Adult Services

Policy Manual

Table of Contents

Chapter 1 – Section A 10
I. Legal Regulations 10
A. Legal Basis 10
B. Compliance with Civil Rights Act of 1964 and Rehabilitation Act of 1973 10
II. Eligibility Determination 10
A. Persons Eligible for Protective Services 10
B. Additional Criteria 11
C. Residence 11
D. Definition of a Family 11
III. Application Process 12
A. Application for Adult Protective Services 12
B. Multiple Applicants 12
C. Application Completion 12
IV. Provision of Protective Services 13
A. Case Documentation 13
B. Restrictions 13
C. Determination and Re-determination of Eligibility of Services 14
D. Standard of Promptness 14
E. Waiting List 14
F. Controls Regarding Standard of Promptness 15
G. Procedures to be Followed in Determining Need of Services. 15
H. Method of Providing Services 16
I. Frequency of Contacts 19
V. Service Reduction or Termination 19
A. Reduction of Services 19
B. Termination of Services 19
C. Notification Procedures 20
VI. DHR Responsibilities 22
A. Coordinating Services with Financial and Food Assistance and SSI 22
B. Providing Clients a Right to Appeal 22
C. Providing Payment for Specific Medical Examination Services 23
Chapter 1- Section B 24
I. Introduction 24
II. Goals and Services 24
A. Goals 24
B. Services 24
I. Service Plan 27
A. Determination of Need for Services 27
B. Client's Assessment 27

Table of Contents

C. Worker's Assessment of Client's Problem and Service 27
D. Development of Service Plan 28
E. Goals 29
F. Reevaluation of Case Plan 30
II. SERVICE RECORD 30
A. Purposes of the Service Case Record 31
B. Combined Service Case Records 31
C. Arrangement of Adult Service Case Records 32
D. Purpose of the Narrative 34
E. Recording in the Narrative 34
F. Restricted Case Records 36
G. Case Records During Out-of-County Placements 37
H. Transfer of Adult Protective Service Records 37
I. Administering Adult Protective Service Records 38
III. Youth in Need of Adult Protective Services 39
A. Transitional Planning 40
B. Discharge Planning from the Child Welfare System of Care 40
C. Transfer of Family Services Cases to Adult Protective Services 41
D. Youths Requesting Reentry into the Child Welfare System of Care 42
Chapter 2 Section A 43
I. Definition of Counseling Services 43
II. Determination of Need for Counseling Services 44
III. Development of the Case Plan 44
IV. Recording of the Case Plan 45
V. Evaluation or Reevaluation of the Case Plan 45
VI. Employment (non-WIN) 47
VII. The Local Employment Service Office (ES) 48
VIII. Vocational Rehabilitation Service (VRS) 49
IX. Health 52
X. Resources 53
XI. Services Related to Nursing Home Care 54
XII. Planning for Nursing Home Care 55
XIII. Services During Nursing Home Care 56
XIV. Discharge from Nursing Home Care 57
XV. Home Management 57
XVI. Housing 59
I. INTRODUCTION 62
II. GENERAL GUIDELINES 62

Table of Contents

A. Contraception 62
Chapter 2 Section D 63
I. GENERAL POLICIES APPLICABLE TO ADULT DAY CARE 63
A. Introduction 63
B. Eligibility 64
C. Responsibilities of the Service Worker 64
D. Sources of Adult Day Care 66
E. Physical Examination 66
F. Individual Records for Adult Day Care Participants 67
G. Confidentiality 67
H. Absences 67
I. Re-evaluation of Adult Day Care Participant 68
J. Termination of Adult Day Care 68
II. POLICIES APPLICABLE TO ADULT DAY CARE CENTERS ONLY 69
A. Development of Adult Day Care Center Resources 70
B. Contract to Provide Adult Day Care 70
C. Allocations of Adult Day Care Slots 70
D. Centers Serving Clients from More than One County 71
E. Terminations Due to Funding 71
F. Payments to Centers 71
G. Holidays and Emergency Closing 72
H. Program of Activities 72
I. Meals and Snacks for Participants 72
J. Transportation to Adult Day Care Center 72
K. Attendance Record and Reports for Adult Day Care Centers 73
L. Procedures Regarding Complaints about Adult Day Care Center Providers 74
III. POLICIES APPLICABLE TO ADULT DAY CARE HOMES ONLY 77
A. Development of Adult Day Care Homes 77
B. Approval, Denial, Suspension/Revocation of Day Care Homes 78
C. Resource Case Record for the Day Care Family 80
D. Supervision of Day Care Home for Adults 81
E. Program of Activities 82
F. Health Care 82
G. Meals and Snacks for Participants 83
H. Attendance Record and Reports for Adult Day Care Homes 83
I. Payments to Homes 84
J. Day Care Home Transportation 85
K. Complaints about Care in Adult Day Care Homes 86
L. Corrective Action, Hearings, and Appeals 87
IV. ADULT DAY CARE HOME FORMS 91
A. Initial Adult Day Care Home Provider Approval Check List 91
B. DAY CARE HOME FOR ADULTS HOME STUDY 93
I. Day Care Family 93

Table of Contents

II. Health, Fire, and Safety Features/Standards 94
III. References for Applicant(s) 95
IV. References for Substitute Caregiver(s) 95
V. Minimum Standards for Adult Day Care Homes for Adults 95
VI. Worker's Assessment 96
VII. Disposition 96
C. ADULT DAY CARE HOME RE-EVALUATION 97
D. ADULT DAY CARE HOME TRANSPORTATION AGREEMENT 100
E. A Sample Letter for use on County Letterhead to secure Medical Information 102
F. Department of Human Resources HIPAA PRIVACY AUTHORIZATION 103
G. Sample Denial Letter on County Letterhead 106
H. Sample Letter of Suspension or Revocation of Approval on County Letterhead 107
Chapter 2 Section E 109
I. Introduction 109
II. Target Population 109
III. Provider Qualifications 109
IV. Assurances Necessary for Federal Approval to Provide TCM 110
V. Client Eligibility 110
VI. Provision of TCM 111
VII. Core Element Functions of TCM 112
VIII. TCM Encounter 114
IX. Reimbursement for TCM Encounters 114
X. Documenting TCM Encounters 114
XI. Third Party Insurance Reimbursement of Targeted Case Management for Adults 117
XII. TCM Data Collection 117
XIII. TCM Encounter Billing Process 118
XIV. Entering Client Data in FACTS 118
XV. Entering Case Plan in FACTS 118
XVI. ERD Reports for Targeted Case Management 118
Chapter 2 Section F 120
I. Legal Base for Adult Protective Services 120
A. Introduction 120
B. Definition of Protective Services for Adults 120
C. Eligibility 122
D. Purpose of Protective Services for Adults 122
E. Legal Definitions 122

Table of Contents

F. Penalties for Abuse, Neglect and Exploitation 125
G. Responsibilities of Department of Human Resources Pursuant to Adult Protective Services Act of 1976, Amended 1989 127
II. Theory and Practice of Adult Protective Services 129
III. Reports of Abuse, Neglect, and Exploitation (ANE) 133
A. Reporting to County Departments 133
B. Immunity 136
C. Intake in Protective Services 136
D. DHR Response Times 140
E. After Hours Intake 141
F. Procedures for Special Case Situations 141
G. Reporting to Adult Protective Services, SDHR 156
H. Role of District Attorney or Law Enforcement 157
I. Policy Regarding Photographs and Audio/Video Tapes 159
J. Departmental Policy Regarding Signing of Criminal Warrants 160
IV. PROCEDURES OF INVESTIGATIONS AND DISPOSITIONS 161
A. Conducting the Investigation 161
B. Disposition of the Investigation 166
C. Recording the Investigation 170
D. Suspension Protocol for AANE Reports 173
E. Suspension for Administrative Hearings 174
F. Procedures for Protective Services Investigative Hearings 175
G. Procedures for Agency's Out-of-Home Protocol 181
H. Administrative Record Reviews 182
I. Disclosure and Release of Confidential Information 186
V. PROVISION OF ADULT PROTECTIVE SERVICES 189
A. Provision of Preventive Protective Services 189
B. Provision of Protective Services 191
C. Multi-Disciplinary Teams for Adult Services 195
D. Community Resources 196
F. Reimbursement for Meals Purchased for Clients 203
G. Purchased Protective Services for Adults 203
H. Sex Offender Registry Study 216
I. Placement Resources 216
VI. THE LEGAL SYSTEM. 233
A. The Decision to Involve the Legal System 233
B. Freeze Assets and Temporary Guardian 233
C. Protective Placement 233
D. Emergency Protective Services 243
E. The Alabama Uniform Guardianship and Protective Proceedings Act 244
F. Appointment of Guardian of the Person 246
G. Uniform Veterans' Guardianship Act (§26-9-1) 255

Table of Contents

H. Appointment of a Conservator of the Estate 255
I. Commitment to a Mental Institution 266
J. Securing Authorization for Medical Treatment 272
VII. OTHER LEGAL ISSUES 279
A. Legal Representation for County Departments 279
B. Preparation for Testimony 279
C. Legal Costs for Protective Services 280
D. Legal Counsel for the Elderly – A Resource 285
E. Legal Assistance with Resource Management 287
VIII. Additional Issues Related to Adult Protective Services 290
A. Duties and Responsibilities of Community Ombudsman 290
B. Natural Death Act 291
C. Alcohol or Drug Abuse and Suicidal Gestures or Tendencies 293
D. Domestic Violence 294
E. Protection from Abuse Act 295
F. Pauper Burials 298
G. Reimbursement to Local Funds for Photocopying Expenses 298
Section VIII. Additional Issues Related to Adult Protective Services 299
H. Protection of Vulnerable Adults from Financial Exploitation Code of Alabama, Section 8-6-170.. 299
I. Glossary of Legal Terms 301
J. Sample Itemized Statements and Letters 309
K. List of Sample Petitions and Court Orders 314
MOTION TO BE RELIEVED OF REPORTING RESPONSIBILITY 318
MOTION FOR ORDER GRANTING EMERGENCY MEDICAL TREATMENT 319
EX PARTE ORDER OF 320
PROTECTION FROM ABUSE 320
LETTERS OF CONSERVATORSHIP 323
EMERGENCY ORDER 324
CHAPTER 2 SECTION G 325
I. Introduction 325
II. The Foster Care Client 325
A. Criteria for Persons to be Served in Foster Care 325
B. Financial Considerations 326
C. Foster Care Placement 329
D. Use of Other Services in Conjunction with Foster Care 334
E. Investigation of Reports of Abuse, Neglect and Exploitation 335
F. Temporary Absence from the Foster Home 335
G. Termination of Placement 336
H. Death of a Person in Foster Care 337
III. Foster Care Providers and Homes 338
A. Recruiting Foster Homes 338
B. Requirements for the Foster Family 339

Table of Contents

C. Requirements of the Foster Home 356
IV. The Home Study 360
A. Interviews and Training 360
B. Minimum Standards 361
C. References 362
D. Evaluating the Foster Home 362
V. Application Approval/Denial and Revocation of Approval 363
A. Approval to Provide Foster Care 363
B. Denial of Application to Provide Foster Care 364
C. Semi-Annual Update Visit 364
D. Re-Approval to Provide Foster Care 365
E. Approval to Provide Both Foster Care and Day Care for Adults 365
F. Homes Providing Foster Care for Children and Foster Care for Adults 366
VI. Resource Case Record for the Foster Family 367
VII. ATTACHMENT A: SAMPLE MEDICAL STATEMENT 368
VIII. ATTACHMENT B: SAMPLE DENIAL LETTER 369
IX. Attachment D: Initial Adult FC Provider Approval Checklist 370
X. ATTACHMENT E: SAMPLE LETTER FOR SUSPENSION OF APPROVAL 372
XI. ATTACHMENT F: PAYMENT TO THE FOSTER CARE PROVIDER 373
XII. ATTACHENT G: HIPAA BUSINESS ASSOCIATE AGREEMENT 374
Chapter 3 Fraud 377
Introduction 377
Definition 377
Legal Basis 377
Elements Constituting Fraud 377
Prevention of Fraud 378
Determination of Suspected Fraud 379
Examples of Fraud 380
Reporting the State Department 381
State Department Responsibilities 381
Action of Attorney General 382
Cases Referred to the Attorney General's Office 382
Cases Involving Non-Fraud Unentitled Services and Administrative Error 383
Computation of the Case Value of Services Received Fraudulently 384
Cash Value of Units of Service 385
Collections 386
Chapter 4 Hearings 387
Introduction 387
Request for a Hearing 389
Procedures to be Followed After Receipt of Request for Hearing 390
Notice of Hearing 394
Issuance of Subpoenas 395

Table of Contents

Organization of Hearings 396
HEARING PROCEDURES FOR SERVICES 405
Minimum Standards for Foster Care Homes 407
I. INTRODUCTION 407
II. MINIMUM STANDARDS FOR FOSTER HOMES FOR ADULTS 408
A. Adults in Foster Care 408
B. Application and Procedures 408
C. Foster Family Home Requirements 409
D. The Foster Family 411
E. Character and Suitability Requirements 414
F. Responsibilities of the Department of Human Resources 416
G. Responsibilities of the Foster Family 416
H. Adult Foster Care Service Fee 417
MINIMUM STANDARDS FOR DAY CARE HOMES FOR ADULTS 418
Application and Procedures 419
Day Care Home Requirements 420
Day Care Family 422
Absences 427
Payment for Adult Day Care 427
Records and Reports 428
Responsibilities of the Department of Human Resources 429
MINIMUM STANDARDS FOR ADULT DAY CARE CENTERS 436
Chapter 5 United States Repatriation Program 448
A. NON-EMERGENCY REPATRIATION PROCEDURES: 448
B) EMERGENCY REPATRIATION PROGRAM 453
Chapter 6 454

Chapter 1 – Section A

I. Legal Regulations

A. Legal Basis

Welfare Laws, State of Alabama, Title 38, Code 1975, Sections 38-1-1 through 38-9-11, and the Social Security Act and its amendments provide the legal basis for the Adult Protective Service Program of Alabama.

B. Compliance with Civil Rights Act of 1964 and Rehabilitation Act of 1973

In conformity with the requirements of the two acts mentioned above, all services of the Department of Human Resources are to be provided in such a manner that no person will, on the grounds of race, color, religious creed, national origin, political beliefs, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in regard to such services.

A copy of the current Civil Rights pamphlet is to be distributed to clients upon application for services. An additional pamphlet is to be given upon all denials. If a denial is made at the time of application, the applicant need receive only one Civil Rights pamphlet.

It is not necessary for the client to receive a copy of the Civil Rights pamphlet at the time of 6 month reevaluations or when services are terminated.

II. Eligibility Determination

A. Persons Eligible for Protective Services

As used in the Adult Protective Services program, an adult is an individual who is 18 years of age or older. This does not prohibit a person 18 years of age or over from continuing to receive services defined in the Family and Children's Services Manual when such services are more appropriate to his or her needs.

Listed below are the persons who are eligible for services:

1. Individuals, age 18 or over who are suspected to be at risk of abuse, neglect, or exploitation and who otherwise meet service specific criteria. [1] Individuals at risk of abuse, neglect, or exploitation are defined as individuals who are suspected to be or likely to become adults in need of protection. An adult in need of protective services is defined as an individual age 18 or over whose behavior indicate that he or she is mentally incapable of adequately caring for himself or herself and his or her interests without serious consequences from abuse, neglect, exploitation, sexual abuse, or emotional abuse by others and who has no guardian, relative, or other appropriate person able, willing, and available to assume the kind and degree of protection and supervision required under the circumstances.

[1]Revised APS Letter 2008-06
April 2008

2. Individuals who are age 18 or over who are at risk of institutionalization and who otherwise meet service specific criteria. Being at risk of institutionalization is defined as adults who are unable or likely to become unable to live safely outside of an institution due to his or her inability or his or her caretaker's inability to provide the minimum sufficient level of care in his or her own home.

B. Additional Criteria

Not only is it necessary that an individual be eligible for services, but it must also be determined that the service to be provided:

1. is needed,
2. is accepted by the client with the exception of APS Case Management Services or those which are court ordered, and
3. is an appropriate part of the service plan for that individual.

C. Residence

For the purpose of determining eligibility for Adult Protective Services, any adult in need of protective services in the State of Alabama may be considered a resident and, therefore, eligible for those services.

D. Definition of a Family

"Family" means the basic family unit consisting of an adult and his or her spouse and children under 18[2]. (or under 21 if in school) related by blood, marriage, or adoption who are residing in the same household. A member of this basic family unit temporarily out of the home – for example, attending school but returning for holidays and vacations, or hospitalized – continues to be considered a part of the family. Considered as separate families are:

1. Related persons 18 years of age or over, other than spouses, who live together.
2. Unrelated persons 18 years of age or over who live together.
3. Children living with unrelated persons. This includes children in foster care and children in adoptive homes for whom no final decree of adoption has been issued.
4. Children for whom the Department has custody or planning responsibility who are living with relatives other than parents.
5. Individuals under 18 years of age who are:
   a. married, or
   b. self-supporting and living apart from the basic family unit, or
   c. grantee relatives for their own child or siblings.

[2] Revised: APS Letter 2015-04
March 2015

III. Application Process

A. Application for Adult Protective Services

Each adult wishing to receive [3]adult protective services from the Department of Human Resources must be given the opportunity to apply for services and sign the DHR-FSP 1966 (revised 6/20), "Application for Adult Protective Services." Determination of eligibility will be based on the client's need for the service.

The application may be filed by the applicant or his or her authorized representative. If the applicant is incompetent or incapacitated or in an emergency situation, the application may be signed by a relative or other responsible person who has been involved in planning the provision of services to the client. *Workers may not sign applications* on behalf of the client. An application, once signed, is active until the case is closed.

B. Multiple Applicants

Each adult applicant for services is to sign a separate DHR-FSP 1966 (revised 6/20). This includes individuals who are married and applying either at the same time or at different times. Eligibility will be determined for each individual based on his or her need.

C. Application Completion

It is often necessary for county staff to assist the applicant by completing the application with information supplied by the applicant or someone acting for him or her. The applicant may also be allowed to take the form to be completed elsewhere with the assistance of another person. The applicant or responsible person should be made aware of the information on the back of the form regarding his or her rights and responsibilities related to the application. The Civil Rights pamphlet should be given at the same time that the application is provided.

If the application is received in the county office with insufficient information, the worker should contact the client or his or her representative for clarification. Information gathered may be added by the worker and indicated by initialing the changes or additions to the form.

It is necessary to prepare DHR-FSP-1967, "Notice of Action on Application," when an application for service is signed by a client or his or her representative.

[3] Revised: APS Letter 2008-06
April 2008

IV. Provision of Protective Services

A. Case Documentation

In each case in which adult protective services are provided to prevent or remedy abuse, neglect, or exploitation or to prevent institutionalization, it is necessary that the case record contain documentation of the circumstances of actual and potential reasons that led to the decision to provide protective services. Cases may be opened and protective services provided for adults for preventive purposes, even though a report of suspected abuse, neglect, or exploitation has not been received or the circumstances do not support the worker filing a report.

The following information should be recorded if available:

- Specific problem reported and the source of the report
- Date(s) of the incident(s)
- Description of the incident(s)
- Name and address of the person(s) believed to be responsible
- Description of the client's condition (physical and mental)
- Information the worker has about previous such incidents, and
- Whether a report has been submitted to any law enforcement officials.

If a report to law enforcement has been made, the information contained in that report should be included in the narrative. If a copy of the report is available, it should be placed in the record and a reference to that copy should be made in the narrative.

B. Restrictions

It is important that all services, including abuse, neglect, and exploitation investigations be listed on the "Application for Adult Protective Services" (DHR FSP 1966, revised 6/20) to ensure accurate claiming for federal funds. In addition, there are limitations on what services can be provided without the request or consent of the client or his or her representative. [4]

If a protective services client or his or her authorized representative refuses to sign a service application, the client can only receive case management services which include investigation of any allegations of abuse, neglect, or exploitation and arrangement of services. If a service application is not completed, the case narrative must document whether the client is receiving services voluntarily or under court order. A service application signed by the client or his or her representative or a court order is required when purchased services such as day care or foster care are provided to any client. No application is required when there is a court order.

[4] Revised: APS Letter 2008-06
April 2008

C. Determination and Re-determination of Eligibility of Services

Determination of eligibility for ongoing protective services shall be made on the basis of the client's need as assessed by the agency. The APS Case Plan, Initial and Reviews, on FACTS, can be used in making this assessment and to establish a case plan for the client if necessary. Information may be gathered from the client or his or her representative, other involved individuals, medical personnel, etc. as well as from the DHR worker's observations. Once the need for protective services is established, the client's situation must be re-evaluated, as needed, but must be done at least every six months. All clients must be seen monthly or as often as necessary to assess the safety and well-being of the client, regardless of their placement type. The reevaluations will be accomplished by a face-to-face visit. The case plan must be used to reassess all areas of concern and the case plan revised as appropriate. (Please see "Development of Service Plan," Section C of this Chapter.)[5]

D. Standard of Promptness

A decision must be made on all applications within 60 calendar days after the "date of application," which is the date the completed and signed application is received in the county office, effective June 10, 2008. For applications received in the county office prior to that date, the decision must be made in 45 days. The applicant will be informed of that decision in writing by use of form DHR-FSP 1967, "Notice of Application for Services." The date of the worker's signature is the date on which eligibility determination is completed.

Note: The applicant has the right to appeal when no decision has been made on his or her application within 60 days, effective June 10, 2008, unless the application was received prior to that date.

E. Waiting List

An individual, whose situation does not meet the criteria for a Report of AANE but who is determined to be at risk of AANE or institutionalization, may have his or her name placed on a *waiting list for an unavailable service, such as adult day care.* A service case is not opened at that time unless case management services are deemed to be required. When a prevention case is waiting to be opened for adult day care, and a slot becomes available, the client's need for the service must be reassessed with a new referral created, submitted, and approved if the previous referral has been completed more than 30 days. A case may be opened from the previously created, submitted, and approved referral when the service becomes available within 30 days from the previous referral approval date.

For those individuals on whom an AANE report is received, the worker must seek alternate solutions, even if temporary, while the name is on a waiting list.

[5] APS Letter 2021-11
August 2021

One waiting list should be established, as needed, for each service which that county department provides. All services are provided only for the purpose of remedying or preventing abuse, neglect, exploitation or prevention of institutionalization.

When a slot becomes available, it is necessary to reassess the service needs of the first client on the list. Clients at risk of AANE are the first on the list followed by those at risk of institutionalization. The date of request determines order of those sharing the same risk. If the client continues to need the service, refer the client to the next provider due to receive a referral. If the client is no longer appropriate for the service, the next highest name will be considered for the slot. The reassessment and reasons for removing the client's name from the waiting list must be documented in the case narrative. The client must be notified by use of DHR-FSP 1967, "Notice of Application for Services."

F. Controls Regarding Standard of Promptness

It is necessary to maintain sufficient controls so that the worker will have advance notice to comply with standard of promptness and can complete the applications or reassessments within the time allowed. Currently these standards may be met through the electronic tracking systems. Notices are provided in advance on FACTS for the APS investigations and on FCBS printouts for on-going APS cases due for reevaluation.[6]

See "Reduction or Termination of Services" later in the section for discussion regarding advance notice of reduction or termination of services.

G. Procedures to be Followed in Determining Need of Services.

Individuals requesting or referred for Adult Protective Services must be carefully assessed to determine their eligibility and need for the service(s). Once this assessment has been completed (see "Eligibility Determination", this section), the individual must be given the opportunity to prepare and sign an application. If services are to be provided, a case plan must be developed with the individual or his or her representative. All services provided by DHR must be necessary to protect the individual determined to be at risk of abuse, neglect, or exploitation or to prevent institutionalization.

Clients may choose to refuse services which the worker assesses would be beneficial in providing protection of the client. (See §38-9-4 through §38-9-5, Code of Alabama.) Unless court ordered, ongoing services may not be provided without the agreement of the client. The worker may choose to open the case for Preventive Protective Services with periodic contact with the client to develop a level of trust that may enable the client to reconsider the services offered. However, if the client is adamant in having no further involvement with the agency and there is no Court order, the case must be closed. It is important, however, that the worker leave information on how to contact a DHR representative if the client later decides to accept the service(s) offered.

[6] Revised APS Letter 2010-10
May 2010

Using the DHR-APSP-1897, "APS Case Plan/Initial and Reviews, the worker must carefully assess the strengths and needs of the client. It is vital that information be sought from those known to be involved with the client to determine the level of support already in place as well as what is needed. [7]This assessment would include contact with family, friends, doctors, pastor or church members, other community agencies, etc. Once needs are determined, the client and worker can begin to formulate a case plan to meet those needs. Plans must include not only DHR provided services but also those being provided in the community.

The need for services should be reassessed as contacts are made with the client but must be done every six months using the DHR-APSP-1897. The case will remain open as long as the client is determined to be an adult in need of protection, and to be at risk of abuse, neglect, or exploitation.

H. Method of Providing Services

Services for eligible persons may be provided by:

1. DHR Employees or Support Staff

a. An adult protective service worker may provide case management services immediately if his or her assessment is that the client is an adult in need of protection and immediate action is required.

b. Volunteers may be recruited and utilized after proper background checks are completed.

2. Purchased Services

a. Individuals may provide services as Adult Foster Care providers or as Day Care Home providers.

b. DHR may contract with other agencies to provide such services as Homemaker, Day Care Center, etc.

These purchased services may be provided only after the client or his or her representative has signed an application for services (DHR-FSD-1966, revised 6/20) and has received a notice that approval (DHR-FSD-1967) has been given by the agency. Please see the appropriate sections of Chapter II, Adult Service Manual for specific instructions for procedures required to establish provision of these services.

[7] Revised: APS Letter 2008-06
April 2008

3. Services Without Charge to DHR from Other Agencies

County Departments must make maximum use of other sources of services that are available without cost to the agency. It is important for County staff to be aware of all the resources available in the community to access relevant programs and develop the best possible case plan. This can be an invaluable intervention or support. For example Medicaid Waiver Services may be available through the local Area Agency on Aging for homemaker or day care services. Appropriate referrals *must* be made to Medicaid Waiver agencies prior to authorizing day care through DHR. In order to connect people with the resources to help them, Information and Referral (I & R) Services are an essential part of Department responsibilities. If a referral is made to another agency for resources, the other agency should be contacted to ensure that the person will receive the service(s) which is needed.[8]

The worker must give the client known information about resources in the community that would be beneficial in dealing with identified needs of the client. If there is a choice of resources, the client should be given enough information about each to assist in his or her decision making. Referrals must not be made without the agreement of the client.

The worker must be sure that the client or the person acting for him or her understands the necessity for sharing information needed by the resources. The client must give his or her permission for the worker to proceed with the referral by signing a Release of Information form specifically for that agency. It is important to reassure the client that only the information essential to providing the desired service will be shared.

In discussing possible resources, the worker must not appear to commit the other agency to providing assistance. Once the worker is aware of the individuals' current needs and experiences, they should proceed to share the range of available and applicable resources and help make these services accessible. Depending on what the client wants and needs, the worker can help him or her reach the hotline, local shelter and local support groups by also notifying that agency of how to contact the person who is in need of assistance. The client should be given any information about possible or probable delays in availability if the referral is accepted.

Making a referral may be done in one or a combination of the following ways:

- A telephone referral, possibly in the client's presence. This could be important in reassuring the client of the nature in which he or she and the situation are discussed.
- A letter may be written to provide the necessary information in a more formal and systematic manner.
- A conference between representatives of the County DHR staff and of the community resource may be held to discuss details of the client's needs. This can be especially helpful in very difficult situations.

[8] Revised: APS Letter 2015-05
March 2015

- A form designed for referral purposes may be used.

The worker should arrive at a clear understanding with the other agency as to the Department's continued role related to the case and any follow-up steps to be taken.

Follow-up is an important part of the referral process unless the referral is to obtain a service such as a walking cane, eye glasses, temporary financial assistance, etc. The method and frequency of follow-up depends on many factors such as the extent of the client's need for support, the nature of his or her problems and the plans for dealing with them. In addition, the nature of the services from the other agency and the extent of the understanding and cooperative efforts between the two agencies will determine how follow-up is handled. Values of follow-up include:

- It helps the client to understand the continuing support of the agency and the role of the worker as an advocate.
- It enables the worker to assess the client's progress and to evaluate the service plan and adjust the plan as necessary.
- It provides a reliable basis for a decision that services are appropriate and useful in meeting the established goals.

It may appear that one agency alone can best meet the needs and interests of the client. If this happens and there is no court order charging DHR to provide services, the two agencies should decide which will continue, and the other agency should withdraw in a professional manner.

In all open APS cases, recording of information and referral services is to be included as part of the case plan on FACTS. Any additional recording is to be done according to I&R procedures on FACTS in Referral. [9]

[9] Revised: APS Letter 2015-05
March 2015

I. Frequency of Contacts

To provide the degree of protection necessary and to assure effectiveness of services, the worker must see the client or someone acting in his or her behalf as often as necessary to achieve the objectives of the service plan.

Once a service plan is well established and an appropriate level of protection has been achieved, contacts may not need to be made as often as in the beginning of the case. In other cases, especially if there is limited community support, continued worker involvement may be desirable. These contacts may be made in the home, the office or elsewhere depending on the client's needs.

Contact must be made with all clients monthly or as often as necessary to assess the safety and well-being of the client. When completing case plans at least every six months, the client should be interviewed face to face. Also, if a client receives day care services, they should be visited at the day care center monthly. If a client is in foster care and receives Adult Day Care services, the client must be seen monthly in the foster home and every other month in the day care setting. Additionally, if a client is not in an out-of-home placement and attends Adult Day Care, the client must be seen in both settings, alternating the monthly visits between the settings. Clients must be visited in both settings remove as often as necessary to assess the client's on-going needs.[10] When completing a case plan, a home visit should be made to the client's residence to observe the client's level of functioning. Information should be documented on the case plan and in the narrative.

V. Service Reduction or Termination

A. Reduction of Services

The level of service will be reduced when:

- It is assessed that less services will appropriately meet client's needs as reflected by the case plan, or
- Funding reductions make it necessary to reduce the amount of services provided.

B. Termination of Services

Services may be terminated under the following conditions:

- Lack of funding make it necessary to terminate the service, or
- The case goal has been attained or there is no longer a need for the service(s), or
- It is documented in the case record that the agency has attempted to meet the need but has determined that the client will not benefit, or

[10]APS Letter 2021-11
August 2021

- The client or his responsible representative refuses or no longer wants the service and there is no Court order directing the agency to provide the service, or

- The client is no longer determined to be an adult in need of protection or at risk of institutionalization and is therefore no longer eligible for the service, or

- The service(s) being provided is no longer available from this agency in the client's geographic area

- For day care service only, the client is disruptive in a day care program, or

- For day care service only, the client meets the definition of chronic absenteeism for day care. (See Chapter II D.)

When a case is closed for service, the worker must attempt to assure that the client or his or her representative is aware of how to seek assistance from the agency in the future if needed.

C. Notification Procedures

1. Advance Notice of Reduction or Termination of Services
   Use of the "Notice of Reduction or Termination of Services" (DHR-FSD-1968) *is required* when:
   - There is a reduction in the level of services;
   - Any service is being terminated, whether some other service will continue to be provided or not.

If a purchased service is being reduced or terminated, it will be necessary to submit the DHR-FSD-1968 to the client and the provider of service. [11]If there is more than one provider, each must receive a copy of the form but they must not receive copies regarding other services or agencies providing other services.

If it is necessary to change a provider of service, DHR-APS-2192 must be sent to the client and a copy to the current provider with client permission.
The effective date in all cases other than those listed below (under Exceptions) will be 10 days after the "Date of Notice" on the DHR-FSD-1968.

If the client exercises his or her right to appeal within 10 days from the date of notice, services are to be continued until a final disposition is made on the appeal.

2. Exception to Advance Notice of Reduction or Termination:

[11] Revised: APS Letter 2008-06
April 2008

There are some situations in which the 10-day advance notice of reduction or termination is not required and the effective date of DHR-FSD-1968 is the same as the "Date of Notice". All exceptions must be well documented in the case file. These situations include:

- A written statement is provided by the recipient or his or her authorized representative stating that services are no longer needed or desired. The written statement must be filed in the case record.
- The recipient has moved to another county and services are being provided in that county.
- The recipient has moved to another state.
- The recipient has moved and left no forwarding address and his or her whereabouts are unknown as verified by return of agency mail. The returned agency letter and envelope must be retained in the case file.
- The recipient died. Death must be verified by death certificate, newspaper notice, contact with family, physician, coroner, or funeral director. *No DHR-FSD-1968 is to be completed.*
- An adult client has left day care or has been removed by his or her responsible person and the Department is notified in writing either by the client, representative, or provider that the client is not returning. This written statement must be filed in the case record.
- The service was authorized at a specific level or for a limited period and, at the time of authorization, the client was given written notice that the service would be reduced or end at a specific time.

3. Notice to Provider

A copy of DHR-FSD-1968, "Notice of Reduction/Termination of Services" is to be sent to the provider when a purchased service is reduced or terminated. This includes the provider of foster care for adults and day care home providers. The copy going to the provider will not contain the information concerning the reason for reducing or termination service(s).

Upon the receipt of an appeal requiring a service to be continued, DHR staff must immediately notify the provider by telephone, email, or fax that services are to be continued until further notice. That information must be confirmed by letter within 5 days. Upon resolution of the appeal, the provider(s) must be notified in writing immediately whether the service(s) are to be continued. If the appeal decision is adverse to the client, services must be reduced or terminated immediately.

It is the responsibility of the County Department staff to maintain adequate controls for determining when the effective date has been[12] reached and whether services are to be continued. As noted in section C. Notification Procedures, the provider may also receive a copy of DHR-ASP-2192, with the client's permission when a change in providers takes place.

[12] Revised: APS Letter 2008-06

VI. DHR Responsibilities

A. Coordinating Services with Financial and Food Assistance and SSI

Information solicited from the client by the service worker should be confined to that needed for purpose of assessment and development of a case plan. In securing this information, the worker may become aware of changes that may affect eligibility for Food Assistance, supplementation, or SSI and the amount of payment to be received from each. For example a change in living arrangements might affect the amount of SSI Supplementation being received. A referral to the eligibility worker would give that person the opportunity to determine whether a change should be made.

It is important for the client to report any information affecting a money payment or food assistance whether it would result in an increase or decrease in benefits. It is also important for the worker to provide any necessary or requested assistance to the client in making these reports. When the client does not report a change which affects Food Assistance benefits, TANF, or SSI Supplementation, the service worker must do so. As an employee of the agency, the worker has the responsibility for making known to the Food Assistance Office or the Family Assistance Unit that a change has occurred which may affect the client's eligibility. In such cases, any follow up regarding specific information and its effect on eligibility is the responsibility of the Food Assistance or eligibility worker.

If the service worker learns of information which might affect eligibility for SSI, the worker should attempt to help the client understand his or her responsibility to report this information to the Social Security Administration. Assistance should be offered in providing the telephone number and address of the local office as well as help in completing any necessary forms related to reporting information.

It is the responsibility of the Food Assistance or Family Assistance workers to refer to the service unit any persons who appear to be adults in need of protection due to the risk of abuse, neglect, exploitation, or institutionalization. [13]Referrals should be based on case situations and on the clients' circumstances.

B. Providing Clients a Right to Appeal

Applicants for and recipients of services must be provided the right to express their dissatisfaction with denial or exclusion from a service, reduction of a service, or failure of the agency to respect the client's decision regarding use of a service. All such applicants and recipients must be advised of their right to appeal and the procedures for such appeal. See Chapter V "Hearings". Specific information regarding rights of appeal are included on the reverse sides of DHR-FSP 1966, revised

[13] Revised: APS Letter 2008-06
April 2008

6/20 ("Application for Adult Protective Services"), DHR-FSD 1967 ("Notice of Application for Services"), and DHR-FSD 1968 ("Notice of Reduction or Termination of Services"). At the time of application, clients should be apprised of their right to appeal, made aware of the instructions on the back of the application form, and informed that the same instructions will be on the backs of any notice denying, reducing, or terminating a service(s). In addition, a copy of the rights of appeal must be provided to persons requesting information on Hearing and Appeal procedures[14].

C. Providing Payment for Specific Medical Examination Services

Payments may be authorized to secure a medical opinion for the following purposes:

- Foster Care for an adult client
- Day Care for an adult client

When it is necessary to authorize payment for cost of such examinations, a statement of charges made by the examiner must be secured in duplicate. Each statement must be itemized properly, showing the name of the person(s) examined, date(s) of service, service(s) provided and amount of charge. Before submitting the statement for payment, the county office must see that each examination entry is clearly identified with case name, case number, and the purpose of the examination (foster care or day care). Each statement must be properly signed authorizing payment. DHR-BFM-676 will be used to submit statements to the SDHR Finance Division for payment. Instructions for procedures for completion of the form are included in Adult Services Manual Forms and Appendices, Chapter VI.

[14] Revised APS Letter 2008-06
April 2008

Chapter 1- Section B

I. Introduction

The Mission Statement of the Department of Human Resources is to provide for the protection, well-being and self-sufficiency of children and adults.[15]

The mission of Adult Protective Services is to support and enable County Departments to protect elderly and disabled adults from abuse, neglect, and exploitation and prevent institutionalization.

This Section contains a brief description of the services included in the Adult Services program.

II. Goals and Services

All services provided for adults by the Department of Human Resources, either directly or through purchase of service, are to be directed toward one of the following goals:

A. Goals

1. Preventing and remedying neglect, abuse or exploitation of adults, 18 years or older, unable to protect their interests; or

2. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care.

B. Services

The services which follow are available, if appropriate, for adults in need of protection. Services include those provided by DHR staff, purchased by contracts, or other agencies through DHR referrals. Counseling and Family Planning Services are available to all recipients of APS services through referrals to appropriate agencies in the community. Information and Referral Services are provided to those who request assistance.

Not all of the following services are available statewide.

1. Day Care for Adults

Day care for adults is a program of care for a portion of a 24-hour day in a protective setting for an eligible adult 18 years of age or over;

- for whom day care is an appropriate part of a case plan to prevent or remedy abuse, neglect, or exploitation when the circumstances are documented in the case record;

[15] Revised APS Letter 2008-06
April 2008

- who without day care is threatened with institutionalization because he or she is unable to manage daily living activities;

This service includes a medical examination (when not available without cost to the Department) to determine appropriateness of service; and case management to assure the placement continues to be appropriate to the needs of the individual served. The service includes meals and may include transportation.[16]

See Chapter II, Section D, "Day Care for Adults," for additional information.

2. Foster Care for Adults

Foster care for adults provides for service in approved homes on a 24-hour basis for adults (persons 18 years of age or over) who because of physical, mental or emotional limitations are unable to live in their own homes and who have no families with whom they can live.

This service includes medical examination (when not available without cost to the Department) to determine appropriateness of service; case management services to assure that the placement is and continues to be appropriate to the need of the individual being served; proper care; limited transportation; and recruitment and study of foster homes.

This service does not include payment for room and board, and the client must have sufficient resources to pay this cost. A service fee is paid to each provider of care unless the client has adequate resources to meet that cost.

If a client is approved for State Supplementation and is placed in an Adult Foster Home, the client is responsible for paying the amount of the State Supplementation to the Foster Care Provider.

See Chapter II, Section G, "Foster Care for Adults," for additional information.

3. Homemaker Services for Adults

Homemaker services include assistance in managing and keeping in operation the home of:

- the elderly or disabled person who is in need of protection from abuse, neglect, or exploitation and for whom homemaker service is the least restrictive method by which such protection can be provided;

- elderly or disable person(s) living in a home without a caregiver who can continue to safely live outside of an institution if homemaker services are provided;

[16] Revised: APS Letter 2008-06
April 2008

The service also includes limited personal care such as help in bathing and dressing; limited transportation; and case management services as required to assure needs are being served and to monitor the provision of the service.[17]

4. Preventive Protective Services

Preventive Protective Services are case management services provided to those at-risk individuals who are not specifically suspected to be abused, neglected or exploited but who are assessed as being at significant risk of abuse, neglect, exploitation, or inappropriate institutionalization. This would include such services as referrals to community resources, arrangements for transportation to medical appointments, assistance with resolving unpaid bills, follow-up visits, etc.

See Chapter II, Section F, "Protective Services for Adults," for additional information.

5. Protective Services for Adults

Protective Services for adults are directed toward preventing or remedying neglect, abuse or exploitation of individuals 18 years of age or older who are unable to protect their own interests, or are harmed or threatened with harm through the action or inaction by another individual or through their action due to ignorance, incompetence or poor health, if such action or inaction results in:

- physical or mental injury;
- neglect or maltreatment;
- failure to receive adequate food, shelter, or clothing;
- deprivation of entitlements due them; or
- wasting of their resources

These services include: identifying those in need of such services, investigating their situations, assessing their situations and service needs, providing case management services to them and to others on their behalf; transportation necessary for worker to provide the service; or arranging appropriate alternate living arrangements, arranging for medical care and other community resources, arranging for guardians or conservators, arranging for protective placement, providing advocacy to assure receipt of rights and entitlements due them, emergency shelter care limited to twenty-eight days per fiscal year, receiving interpreter services, mental or medical Diagnosis and Evaluations, mental health counseling, DHR limited payment to nursing homes, filing adult protective service reports, making required reports to the court and Information and Referral.
See Chapter II, Section F, "Protective Services for Adults," for additional information.

[17] Revised APS Letter 2008-06
April 2008

Chapter 1 Section C

I. Service Plan

A. Determination of Need for Services

In all cases, when it is agreed between the agency and the client that services will be provided, a service plan must be developed. [18] The client or his or her representative must sign an application before any purchased service can be provided. A signed application is not, however, necessary for the agency to provide protective service investigations and case management services.

B. Client's Assessment

An important part of case planning with an adult client is the adult's assessment of his or her problem and what assistance he or she wants in making changes. Did the client contact the agency and request service? What problem(s) does the client want help with? When and how did the problem(s) begin? What has the client done or tried to do about the problem(s)? Is there anyone available, willing, or able to resolve the problem or to provide the service without assistance from the Department?

The worker will provide the client, or client's representative, with information about the services available which are related to the identified problem of the client. These might include direct services provided by the agency, services purchased from other resources, or services secured by referral.

C. Worker's Assessment of Client's Problem and Service

The worker's comprehensive assessment will include the individual's overall functioning, such as the person's home environment, ability to perform activities of daily living, physical appearance, medical or nutritional needs, as well as mental and emotional state. The assessment would also include information related to finances, personal support system, and risk factors that are concerns. (Please see DHR-APSP 1897, Adult Protective Services Case Plan, Initial and Reviews for a specific checklist of details for assessments.) Based on the situation and level of support available, the worker must determine whether the individual is an adult at risk of abuse, neglect or exploitation or of institutionalization. Agency services will be provided only if needs cannot be adequately met by other agencies or by members of the person's support system.

[18] Revised APS Letter 2011-20
December 2011

The following are some items of information which might be needed to make an assessment of the client's problem(s) and, in cooperation with the client, prepare a service plan:

- Family – What is the composition of the family? What strengths and needs of the family have a bearing on the client's problem(s)? If needed, does the client have someone who is willing and able to protect him or her from abuse, neglect or exploitation?[19] Home Management – How is the home managed including meal preparation, laundry, cleaning, and physical maintenance of the house?

- Money Management – Are bills currently paid? Does the client need help prioritizing expenses? Is someone available to assist or to become a representative payee?

- Living Arrangements – Does the client live alone; is there someone who takes responsibility for planning for him or her? If client lives with someone else, who is responsible for his or her care? Is this arrangement satisfactory?

- Release from Institutional Care – What level of care is recommended by the physician? What adjustments will be required? Are interim plans indicated before attempting independent living?

- Need for Legal Protection – Is the client able to manage his or her affairs or do limitations create serious hazards? Is legal protection needed? Is someone interested in the client who might be willing to serve as a guardian or conservator?

- Health – What is the client's physical and mental condition? Does he or she require assistance in receiving medical care? What form of treatment does he or she require? In the physician's opinion, what are limitations on self-care and management imposed by physical or mental limitations? What is the client's level of day to day functioning? Is help required for personal hygiene?

D. Development of Service Plan

In formulating a case plan with the client, the worker must recognize the client's right to make his or her own decisions to the greatest extent possible. This same principle is extended to relatives or other representatives who are involved in planning for the client. The service plan reflects the services offered to the client, the client's decision to accept or reject the services, and mutually agreed upon steps to be taken by the worker and the client within a specified period of time. Only protective services may be provided without the client's consent or by a court order.

[19] Revised APS Letter 2011-20
December 2011

The worker and the client determine which problem is to receive attention first. It may not be the one the worker considers most important but it would be the one with which the client is willing and ready to accept help. Sometimes a particular problem might be agreed upon because it appears to be amenable to an early solution. The client, or his or her designated representative, will determine with the worker which service is desired and to be accepted, and together they will agree upon steps to be taken by each within a specified period of time.

DHR-APSP-1897, "Adult Protective Services Case Plan/Initial and Reviews", is an optional form and may be used by the worker for field work or other work that will facilitate entry of the case plan on FACTS. It should be discarded after the information is entered into FACTS. Initial case plans must be created, submitted and approved within 30 days of the case opening date.[20]

E. Goals

The goal of each service plan must be to:

- Prevent or remedy neglect, abuse, or exploitation of adults unable to protect their own interests and who have no one to provide that protection; or
- Prevent institutionalization.

The client, or his or her designated representative, will determine with the worker the goals toward which the service plan is to be directed.

The client, service worker and other interested persons must work together on the client's behalf, to meet the appropriate goal. It is important that the service plan have specified objectives, stated needs and steps to meet those objectives, and the responsible person for each step. Objectives are the specific aims of the case to be met within a specified time. There can be more than one objective for the same goal. For example, the goal for an elderly person living alone might be to prevent self-neglect. The needs might include improved nutrition, increased socialization, and better maintenance of the home. The steps to achieve that should then be developed which would allow both the client and the worker to have joint roles in seeking ways to meet the objectives.

For example, for the objective of improved nutrition, (1) the worker might make a referral to the local congregate meal site, which would also be a step to meet the need for increased socialization; (2) the two of them might plan simple meals for mornings, evenings, and weekends to supplement those; and (3) the client could contact local grocery stores to check on possible food delivery. Each step should have a specific time limit to help both the

[20] Revised APS Letter 2015-05
March 2015

worker and the client stay focused and progressing. In many cases, the client may only be able to assist in a very limited way, but whenever possible it is important to include that person in some part of the process.

F. Reevaluation of Case Plan

The service plan can be reassessed as often as needed but must be reassessed at least every six months. All Adult Protective Services clients must have a face-to-face interview at least monthly. Additionally, a client must be seen as often as necessary to carry out the objectives of the service plan, but at least monthly.[21] These monthly contacts should be documented in the FACTS narrative. Also, six-month reassessments must recorded on FACTS. Updating the case plan should be accomplished with a face-to-face interview with the client. Contacts should also be made when possible with the client's designated representatives or their service providers to obtain information regarding the client's status via mail or telephone. All aspects of the case plan should be reassessed. The worker and the client should assess the effectiveness of the service in achieving the goal. The service may be continued or modified (if the client remains eligible) or terminated, as is indicated by the reassessment and approved by the supervisor.

II. SERVICE RECORD

The service case record is contained in a folder with the client's name and a case number appearing on the tab. The name and case number are the same as on the County Master Index Card and on the DHR-723, "Basic Social Service Information", when available. The appropriate legal documents, forms, narrative and correspondence relating to the particular client are included in the case record. Such a folder should be established when:

- There is a document pertaining to the individual, such as an SSA 1610, to be filed; or
- There is a request for service by or on behalf of the client, a concern for an elderly or disabled person is expressed, or a report of abuse, neglect, or exploitation is made.
- An application is received by a person wishing to provide adult foster care or adult day care in a home
- A narrative record is initiated related to an intake call, or interview, and entered on FACTS. Documents should be scanned and filed in the file cabinet on FACTS.

[21] APS Letter 2021-11
August 2021

Chapter 1 Section C: Service Plan and Service Record

A. Purposes of the Service Case Record

- To substantiate agency action at all times by containing documentation of initial and continuing eligibility for services or valid reasons for the disapproval, discontinuance, or change in service provided; or

    - To provide a record of the client's problems, the setting of goals and the services to be provided to reach those goals; or

    - To maintain on-going assessments of individual family members strengths and needs; or

    - To substantiate agency decision to license or approve, or not to license or approve a resource such as a day care home or a foster care home or to revoke a license or withdraw an approval; or

    - To show a picture of how a resource meets standards, what it has to offer and how it is or is not fulfilling its responsibilities; or

    - To prevent needless repetition by the worker or the resource and to afford continuity of service.

Because the case record serves the purposes listed above, it is useful in evaluation of agency practice, in supervision, and in research.

B. Combined Service Case Records

Maintain *only one service case record* for persons in families for whom there is a common service plan. For example, for spouses[22] who are eligible for services; for a person eligible for adult services and the FA he or she serves as a grantee relative; or for a recipient of SSI and the FA of which he or she is a member. There would be only one case record even though eligibility for services is determined in different ways.

In the instances cited above, there should be a separate master file with the same control number for each person who is eligible for adult services.

Adult siblings living together have a separate service case record although both may be receiving services. Each is an individual family unit. In FACTS, enter spouses as one case with one case plan for each spouse.

[22] Revised APS Letter 2015-04
March 2015

C. Arrangement of Adult Service Case Records

County Departments may choose to maintain service case records in either a single file folder system or an accordion file folder system. The system selected must be uniform within the county.

1. Single File Folder Records

a. Attach the following documents to the left side of the folder in the order listed with the most current documents on tops

- Legal documents (e.g., petitions, court orders, court reports, administrative reviews, burial insurance policies.)
- Approvals

b. All other documents are placed on the right side of the file in the order listed below:

- DHR-723, Basic Social Service Information (Face Sheet), current forms, as applicable, are filed inside the folded 723 (e.g., DHR-1966, DHR-1967, DHR-1968, and all other current forms).
- Reports of Adult Abuse, Neglect, or Exploitation, including those recorded on FACTS, should be clipped together with the most recent on top.
- FACTS Narrative and DHR-1897, APS Case Plan, may be arranged chronologically with the case plan inserted in the narrative based on the date it was developed with the client. Because case plans are recorded on FACTS, it is not necessary to print and file case plans in hard files.
- In Foster Care Provider records, DHR-ASD-666, Records of Foster Home for Adults, should act as a cover page to narratives.
- Correspondence (except for medical and court related correspondence) will be filed behind the narrative and arranged in chronological order with the most recent communication on top.
- Medical Forms should be clipped together chronologically with the most recent on top.
- Obsolete forms are to be attached to the back cover of the folder or attached together and filed as the last items in the folder.
- Materials in the various sections should be held together with paper clips or by some other satisfactory method.

When case material cannot be maintained in one folder, a second folder, labeled "Volume II," may be established for correspondence and obsolete materials. Please see Chapter II C, "Responsibilities of the Service Worker," for instructions on

retention of PSD-BSA-719 (progress reports). Volume I is always used for current materials.[23]

An alternate method of maintaining paper case records is the accordion or expanding file folder. Information in the case record is grouped into categories and different colored folders which contain specific information. Colored folders are then filed inside the accordion folders. Even though the folders within the accordion file are color coded, it is important to label each folder's tab. The folders must be labeled by subject, as follows, with information pertinent to the subject label filed within the appropriate folder.

2. Accordion File Folder Records

- Yellow — All legal papers such as petitions, court orders, court reports, etc
  Approvals
  DHR-665, Foster Care Approval Form or Letter of Denial
  Criminal History forms

- Blue — DHR-723, Basic Social Service Information
  DHR-1966, revised 6/20 DHR-1967, and DHR-1968 (Application and Notification Forms)
  DHR 663, Application to provide Foster Care for Adults
  Medical forms
  Foster Care Forms for Clients
  Current DHR500, Emergency Information; DHR1332, Adult Foster Care Payment
  Nursing Home Information
  Nursing Home Medicaid Application
  Limited Nursing Home Agreement

- White — Narrative with DHR-1897, APS Case Plan, forms inserted in the narrative by the dates developed
  DHR-666, Record of Foster Home for Adults
  DHR-1472, DHR-1473, or DHR-1781 (Foster Home Forms)
  DHR-2112, Safe Case Closure

- Green — All other forms (e.g., DHR billing such as limited nursing home, Foster care payments, and other financial forms or bank statements)
  Release forms: HIPAA, medical, mental health, bank, etc.

[23] Revised APS Letter 2011-20
December 2011

- Purple Correspondence
  All non-medical or non-court related correspondence arranged
  In chronological order with the most recent communication on top.

- Pink Obsolete Forms

Note: Counties already using a different color file folder system at the time of this policy's release are not required to change their existing system. The case record system should meet the county's needs and be uniform within the county. These instructions are retained for historical files.[24]

D. Purpose of the Narrative

The narrative is an important part of the case record. Its purposes are:

To organize and document information for accountability and to support casework.

To enable the worker to elaborate on: the individuality of the client; the problems as the client sees them and as the worker sees them; how these problems interrelate; the client's attitudes toward his or her problems; the basis for the setting of priorities, documentation of need, agreement of goals, and the client's agreement regarding steps and services to be provided to reach those goals.

To enable the worker to enter additional information as needed to be used in evaluating and reevaluating the effectiveness of services being provided and a basis for changing the case plan.

To identify patterns of behavior and client's progress as well as problems.

To provide a history of agency involvement for continuity in the case when the social worker changes.

To provide documentation of activities on behalf of the client for court proceedings, federal claiming and audits, and to demonstrate the good faith performance of duties by the worker.

E. Recording in the Narrative

[24] Revised APS Letter 2011-20
December 2011

Narrative Recording is completed in FACTS and must use appropriate headings in the FACTS drop down boxes. Underlined headings may be used within the body of narrative to indicate first victim contact, case assessment and documentation. Other headings can be used to identify any other specific areas of discussion.

For example: Jane Doe information recorded on FACTS must use the appropriate headings (type, date, time, contact method, contact type, contact purpose, etc.) from the drop down boxes. "First Victim Contact" must be used only for the first face-to-face contact with a person alleged to be abused, neglected or exploited. TCM headings should be used on every narrative contact to show provision of Targeted Case Management. The client must be shown in the "Client's Discussed" box.

Contacts should be recorded, including telephone calls or visits with the client where information is given or observed in relation to the case plan. In addition to client contacts, workers must document collateral contacts, especially with family members, caregivers, law enforcement, courts, medical personnel, etc.

Record only information as it pertains to the case plan on the case plan or additional information tab. All other narrative is recorded on the narrative screen in FACTS.
E-mails should not be copied and pasted verbatim in the narrative. Workers may indicate they have had contact via email with participants and record what they learned. Copies of the specific email may be saved to the file cabinet under correspondence. Multiple contacts made in different months cannot be entered as one contact in FACTS.[25]

The narrative in certain records, Day care and Foster care requires more detailed information.

The following are specific recording requirements:

- Timeliness The recording of the narrative must be entered in FACTS within 45 days of the date of occurrence.

- Resource Cases Recording in the narrative of resource cases must be documented on the contacts screen in the Provider section of the case in FACTS. The narrative must contain sufficient detailed information to show conformity or lack of conformity to appropriate standards. (Example: semi - annual re-approval visits and deficiencies).

- When No Services are Accepted The narrative in the case record of a person who appears to understand the worker's explanation of available services but who does not accept any

[25] Revised APS Letter 2013-03
April 2013

services must include: How the client was contacted (interviewed in person, by telephone, etc.), that the service program was explained and the client appeared to understand, the client's decision not to accept service(s), and that he or she was given information about how to reach the agency in the future.

- Opening Cases for Services The preparation of a case record folder and the filing of papers in that folder are not sufficient to open a case for services. A case is to be opened for service when an individual is determined to be at risk of abuse, neglect, or exploitation or at risk of inappropriate institutionalization. To receive *purchased* services, the client must sign an Application for Adult Protective Services, DHR-FSP 1966 (revised 6/20) a slot must be available for the requested service, and the client notified by use of DHR-FSD 1967, Notice of Application for Services. A closed case would be reopened as above. All open cases should be entered on FACTS as appropriate.

When an application is approved but there is no available service slot, the client must be informed of the limitation of slots for that service. The Notice of Application for Service is sent to the client advising that his or her name has been placed on the waiting list. If such clients do not receive other services, the case will not be opened to services for the purpose of maintaining the client's name on the waiting list unless it is assessed that case management services are needed as part of preventive protective services.

- Closing Cases for Services See "Reduction or Termination of Services" in Section A of this Chapter for a discussion of the circumstances under which services are reduced or terminated. When all services are terminated, the case is to be closed for service. The service case record remains in the master file.

F. Restricted Case Records

Restricted case records are those for which access to the case material (written or automated data) is limited to designated individuals. Access to restricted cases is determined according to security levels assigned by County DHR Directors and Supervisors. Cases involving current DHR employees (active, on leave, contract) and their immediate family members shall be restricted. Cases involving close working associates of DHR may be restricted. County Directors or their designee are responsible for identifying specific individuals (doctors, teachers, Multi-Disciplinary Team members, etc.) in their county whose working relationship with the County Department may be adversely affected by case information being made available through county or statewide search. The restriction may also cover that person's spouse or children.

The appropriate restricted cases should be entered on FACTS following the detailed instructions provided in the FACTS Basic User Guide. Paper case record files for restricted cases must be stored in a secure location such as a locked drawer or file cabinet. The

County Departments will develop local procedures for storage that ensure the case material is accessed only by designated individuals.

G. Case Records During Out-of-County Placements

When a client is placed out of county by direct or indirect referral in a nursing home, assisted living facilities, boarding home, foster home, etc., the county which made the placement retains planning responsibility. The institution, facility, or home should be asked to contact the adult protective services worker in the client's county of origin, if difficulties develop with the placement. The county of origin must notify the county of placement in writing when a client is placed in a domiciliary or boarding home or when a client is placed in any home or facility by court order pursuant to the Adult Protective Services Act so that the appropriate county can be contacted if additional services are needed. Copies of appropriate court orders should be transmitted to the county of placement.

Whenever possible, the county of origin is encouraged to conduct monthly client contacts[26] and 6-month evaluations in order to maintain continuity for the client. If assistance with monthly contacts is needed from the county of placement, the County Director of the county of origin must contact the County Director of county placement to request their assistance to arrange or make a monthly contact on behalf of the requesting county. The county of placement is not required to make monthly contacts with the county of origin's clients. It is the county of origin's responsibility to make sure monthly contacts are made or arranged in a timely manner. If no prior agreement has been established between the county of origin and the county of placement, the county of origin will be required to make monthly contacts. The case record remains in the client's county of origin in court ordered placements.

Note: The County where the client is placed may elect to accept the case. If so, the record is forwarded and opened in that county. The county of origin still retains ultimate planning responsibility and is notified when the placement is ineffective and further plans must be made. The case record is returned to the county of origin.

H. Transfer of Adult Protective Service Records

When a client moves to another county, the adult protective service record is to be transferred to the county to which the client is moving. It is important that the Family

[26] APS Letter 2021-11
August 2021

Assistance Unit and the Food Assistance Unit be notified (in writing) of this change and the date of it.

In connection with the service record, the following procedures are to be followed:

1. A letter or email should be written by staff of the county from which the client is moving, advising staff of the county to which he or she is moving about the move and providing information which might be of value to the new county in determining need for services. (See FACTS APS Roadmaps-Assign-Transfer Primary and Secondary Responsibility Screen.)

2. The county from which the client is moving should continue to carry the case as active for service through the month in which the last service is given by that county. The date of closure (which should be the last day of the month) should be shown in the letter.

3. When the service record is needed and accepted, it should be sent by certified mail, return receipt requested, from the first county to the second.

4. The county from which the case is being transferred should retain copies of correspondence concerning the transfer, out-of-date correspondence, and any financial documents relating to service given by the first county.

5. When protective service or foster care clients move to another county, the county to which the case is being transferred should contact the client as soon as his presence in the county is known so that the continuing need and eligibility for services can be determined. If service is needed the case should be opened for service, effective on the first day of the month following date of closure in the first county. (This is true even though some service may have been given by the second county prior to the date on which the case was closed in the first county.)

The above steps are to be taken separate and apart from the steps taken to transfer the assistance payments record from one county to another.

I. Administering Adult Protective Service Records (Paper Records) – Following is a summary of APS record retention policies.[27]

[27] Revised APS Letter 2011-20
December 2011

Central Office:
Reports of Adult Suspected to be Abused, Neglected, or Exploited at Mental Health Facilities (DHR-ASD-798)
Disposition: Temporary Record. Retain 5 years after the records were created.

Adult Protective Services County Compliance Audit and Review Files
Disposition: Temporary Record. Retain 10 years after the records were created.

Adult Protective Servies Routine Inquires
Disposition: Temporary Record. Retain 45 days after the creation of the records.

County Offices:
Hard copies of "Reports of Adult Suspected to be Abused, Neglected, or Exploited" at Mental Health Facilities (DHR-ASD-798)
Disposition: Temporary Record. Retain 5 years after the records were created.

Investigation Files of Adult Suspected to be Abused, Neglected, or Exploited
Disposition: Temporary Record. Retain 5 years after the records were created. It is no longer necessary to retain a suspense file on ANE referrals entered on FACTS.

Adult Foster Home Provider Files (Clients Placed)
Disposition: Temporary Record. Retain 10 years after the provider is no longer in service.

Adult Foster Home Provider Files (No Clients Placed)
Disposition: Retain 5 years after final contact.

Adult Protective Service Files (Client Files)
Disposition:

(1) If the client is deceased: Temporary Record. Retain 5 years.

(2) If the client no longer needs service: Temporary Record. Retain 10 years.

III. Youth in Need of Adult Protective Services

The family services worker will refer youths who meet the definition of adults in need of protective services to the Adult Protective Services Program. *Referrals to the Adult Protective Services Program are appropriate only when there is a need for on-going adult foster care or other adult protective services necessary to prevent or remedy abuse or neglect or exploitation (A/N/E) or institutionalization after discharge from the child welfare system of care.*[28]

[28] Revised APS Letter 2008-06

A. Transitional Planning

Transitional planning is done for all youth in preparation for transition into adulthood. Some youth may have on-going needs as a result of physical or mental illness, developmental disabilities, or other disabling conditions, which continue into adulthood. When it is anticipated that the youth may transition into adult service systems, DHR Adult Protective Services staff are available to serve in an advisory capacity to the child and family planning team during the level of functioning assessment process. The level of functioning assessment is begun no later than the youth's fourteenth (14th) birthday.

B. Discharge Planning from the Child Welfare System of Care

Discharge from the child welfare system of care is the point in time when the youth is no longer in DHR care, custody/planning responsibility, or supervision as a youth. This includes the youth that ages out of the system. Youths age out of the child welfare system of care:
(1.) on the youth's nineteenth (19th) birthday when they are receiving on-going protective services in their own homes *without* a current court order in effect or
(2.) on their twenty first (21st) birthday when the youth has been under a court order, in the Department's custody or in children's foster care.

Allegations of abuse, neglect or exploitation that occur prior to the youth's eighteenth (18th) birthday will be investigated by the child welfare worker. Preventive or on-going child protective services will be provided as needed by the child welfare staff until the youth's nineteenth (19th) birthday. Children's foster care and related services may continue until the youth's twenty-first (21st) birthday.

Family Services staff shall begin discharge planning no later than twelve (12) months prior to the anticipated date that the youth will be discharged from the child welfare system of care.

When youth need on-going supports and services, a DHR Adult Protective Services worker shall participate as a member of the child and family planning team as discharge planning is initiated. The Adult Protective Services worker will assist the child and family planning team with determining if the youth meets the APS Program's criteria and if an APS referral is appropriate. The APS worker may also provide information to the team about arranging

services from adult services systems in the community as well as DHR Adult Protective Services Program.[29]

C. Transfer of Family Services Cases to Adult Protective Services

To effect an orderly transfer from Family Services staff to Adult Protective Services staff, county service staff will work cooperatively applying the following policies:

Referrals to DHR's APS Program shall be made no later than nine (9) months prior to the anticipated date of discharge. The following information and documentation, at a minimum, shall be included with an APS referral:

- APS referral form (DHR-FCS-2103)
- Copy of the most recent Individualized Service Plan (ISP);
- Copies of medical/psychological evaluations completed within the last two (2) years;
- Copy of the narrative recording for the last twelve (12) months;
- A social summary noting historical information which impacts placement or decisions related to case planning.

A Report of Adult Suspected Abused or Neglect or Exploitation will be completed when needed. Although child welfare staff will continue to provide case management and ongoing services to youth prior to leaving the system of care, Adult Protective Services staff will conduct investigations of APS reports on youth eighteen (18) or older.

APS Program staff will contact Family Services staff to schedule a case conference within thirty (30) days of the referral date to plan the administrative transfer of a youth's case to the APS Program. The conference will be attended by the assigned social workers and their respective supervisors. If service planning and delivery issues are identified during the conference, child welfare staff shall schedule an ISP meeting to address resolution.

The case will be transferred to the Adult Protective Services unit when the narrative recording and forms are current and the youth becomes nineteen (19) years old or older if DHR adult protective services are appropriate for the youth.

[29] Revised APS Letter 2008-06
April 2008

D. Youths Requesting Reentry into the Child Welfare System of Care

Youth who have previously resided in DHR children's foster care may request reentry into the system following discharge if they are living in a situation where there is an identifiable risk of harm that would typically result in the provision of child welfare services if they were under age nineteen (19).

This policy provides a safety net for youth ages eighteen (18) through twenty (20) who need assistance to reestablish and maintain safety, stability, and overall well-being.

In these situations, child welfare staff shall schedule a conference to assess the youth's needs and make a decision regarding service planning and delivery. Conference participants shall include, at a minimum, the following individuals:

- The youth;
- Any individual (e.g., advocate, mentor) requested by the youth;
- An Independent Living Program or Family Options worker or supervisor;
- An Adult Protective Services worker or supervisor; and
- The child welfare worker with the most knowledge about the youth's situation (i.e., the youth's most recent worker or the worker receiving the youth's request).

As a part of this process, consideration shall be given to whether the youth meets the definition of an adult in need of protective services and referral to DHR's Adult Protective Services Program is indicated.

Chapter 2 Section A

I. Definition of Counseling Services

Counseling Services, as described in this chapter, are those specific counseling activities related to the areas of health, nutrition, improving living arrangements; making best use of income and resources, improving parenting and individual functioning, improving communication skills, and removing barriers to employment. These areas have been brought together because of the interrelatedness of the problems and that of the services usually brought to bear in assisting individuals in solving such problems.

It is recognized that counseling is a part of the casework process which is inherent in the effective delivery of all social services, including Counseling Services, and is basic to all services whether they are provided directly through the use of outside facilities, or through specialized programs such as foster care, day care, homemaker services, family planning services, protective services, or services to unmarried parents and their children.[30]

Examples of the interrelatedness of these areas and activities are:

1. The presenting problem may be related to housing. However, the health of the family may be affected because of lack of adequate housing; i.e., inadequate plumbing, windows which are unscreened, poor heating facilities. Housing which does not provide sufficient privacy for its members can also lead to poor family relationships which can affect the family's normal potential.

2. Housing located too far from a special school or rehabilitation center needed by a disabled child or young adult may prevent his or her development to his or her full potential.

3. In other situations, health may be the presenting problem; yet counseling in the area of home management may be needed to help an adult learn to prepare wholesome and nutritious meals, or how to identify health problems (physical and mental). The recently disabled person learning to use a wheelchair may need help in planning how his house can be modified to accommodate the wheelchair. A person living alone may need encouragement to maintain needed contact with others and, if a telephone is to be part of the solution, help may be needed with budgeting for it. Counseling may take place simultaneously in more than one problem area. While Counseling Services may be directed toward any one of the five goals, the goal selected should be appropriate for the problem area being given major emphasis. The goals appropriate for each problem area are:

[30] Revision No 53
March 1981

employment (non-WIN) – Goal I

health – Goals I, II, III, IV, or V

home management – Goals I, II, III, or Iv

housing – Goals I, II, III, or IV

child rearing and family life – Goals I, II, III, IV, or V

social functioning for adults – Goals I, II, III, IV, or V

The skillful use of Counseling Services can be a means of improving the quality of the lives of individuals and families.[31]

II. Determination of Need for Counseling Services

When assessing a case to determine if it is appropriate to open the case to Counseling Services, the following criteria must be met:

1. The worker and the client agree a problem exists;
2. The acknowledged problem is in one of the areas that can be addressed with Counseling Services (refer to definition of Counseling Services); and
3. The client desires assistance from the Department in resolving the problem.

If the above criteria are not met, counseling services cannot be authorized.

III. Development of the Case Plan

The worker must discuss the situation with the client and determine the nature of the problem and their desired solution to the problem. The worker and the client must agree on:

1. The nature of the problem;
2. The specific objective(s) they will work toward;
3. The actions to be taken by the client prior to a specified time or the reevaluation date, whichever comes first; and
4. The actions to be taken by the worker prior to a specified time or the reevaluation date, whichever comes first.

For example, the client may have a problem in controlling a diabetic condition because of poor nutritional habits. The worker and client might decide that the objective they will work toward is improved eating habits for the client. The worker agrees to contact the client's physician within a week to obtain a prescribed diet and to help the client understand requirements of the diet. The

[31] Revision No 53
March 1981

client agrees to eat only the food specified on the diet and to participate in a local food preparation class.

Service agreements have proven to be an effective tool in many instances. Service agreements may be used to record, in terms the client can understand, what is expected of the client and worker. The service agreement may include any of the objectives and actions upon which the worker and client have agreed. The agreement must be signed by both the worker and client. One copy of the agreement is given to the client and the other copy is filed in the case record. Refer to sample service agreement in the Forms and Instructions section.[32]

IV. Recording of the Case Plan

The case narrative must include:

1. The statement of the problem as agreed on by the worker and the client;
2. The solution desired by the worker and the client;
3. A statement of the specific objectives as agreed on by the worker and client;
4. The action(s) to be taken by the client within a specified time or prior to the reevaluation date; and
5. The action(s) to be taken by the worker within a specified time or prior to the reevaluation date.

V. Evaluation or Reevaluation of the Case Plan

1. At sometime during the six-month period between scheduled case plan reevaluation the worker must review the case and document what has transpired. The case narrative must include:

    a. Date of significant contacts;

    b. A statement of action(s) taken by client and worker; and

    c. A statement of progress or lack of progress toward and stated objectives.

2. As part of the scheduled six-month reevaluation of the case plan (and redetermination of eligibility when appropriate) the client and worker must together assess the case plan and the need for counseling services. The case narrative must include:

    a. A statement of agreed-upon action(s) taken by the client and worker;

    b. An assessment of progress of lack of progress toward the stated objective(s);

[32] Revision No 53
March 1981

c. The client's statement about the current status of the problem; and

c. A statement of any agreed-upon action(s) that were not taken and why; and an assessment of whether these actions are realistic and necessary for achievement of the goal.

The worker must determine whether Counseling Services should be continued or terminated.

3. Counseling Services should be continued when:

   a. The stated objectives have been attained, but the client and worker agree that the client has other problems that can be addressed through Counseling Services. A new assessment and case plan must be developed.

   b. The problem has not been completely resolved but progress has been made toward attaining the stated objectives and the client wishes the continued assistance of the worker in resolving the problem.

4. Counseling Services must be terminated when:

   a. The stated objectives have been attained and the worker and client do not see a need to work on additional problems; or

   b. The objectives have not been attained, but the client does not wish to continue receiving Counseling Services. In such cases the worker must determine whether it is appropriate to authorize protective services, which may be provided without the consent of the client; or

   c. The worker and client do not identify problems in an area that can be addressed by Counseling Services.

5. The worker must discuss the case with the supervisor to determine if Counseling Services should be continued when:

   a. Two consecutive reevaluations of the case plan indicate that, although the worker and the client have taken the action(s) agreed upon, no progress has been made toward resolving the problem; or

   b. Two consecutive reevaluations of the case plan indicate that either the client or the worker has failed to take the agreed-upon action(s).

The worker and supervisor must discuss the case to assess the appropriateness of the current case plan, the barriers which have impeded progress toward resolution of the problem, and whether services other than Counseling Services are more suitable for problem resolution.[33]
The case narrative must document that the supervisor has reviewed the case and include the supervisor's rationale for continuing or terminating Counseling Services.

VI. Employment (non-WIN)

Counseling in the area of employment consists of casework to assist individuals and families remove barriers to employment, develop employment potential and use employment resources. The employment services discussed here are available to all adults eligible for Title XX services who currently, for whatever reason, are not able to receive such services under the WIN program. Employment is, for many clients, a desirable goal – not only because of the economic advantages which usually accompany employment – but also because of the intangibles. In today's society it is expected that adult males will work at a job for which they are paid, and this is especially true if they have wives or children dependent upon them. The man who does not do so may have a low opinion of himself. On the other hand, changing a man's status from unemployed to employed full time will usually enhance his value in his own eyes as well as those of the public.

The attitude of the public is not quite the same toward women but today it is more generally expected than in the past that women will be employed outside the home, and her own feelings about herself may be colored by what she feels is expected of her. For some women there can be real pride of achievement when they find that they can support themselves and their children in spite of difficult circumstances.

In preparing a case plan and determining whether or not employment is an appropriate goal toward which services are to be directed, the client and the service worker should consider the client's potential for employment, including the possibility of self-support, what barriers prevent or delay moving toward employment, and what it would mean to the client to be employed.

The following are some of the barriers to employment frequently encountered and some possible methods of removing them:

1. Lack of education – Long-range plans might include returning to school full time, either for basic education or for job training. More immediate planning could include apprenticeships, on-the-job training, or adult education classes.
2. Client attitudes such as lack of self-confidence; feelings of discrimination, hostility, hopelessness, etc. – The worker may be able to deal with some of these attitudes. However, extreme cases may require intensive mental

[33] Revision No. 53
March 1981

health services and in-patient care may be indicated.

3. Need for the client to be in the home to care for a child or an impaired adult – Day care for the child or for the adult might offer the solution.
4. Health – For illnesses, medical care might be arranged. For physical and mental handicaps, see discussion later in this section regarding Vocation Rehabilitation Service.

For some clients full-time paid employment needs to be arrived at through intermediate steps. There are some who should be encouraged to remain in school and to seek after-school, weekend or summer employment. Part-time work should not be overlooked in helping an individual make employment plans; in some instances it can lead to eventual full-time work, even for the individual who originally could not adjust to full-time work. Participation in community volunteer activities might also provide some valuable experience and lead to employment later.[34]

For the person who is ready for employment, help from the worker might take the form of referral to the Employment service and encouraging the reading of want ads in newspapers and on neighborhood bulletin boards, obtaining job information bulletins from personnel departments of local, state and federal governments and agencies and checking periodically with local industries. Some clients will need help with knowing where to look, how to go about making initial contacts, etc. Sometimes help needed might be with completing an application form, making improvements in grooming, preparation for job interviews, etc. A community resource such as a YMCA or community center that offers classes in job preparation might be just the place for a client to learn how to present himself to an employer and what to expect in the way of job requirements and at the same time to develop some confidence in him or herself and his or her ability.

VII. The Local Employment Service Office (ES)

A most important community resource for individuals in need of employment is the local Employment Service, whose functions include matching available jobs and available employees. It is the responsibility of the service worker to understand the opportunities provided by ES and something of their procedures so that the information can be explained to the client in advance of referral and so that appropriate referrals can be made.

The usual range of services provided by ES are: counseling, testing, vocational training, job development and job placement. Counties having ES offices should take full advantage of their services. If there is a questions about a client's readiness for employment, ES testing and counseling can be helpful in determining whether looking for work should be the next step or whether some preparation, either formal or informal training, is needed before employment is sought.

[34] Revision No. 53
March 1981

Some counties in Alabama do not have ES staff working in the county on a full-time basis, though Employment Service staff will usually be available at least once a month. However, the schedule of visits vary considerably from one county to another and the services offered on those visits may vary. In counties having no full-time ES office, DHR staff should keep up-to-date information about which employment services are available and where and when referrals for those services can be made. In some cases referral to an ES office in an adjoining county might be made, but for many clients this will not be feasible.

It is important that a cooperative relationship with Employment Service staff be developed and maintained so that clients will benefit as much as possible from their service. [35]

VIII. Vocational Rehabilitation Service (VRS)

An important resource to be used in assisting disabled individuals to become employable and to be employed is the Vocational Rehabilitation Service, the purpose of which is to enable disabled persons to become self-supporting or to help them achieve better self-care.

The services of VRS include medical and vocational evaluations, physical restoration, training for employment, job placement and follow up. Such services are available not only for persons expecting to go into paid employment but also for home managers or persons performing chores in their own homes.

Eligibility for the services of Vocational Rehabilitation Services is based on (1) the presence of a physical or mental disability which, for the individual, constitutes or results in a substantial barrier to employment; and (2) a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.

County departments should maintain close contact with the Vocational Rehabilitation Service office serving their own area so that correct and adequate information will be provided to clients and appropriate referrals will be made.

1. Referral to VRS

Persons who receive SSI on the basis of disability or blindness will usually have been referred to VRS by the disability determination staff, though a few SSI recipients will need to be referred by DHR staff, possibly because their condition has changed or for some other reason. Referral by DHR staff to VRS will in some cases be made by the eligibility worker because, in order to be eligible for an ADC or State SUP money payment, certain individuals must accept referral to VRS and meet other conditions in connection with that

[35] Revision No 53
March 1981

referral. Other referrals to VRS will be made by DHR service workers.

Contact with VRS is initiated by DHR by submitting PSD-288, Referral to Vocational Rehabilitation Service. It is essential that accurate controls of such referrals be maintained by the County Department so that disposition of pending referrals can be followed up.[36]

To assure effective referrals, it has been agreed by VRS and DHR that priority will be given to:

a. Disabled individuals who have potential for a substantial work period following vocational rehabilitation services,

b. Disabled individuals who have been receiving financial assistance or services for one year or less,

c. Individuals who have recent work experience prior to the onset of disability,

d. Disabled individuals who manifest interest in employment,

e. Disabled unemployed youth (18 years of age or older),

f. Individuals exempt from the WIN program because of disability, and

g. Individuals who are in need of physical restoration and other rehabilitation services to lead a more productive life, such as a homemaker.

In making a referral to VRS, it is important that the service worker provide to the client general information about the services available from VRS and the purpose of the referral.

2. Service of VRS

Vocational rehabilitation services for disabled persons will focus primarily upon the goal of self-support and upon removal of barriers to establishment or re-establishment of employability. This will include intensive evaluation to assess personal capacities and determine client potential for employment. Restorative medical services and maintenance cost are provided, as needed by the individual client, to the extent that such services are not available through other sources. Services by VRS to prepare the person for employment might include work conditioning, job training, job development, placement and follow-up services. In addition, VRS can at time furnish tools and equipment required for the job, and pay incentive allowances. .

[36] Revision No 53
March 1981

3. Responsibilities of DHR Service Worker

Services provided by the service worker will include social evaluation of the client and his family, with particular reference to appraising the meaning of disability to the client and his adaptation to it, and assessment of social factors that impede functioning. Included will be assessment of individual and family resources that can be strengthened and utilized, and which, together with the assessment provided by the VRS counselor, would constitute a jointly developed service and rehabilitation plan for the client.

In addition to focusing on the needs of the client, the service worker will work toward a plan to meet the needs of other eligible family members, if there are any, particularly as they have a bearing on the planning being done with the client.

The DHR worker will provide direct casework services and also assist the client in securing and utilizing such services as child care, homemaker services, transportation, etc. In considering potential for employment and possible referral to VRS, the service worker should be alert to obvious disabilities which would prevent or preclude the client's successful participation in the VRS program. If it appears that the client is interested in and motivated toward a VRS referral but the worker thinks that a referral is really not feasible, the worker might discuss the client's condition and situation with the VRS staff before offering to make a referral. In addition, if the DHR worker and VRS staff agree upon referral but successful rehabilitation does not seem likely, the worker should try to help the client foresee the possibility that VRS will not accept the referral or that rehabilitation efforts of VRS might not be successful

The following are not usually referred to VRS:

a. Developmental disabled persons who cannot take care of their personal needs or
    i. who require the services of an attendant because they are unable to avoid the common dangers of life.
b. Persons who use alcohol or drugs to such an extent that they are generally known as alcoholics or drug addicts. Individual cases may be discussed with the VRS counselor. Referral to a mental health clinic may be appropriate.
c. Persons with diseases which medical diagnosis indicates will grow progressively worse; for example, advanced cases of cancer, multiple sclerosis and Parkinson's disease.
d. Persons with bedrest or home-bound restrictions because of heart disease.
e. Persons who are already employable. If, however, such handicapped persons are unemployed, they may be referred to VRS for assistance is locating suitable employment.

4. Cooperation of DHR and VRS

DHR staff in cooperation with VRS will work closely with the client to enlist his

cooperation in developing and following through with a plan for his rehabilitation. The counseling and planning required to develop and carry out the rehabilitation program for the individual is to be carried out by a VRS worker in concert with the DHR service worker. Included will be:[37]

a. Assessing client potential for employment.
b. Developing the rehabilitation component of the individual plan.
c. Making available promptly those rehabilitation services required by the individual.
d. Assessing readiness for employment and termination of formalized rehabilitation services.

The DHR service worker must secure the client's permission if pertinent social information is to be made available to VRS, and the narrative must show that such permission has been secured. Also, if medical information contained in the DHR record is to be shared with VRS, written authorization from both the client and the physician must be secured. Attention is called to the fact that some medical forms used by DHR contain this authorization.

Supportive services of other agencies are to be used in cooperative planning for the client's rehabilitation. Referrals might be in order to Medicaid, Children's Rehabilitation Services, manpower programs, day care services, etc.

IX. Health

Counseling in the area of health consists of casework provided to assist individuals and families in identifying individual health needs and locating and making appropriate use of physical and mental health resources.

The Department of Human Resources is responsible for helping eligible persons who need medical care secure that care from available resources. It is the service worker's responsibility to recognize the need for medical attention (either for prevention or treatment); if necessary, to help the client accept the fact that medical help is needed; and to help the client secure and use medical care effectively. The physical and mental health of an adult may be a major factor affecting his or her ability to assume any of his or her responsibilities and help with health problems may be necessary before he or she can deal with other areas of his or her life.

Persons reluctant to deal with health problems may need considerable understanding and support from the service worker before being able to face the need for examination and possible treatment or to follow prescribed routine. Early detection of an illness and prompt treatment can often minimize the care required and prevent complications but acknowledging the presence of a

[37] Revision No 53
March 1981

condition of poor health may be very hard for some persons to do. Sometimes there is a fear of what an examination will reveal; when the level of anxiety is high, imagination can build a minor ailment into a serious illness. Also, the client may be reluctant to use any part of his or her limited resources to secure an examination and treatment when there appears to him or her to be compelling reasons for using those resources elsewhere. A part of the problem may be that the client is not aware of the extent to which medical services are available to him without cost.

Some clients may not accept a diagnosis or may refuse to follow medical advise because of feelings of depression, resentment, hostility, etc. The service worker may need to use considerable casework skill in order to help the client overcome such obstacles to getting and using the medical care needed.

When the sick or disabled client is ready and willing to accept referral, it is the role of the service worker to refer the client to the one or more resources where help can be given. The worker might also need to incorporate into the service plan other DHR services (such as day care) or one or more services of other agencies (such as that of the visiting nurse or the home health aide.)

X. Resources

Resources available to provide the health services needed by adults will vary from one part of the state to another. It is the responsibility of each county staff to maintain in its resource file current information regarding the health services that can be used by county residents.

Medicaid which is administered by the Alabama Medicaid Agency, is a major source of health services for persons eligible for the DHR adult services program. Attention is directed to the fact that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program services persons up to 21 years of age. EPSDT serves to ascertain an individual's physical or mental defects, and provide such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions which are discovered.[38]

County Public Health Departments are located in all counties in the state. Of particular importance are the EPSDT program, which includes referral for the corrective treatment needed, and health care for home-bound patients to prevent unnecessary hospitalization or nursing home care. Services available in all counties are: family planning, cancer screening, venereal disease programs, maternity clinics, hypertension clinics, dental clinics and health education.

Mental Health Facilities Alabama Department of Mental Health operates facilities for the mentally ill, substance addicted and developmentally disabled client. Each mental illness and each developmental disability facility serve as a specific catchment area.

[38] AS Letter 2016-01
March 2016

Community Mental Health Centers operated by local Mental Health Authorities provide community based treatment, counseling, etc., in all counties. Services are available for persons with intellectual disability, mental illness, emotionally disturbed and substance abuser.

Rehabilitation Services The Alabama Department of Rehabilitation Services provides services to individuals with disabilities to enable them to become gainfully employed. Services include vocational evaluation, counseling and guidance, work adjustment, diagnosis and treatment of physical and mental impairments, education and vocation training, job placement, and post-employment services. Tools and equipment for a person with a disability to get started on a job may also be provided.

The Alabama Department of Rehabilitation Services provides services such as hospitalization, surgery, nursing care, physical therapy, medication, appliances, speech therapy, etc., to correct or reduce physical disabilities of persons under 21 years of age; to help the specials needs child and his or her family adjust to his or her disability, and to improve the physical, social, psychological and economic condition of disabled children.

Any person under 21 years of age who is a resident of Alabama is eligible for treatment of certain disabling conditions if the family is unable to provide care through private resources. Some of the disabling conditions are: cerebral palsy, visual defects, hearing loss, cleft lip and palate, convulsive disorders, severe burns, etc.

Medicare is administered by the Social Security Administration. Many persons age 65 and over and some disabled persons under 65 are eligible for Medicare services. The hospital insurance portion of Medicare includes certain benefits for inpatient hospital care, extended care, home health care and outpatient hospital diagnostic services. The medical insurance portion helps to pay for doctors' services, other medical services and supplies, and certain home health services.
Alabama Lions Sight Conservation Association arranges for eye examinations and furnishes glasses for certain persons unable to pay for them. [39]

Additional Resources In addition to the major health resources noted above and nursing homes, which are discussed later, there are many others including some which concentrate largely on research, others that serve only persons living in a limited geographic area and still others that provide services only to certain groups of persons.

XI. Services Related to Nursing Home Care

[39] Revision No 53
March 1981

Because of the nature of the care provided by nursing homes and the fact that such care may extend over a long period of time and may be terminal, the services provided by DHR service workers in relation to nursing home care are frequently different from the usual referral to a health resource. From the patient's point of view, care in his or her own home is usually preferable to care outside his or her home and moving into a nursing home may be, and frequently is, a frightening experience for a patient aware of his surroundings. He or she may feel rejected and abandoned by loved ones. Also, relatives may develop guilt feelings and be either over-protective or neglectful. Help of the service worker in adjusting to the change and in connection with the client's stay there may be needed by the patient or members of his or her family.

When a change in living arrangement is being considered for the patient, it is the responsibility of the service worker to offer to assist the client and his or her family to consider the various possibilities open, including services in his or her home that might make it possible for the patient to remain there. These might include homemaker service or home health care, if they are available.

XII. Planning for Nursing Home Care

When it has been determined that nursing home care is needed, the service worker's help could include any or all of the following, as needed and accepted by the patient or his or her family:

1. Providing information about the types of nursing home care available (skilled and intermediate), names and addresses of nursing homes, and potential resources for meeting the charge for care, including Medicaid (and where eligibility determination will be made), Medicare, etc.
2. Helping to arrange for the family or patient to visit appropriate facilities. Such visits can be helpful in deciding whether care in a particular home is desirable from the family's or the patient's point of view, in lessening fear of the unknown and in providing some understanding of the adjustment that would be required of the patient.
3. Considering with the family, the anticipated effect upon the patient and the family of each possibility, including the patient remaining where he or she is.

When a home has been selected, planning for admission is primarily the responsibility of the family, but help from the service worker may be needed. Also, the administrator and staff of the nursing home can help by making clear what the home can offer in the way of services, the cost of care and any specific regulations of the home that might affect the patient's adjustment and well-being. The nursing home has a responsibility to delineate clearly the care it is prepared to give and to refuse to accept a patient who needs it cannot meet. In such planning, it may be helpful for the service worker to act as intermediary and interpreter to nursing home, family and patient. If the nursing home permits, plans for the patient to take with him or her some personal possessions, such as a favorite rocking chair, family pictures, etc., will probably help him or her

make the adjustment to his or her new way of life, especially if the prognosis indicates long-term care in the nursing home. [40]

Other services to be offered by the service worker at this time might include:

1. Helping the family prepare the patient for the move in order to keep to a minimum the possible adverse effects upon him or her, if he or she is sufficiently aware of his or her surroundings to have emotional reactions to moving.
2. Helping to plan for care of "belongings" (the home, personal property, pets, etc.) preparatory to the move.
3. Interpreting to the administrator of the nursing home policies and procedures of the Department of Human Resources relating to responsibility for services for the patient while in the nursing home.

XIII. Services During Nursing Home Care

While the service worker has some responsibility for services related to adjustment, the patient's physical care and much of his or her emotional well-being is entrusted on a day to day basis to the nursing home administrator and staff. The service worker can help the patient and his or her family understand the nursing home situation and limitations, and also help nursing home personnel understand the client's particular needs and individualize his or her situation to them.

In acting in the capacity of a go-between, the worker must constantly be aware that he or she is carrying out some of his or her activities in the setting of another agency, the nursing home – a situation which could result in confusion and conflict unless he or she understands clearly where to draw the line between his or her own responsibilities and those of the nursing home staff, the doctor and the patient's family. He or she must be very careful not to encroach upon the area of responsibility of the doctor or the nursing home staff. This will call for considerable tact and resourcefulness.

Any information about the patient provided to the service worker by the doctor or the nursing home staff is to be treated as highly confidential and is not to be discussed with the family or the patient until authorized by the doctor or nursing home staff (depending upon which was the source of the information) to do so. This would include information about the client's diagnosis or condition, plans to change treatment or to move the patient, etc.

When the nursing home has on its staff a qualified social worker or when a member of the staff has been designated to find community resources to deal with patient's social problems, the DHR

[40] Revision No 53
March 1981

service worker will coordinate his or her own efforts with those of the nursing home staff member, for the sake of cooperation and to avoid duplication.

For the sake of integration of services and as a matter of courtesy, the service worker should, upon entering the nursing home, notify the nursing home administrator (or someone designated by the administrator) of his or her presence and the names of patients to be seen on that visit.

XIV. Discharge from Nursing Home Care

Anticipation of improvement and returning to a former living arrangement is a hope which can often be used to strengthen the rehabilitative potential of the patient, but care must be used to consider the possibility of release from a realistic point of view. The decision that the patient no longer requires nursing home care is a medical one. When discharge planning is being considered or definitely planned for, the family has primary responsibility for planning for the patient's release and after-care, with help from the service worker if wanted, and participation by the patient to the extent of his or her capacity. Until the medical decision has been made and shared with the patient and the family by the physician or until the physician has given consent for the patient to know what discharge is being considered, the service worker will not discuss such plans with the family or patient. The nursing home staff can be helpful in providing information about the patient's ability to function, problems he or she might be expected to encounter in adjusting to moving back to the community and the kind and amount of care he or she will need outside the nursing home. The service worker can be helpful in identifying resources and problems in the community and the home situation which might affect release planning, and for sharing this with institutional and medical personnel and with the family, when appropriate.

XV. Home Management

Counseling in the area of home management consists of casework provided to assist individuals and families in making the best use of income and resources available to them.[41]

Individuals and families who have lived most or all of their lives on a low-income level may have had little or no opportunity to observe and learn practices which promote a high level of functioning in the area of home management. It is the responsibility of the service worker to be knowledgeable about appropriate techniques in home management in order to recognize problems of this nature and possibilities for improvement. When workers, through their own observations or through discussion with family members, find such problems, they should seek to arouse the client's interest in working toward improvement.

[41] Revision No 53
March 1981

Better home management can sometimes be achieved through efforts of members of the household and, at the same time, serve as an important means of improving family functioning. The service worker can counsel family members regarding individual household tasks and encourage each person's full participation. Working together can help families develop pride in their home, improve methods of using family resources and engender a close-knit feeling that spills over into other areas of daily living, enhancing family unity.

It is the service worker's responsibility to consider with the client all avenues that appear likely to lead to increased income, and to make appropriate referral(s), if referral seems warranted. Possibilities to be considered include increased income through employment, or through establishing eligibility for State Supplementation, TANF, Supplemental Security Income, Social Security benefits, a pension or retirement income. For example, for the client who has no income or whose income is marginal, if it appears that the client might be eligible, the service worker should provide to the client enough information about SSI to arouse interest in filing an application and help him or her understand how to go about it. A referral could be made to Social Security Administration, with the approval of the client.

While additional monetary income may not be possible, the service worker is responsible for helping the client take advantage of opportunities to "stretch income" through use of resources such as food assistance, special distributions of clothing and shoes, discount or free transportation, thrift shops, etc. Some clients will need help in locating and learning how to use them. For instance, the client who is not benefiting from the Food Assistance program might need to have the worker explain the advantages of using the food assistance and procedures to be followed in applying for them.

Efforts of the worker to assist clients to secure increased income or to use community resources to greater advantage include counseling and casework services about financial management but they do not include the eligibility functions of Food Assistance and Social Security staff, nor do they include transporting the client to file either application or preparing the application for the client. Using to the best advantage the income and resources available to them is an area in which a large majority of clients can use much help. Help may be available in the community already or it may need to be developed. Possible resources include:

1. DHR-sponsored group meetings, giving clients the opportunity to learn from each other.
2. Program of the county extension service which might take the form of radio presentations, demonstrations that teach techniques of gardening, preserving food, sewing, cleaning house, etc. Publications of the extension service when using appropriately can also be helpful.
3. Budgeting and nutrition information and demonstrations are frequently available or can be arranged through home economics employed by utility companies.

4. Individual volunteers or groups who have expertise in any of the wide variety of subjects included in home management – budgeting, cooking, cleaning, gardening, sewing, etc. Such volunteers might be available from RSVP, church groups, schools, civic clubs, etc.
5. Adult education classes. Subjects to be covered can frequently be arranged if evidence of need is presented.
6. Training in consumer protection may be available in public meetings planned for that purpose and through literature on the subject. Some clients need help in learning to use (or avoid) credit plans, to deal with creditors and to recognize and avoid fraudulent schemes. In the event a client has already become a victim of dishonest dealings of needs help in withdrawing from a credit plan he cannot continue, the service worker may need to help the client seek legal counsel to rectify the situation.

Help for a client struggling to stretch limited income to cover necessary expenses might be arranged on a one-to-one basis using an individual in the community who has demonstrated ability to manage his or her own resources successfully. Such a person might already be known to the service worker or might be located through any one of the community organizations that recruit volunteers.

The worker may need to help the client do some advance planning before the client can take advantage of training sessions or regularly scheduled meetings away from home. Such help might include anticipating the need for someone to care for a child or disabled person in the home, arranging for transportation to be provided by a neighbor, etc. As he or she counsels the client about a situation that requires advance planning, considering possible solutions, choosing one of the alternatives and carrying through on his or her decision, the worker will have the opportunity to help the client see that he or she is putting good home management into practice.[42]

XVI. Housing

Counseling in the area of housing consists of casework provided to assist individuals and families in improving living arrangements; help with landlord relationships, and with obtaining repairs; and referrals to community programs that offer instructions on such topics as property rights and maintenance.

Persons eligible for DHR services, with their low incomes, are particularly vulnerable as far as housing is concerned. The one who is a homeowner may be able to afford little or nothing for repairs and upkeep, and the one who is a renter may have difficulty finding adequate living arrangements for the rent he can afford. Consequently, housing is a major problem to most low-income families, and for many of them the problem is acute.

[42] Revision No 53
March 1981

Most individuals and families live in a particular neighborhood to be near friends, relatives, a church or religious organization of their choice, shopping facilities, and employment opportunities. Familiarity with the neighborhood offers security; and to re-locate could be difficult, even if the move means more suitable housing for the family. The service worker must be sensitive to the feelings of family members who are considering moving elsewhere or who have already done so.

In determining the suitability of housing in a different location, the availability of resources within reach should be kept in mind. The service worker can help individuals and families arrive at a decision about location by recognizing with the client the distance between the house being considered and such facilities as schools, churches, public transportation, shopping areas and recreational facilities.

Persons living in sub-standard housing may need help in finding better housing, either in the same area or in a different location. A low-cost public housing project may be suitable to some; however, if congregate living is not appealing and a single dwelling is preferred, help should be provided in selecting a house. Features such as a good roof, sound plumbing, safe wiring, reasonable cleanliness, condition of grounds, condition of interior and exterior paint, locks, etc., are to be considered when determining the suitability and safety of a house. Help regarding these matters could probably be secured from city or county health and fire department inspectors.

The service worker's help should be available to assist individuals reach and maintain a sound landlord-tenant relationship. One step in that direction might be to have all landlord-tenant agreements in writing, as a help in avoiding misunderstandings or keeping them to a minimum. Whether individuals or their families elect to remain in the dwelling in which they live or move to another house, there should be an agreement with the landlord listing (1) expenses included in the rent (such as water, electricity, appliances, upkeep of the dwelling, etc.,), (2) responsibilities of the landlord regarding property care and maintenance, and (3) responsibilities of the tenant in that respect. If arrangements are made for the landlord to furnish materials and for family members to make needed repairs, such as replacement of broken windows, repairs to roof, replacement of doors and locks, painting, etc., in exchange for lower rent, this, too, should be in writing. [43]

If the client is going to consider assuming obligations for repairs or for purchasing a home, great care must be taken to see that his interests are protected and that he or she fully understands the agreements being made, his own responsibilities and the responsibilities of other parties to the agreement. It may be possible for a few clients to have State Supplementation begin or increase in order to pay higher shelter costs, but this will not be true in a large number of cases. Before helping the client make plans that involve increasing his or her shelter cost, the worker should help the client look very carefully at total income and resources available, the client's ability to handle

[43] Revision No 53
March 1981

finances, his or her determination to stick to a plan over a long period of time, and his or her ability to adapt to changes.

Potential resources of the county should be fully explored, especially Farmers Home Administration and other agencies that offer opportunities for low-income families to buy or repair homes at low interest rates.

Low interest loans from Farmers Home Administration might, in some cases, make it possible for the client who has been renting to buy a house with monthly payments amounting to no more than the rent previously paid. For the homeowner, loans secured from FHA for repairs can usually be repaid over a long enough period of time that the amount paid per month is kept very small. It would be advisable for the client (and the worker, if needed) to discuss such situations with the local representative of Farmers Home Administration.

Other community resources the service worker needs to be aware of and make referrals to are programs of instruction pertaining to property rights, leases, maintenance of property, etc. County extension services are excellent sources of information regarding upkeep of the home, presenting demonstrations in the area of small repairs, cleaning techniques which can be used when the cost of painting or remodeling is prohibitive, etc. Other programs relating to housing needs and maintenance are sometimes sponsored by church groups, real estate organizations, and utility companies.

If a client has problems of a legal nature regarding property rights, accidents, contents of a lease, landlord-tenant agreements, etc., the service worker might need to assist in locating legal services, possibly under a DHR contract with a local legal organization.

Chapter 2 Section B

I. INTRODUCTION

Family Planning is part of an educational, medical, and social approach to childbearing and determining the number and spacing of children.[44]

In Adult Protective Services, family planning services will be provided as an information and referral service to appropriate adults including females of childbearing age and males of any age who are sexually active. This will primarily consist of individuals who are receiving adult protective services and those seeking this information for their own personal needs.

II. GENERAL GUIDELINES

Adults, as defined by APS policy, have the right to make their own decisions regarding family planning unless they have a court appointed guardian to act on their behalf. It is essential that APS staff recognize and respect this right and provide guidance as *information and referral services only*. Family planning services the APS worker may provide will include:

- Communicating information to appropriate individuals on available family planning resources.
- Making referrals to agencies that provide family planning services when requested.
- Carefully and fully documenting any such referrals.

Adults coming to the attention of Adult Protective Services who are unable to make an informed decision may be assessed for appointment of a guardian to make family planning, as well as other life planning decisions. Refer to Chapter II, Section F, for further information on appointment of a guardian.

A. Contraception

Contraception is a personal choice that can be addressed through a wide variety of methods. APS staff must refer individuals to medical personnel (e.g., health department, private physician, family planning clinic, etc) for specific information on birth control so an informed decision can be made with respect to family planning. It is *not* appropriate for staff to explain or recommend specific or particular birth control methods.

[44] Revised APS Letter 2008-4
March 2008

Chapter 2 Section D

I. GENERAL POLICIES APPLICABLE TO ADULT DAY CARE

A. Introduction

§38-2-6, Code of Alabama, requires the Department of Human Resources to establish rules and standards for inspection and approval of adult day care centers and adult day care homes with whom DHR contracts or otherwise agrees to purchase adult day care services. The policies and procedures contained in this section of the Adult Services Manual for the provision of Day Care for Adults are for the guidance of county staff in working with homes approved by DHR and centers from which adult day care is purchased by DHR through contract. Standards to be met by adult day care homes, day care centers, and provisions written in the contract narrative for adult day care centers have been published separately. The information here is to be used in conjunction with the Minimum Standards for Day Care Homes for Adults, the Minimum Standards for Adult Day Care Centers, and the Department of Human Resources contract for Adult Day Care Centers. Some information contained in those sources is not repeated in this section of the Adult Protective Services Manual.

Day Care for Adults is a program of care for a portion of a 24-hour day in a protective setting for the individual who is at risk of abuse, neglect, or exploitation or at risk of institutionalization and for whom day care is an appropriate part of a case plan. Service includes medical examination (when not available without cost to the DHR) to determine appropriateness of service, case management, and services to assure day care placement appropriate to the needs of the individual served, information and referral and planning with the provider of care. [45] Service includes meals and may include transportation. *Adult day care services are not available for residents of group living arrangements unless already receiving the service prior to the effective date of this policy.*

Adult day care offers supervision, relief from problems at home, the opportunity to associate with one's own peers, the opportunity to develop new interests and possibly new skills, help in recuperating from a traumatic experience such as the loss of a loved one, or relieve stress caused by constant care.

When purchased by the Department of Human Resources, day care for adults will serve elderly individuals or those with disabilities. The program of activities must be geared to relieving the problems of participants related to remedying or preventing abuse, neglect or exploitation or inappropriate institutionalization, and to providing supportive services which enable participants to remain in their own homes.

Note: Throughout this chapter the individuals receiving adult day care services are referred to as clients or participants.

[45] Revised APS Letter 2007-25
November 2007

B. Eligibility

To be eligible for adult day care, an adult recipient must meet one of the priorities listed below. It is the responsibility of the adult service worker to determine whether adult day care is an appropriate part of the service plan for the individual in question. When selecting individuals to receive the Adult Day Care Service, priorities will be given in the following order:[46]

1. Persons for whom day care is an appropriate part of a case plan and who are at risk of abuse, neglect, or exploitation

2. Persons for whom day care is an appropriate part of the case plan and who are at risk of institutionalization.

The client, or a responsible person acting on his or her behalf, must sign an Application for Services, DHR-FSP-1966 (revised 6/20) and the HIPAA Privacy Authorization (Section IV. F) prior to making referrals for day care as part of a service plan.

C. Responsibilities of the Service Worker

The service worker is responsible for determining whether adult day care is an appropriate part of the client's service plan. In doing so, the service worker will need to consider the following: physical, mental, and emotional conditions of the client; whether adult day care can reasonably be expected to meet the client's needs; the effect adult day care will have upon other members of the household; the client's physical capacity to travel to and from adult day care; whether transportation is needed, and available; and the willingness and readiness of the client to accept adult day care.

Because day care is available in only a limited number of counties, the worker must carefully assess existing community resources to determine whether there are other means of meeting the client's needs. Community resources may include private day care, churches, etc.

In considering day care for a person who exhibits disruptive behavior, such as outbursts, care must be taken to determine whether adult day care is an appropriate part of the service plan for that individual. If adult day care is being considered and there is some question about whether it is appropriate, the worker should secure a professional opinion from a physician or a mental health resource. A referral to the local mental health center for a day treatment program may be more appropriate for an individual with a mental illness diagnosis.

For some clients, part-time adult day care is appropriate. An example is the client who cannot be left at home alone all day and is cared for by someone who is employed one or two days per week or for only part of a day. In this case the client could be in adult day care on the days or times that the caretaker is employed outside the home. Another example would be the client who lives with others for whom constant care is too much strain, but, if given some relief for a day during the week, could continue to provide care. It is the responsibility of the adult

[46] Revised APS Letter 2007-25
November 2007

service worker to determine whether part-time or full-time adult day care is needed and document the basis for the decision in the case record.[47]

Before discussing with the client the possibility of attending a particular adult day care facility, the worker should determine whether a slot is available and discuss the situation with the director of the adult day care center or with the social worker supervising the adult day care home (See "Supervision of Adult Day Care Home" later in this section) to consider whether that particular resource could meet the client's needs. The next step should be to explain the service to the client and schedule a visit to the adult day care facility being considered. Such visits could pave the way for acceptance on the client's part and for an understanding of the client on the part of the provider of adult day care.

The client case record should contain an assessment of the initial as well as continuing need for adult day care if it appears that adult day care would be a good plan for the client. Persons for whom DHR makes payment for adult day care must meet one of the established priorities for adult day care. (See "Eligibility" in this section.) A DHR-ASD-664, Report of Physician's Examination for Day Care/Foster Care for Adults, must be on file in the client's case record. (See "Physical Examination" in this section.)

On or before the date of admission, the service worker is responsible for completing DHR-ASD-500, Emergency Information, Adult Day Care/Adult Foster Care. Two copies are to be prepared, with one copy furnished to the adult day care provider other copy retained in the client's case record in the county office. The health professional's instructions are to be copied directly from the latest DHR-ASD-664, Report of Physician's Examination for Day Care/Foster Care of Adults. Keeping the DHR-ASD-500 up to date is the joint responsibility of the service worker and the provider of adult day care. Each should share with the other any changes in information recorded on the form and make changes on the form as appropriate.

When making a referral to adult day care, it is the responsibility of the service worker to give the adult day care provider appropriate information about the client. (See "Confidentiality" later in this section.) The information should be maintained in the client's case record, by the provider, with a copy in the client's case record at the County Department. The service worker should prepare a summary including needs of the client as related to the client's involvement in adult day care activities, special issues of the client that may present concerns, and specific aims toward which activities in adult day care are to be directed. For instance, an aim for the depressed client might be to increase socialization with others, and for the malnourished client, it may be to improve eating habits.

At periodic intervals, *at least every six (6) months* when the service case plan is updated, the service worker is responsible for evaluating adult day care for the client. Considering information provided by the center director or the person providing home day care, the service worker is to evaluate the effects of adult day care upon the client and other household members

[47] Revised APS Letter 2007-25
November 2007

and determine whether adult day care should be continued or terminated. (See "Evaluation of the Adult Day Care for Participant" in this section.) Adult Day Care may continue as long as the client meets the criteria set forth in policy and adult day care is available.

D. Sources of Adult Day Care

Day Care for Adults may be provided in DHR approved centers operated by groups or individuals. Adult day care may also be provided in DHR approved family homes. In each home to which DHR is to make payment for adult day care, the determination as to whether the home has met prescribed DHR standards is the responsibility of county staff. In each center to which DHR is to make payment for adult day care, determination as to whether the center has met prescribed DHR standards is the responsibility of the staff of the DHR Office of Resource Management. (See Purchase of Service Manual for details.)

E. Physical Examination

Within four weeks immediately preceding the initial adult day care admission and annually thereafter, it is necessary for each participant to have a physical examination, medical screening, or medical assessment. The physical examination, screening, or assessment shall be performed by a licensed, practicing medical doctor or physician's assistant (as defined in Section 34-24-290(4), Code of Alabama 1975) or nurse practitioner.

The physical examination, screening, or assessment of the client should be used in evaluating the appropriateness of adult day care. This report should also be used to secure the health professional's recommendations regarding day care limitations of activities, special diets, allergies, medications (kind, dosage, and whether the individual is capable of administering their own medication(s) and to determine the absence of a communicable disease. Results are to be reported on the DHR-ASD-664, Report of Physician's Examination for Day Care/Foster Care for Adults and filed in the client's case record in the county office each year.[48]

It is the responsibility of the service worker to ensure that the client has a physical examination, screening, or assessment *every year* and at any other time the health condition obviously changes to the extent that the appropriateness of the service becomes questionable. A client who leaves adult day care and later returns is not required to have another physical examination, screening, or assessment until one year has passed since the time of the last medical examination. However, if the worker or adult day care provider has reason to believe the client's health situation has changed, then one may be needed before the annual one is due. Payment to the appropriate medical staff may be authorized for a physical examination, screening, or assessment if the County Health Department, clinic, or other resources cannot provide this service without charge. When it is necessary to authorize payment for cost of the medical examination, a statement of charges made by the appropriate medical staff must be secured. The approved bill must be attached to a completed DHR-BFM-676, Request for Medical Examination, and submitted to the SDHR Finance Division.

[48] Revised APS Letter 2007-25
November 2007

NOTE: Only one current DHR-ASD-664 is needed for clients who receive both Day Care for Adults and Foster Care for Adults.

F. Individual Records for Adult Day Care Participants

The adult day care provider must establish and maintain a folder for each participant in adult day care, properly identified with the name and case number of the client, which contains the following:

1. DHR-ASD-500, Emergency Information, Adult Day Care or Adult Foster Care.

2. Copy of the summary given at the time of the initial referral to the adult day care center or home provider and any pertinent information for working with the participant. This could include information provided by the case worker regarding adult day care as a part of the case plan for the client, changes in the client's condition, such as improvements in health or eating habits, or increased interest on the part of the client in what others are doing.

3. Copy of any form signed by the client or his representative authorizing the center or home to release confidential information about the client. This will include all HIPAA forms. [49]

4. DHR-ASD-781, Authorization of Adult Day Care Transportation, if pertinent (Homes only).

5. Quarterly progress notes.

G. Confidentiality

In referring clients for adult day care, service workers must use discretion in selecting only information about the client that will be needed by the adult day care provider. The service worker must be sure that the client or his or her legal guardian has given written consent to have such information shared with persons other than the client and DHR staff. It must be filed where it is available only to persons who need and are authorized to have the information.

Prior to releasing any names or pictures of clients for publicity purposes, specific written permission must be obtained from the client or his or her legal guardian involved and filed in the client's case folder at the adult day care home or center. All HIPAA guidelines, policies and procedures must be followed. More specific policy is available in the later section for Day Care Homes. APS HIPAA policy is available under Online Documents and the required forms are included within this policy revision.

H. Absences

[49] Revised APS Letter 2007-25
November 2007

Payment for day care of adults is based on period of enrollment, not days in attendance. Adult Day Care homes are to follow policies outlined in section, "Attendance Records and Reports for Adult Day Care Homes". Adult day care center providers will follow policies set forth in the contract issued to them by the Office of Resource Management. Policy regarding participants in day care centers will be found in the section "Attendance Record and Reports for Adult Day Care Centers."

I. Re-evaluation of Adult Day Care Participant

An evaluation of the effects of adult day care upon the client must specify the following:

- Whether the client's condition has improved or deteriorated.
- Whether the initial goal for entering adult day care has been reached.
- Whether adult day care should be modified or continue as originally planned.
- Whether the client continues to be appropriate for adult day care based on the criteria set for participation in the program.

The adult day care provider and the DHR service worker should base information included in the evaluation on observation. Discussion with the client about his or her participation in adult day care may assist in the evaluation.

The case plan for each participant in adult day care should be reviewed *at least every six months by conducting a private face-to-face interview with the client.* During this timeframe, the client must be seen at both the center and at their home. If the client is in foster care and receives Adult Day Care services, they must be seen monthly in the foster home and every other month at the day care center.[50] The client must be seen as often as necessary to assess his or her safety and well-being. This interview should be recorded in the participant's APS Case Plan. However, the service worker should periodically conduct *private face-to-face interviews* with the client in order to give them the opportunity to offer suggestions and express concerns. The service worker must continue to see the client as often as necessary to achieve the objectives of the service plan.

It is important that the need for adult day care be clearly stated and recorded each time an evaluation is made of the adult day care service. In determining the continued need for adult day care, the service worker should, in conjunction with the face-to-face interview, observe the client, evaluate the situation, and obtain information about the client from the adult day care provider.

J. Termination of Adult Day Care

The decision regarding continuation or termination of adult day care for a particular client will be based on evaluation in relation to the aims and goals for the individual.

[50] APS Letter 2021-11
August 2021

While adult day care can be continued as long as it is needed and the client continues to be eligible for the service, the possibility of termination should be considered from the date adult day care begins. In some cases, it is expected that the purpose for which adult day care is provided will have been attained.

When a client no longer meets the priorities for adult day care, due to changes in the client's situation or changes in policy, adult day care must be terminated. Reasons for termination of adult day care are:[51]

1. The client in day care for adults becomes disruptive to the program.

2. The client deteriorates to the point that the client is no longer able to attend a day care program.

3. The client deteriorates to the point that it is in the best interest of the client to move from his or her own home or community to a more restrictive setting.

4. Living arrangements change for a client receiving day care for adults, e.g., a relative who can care for the client has moved into the home, or a member of the household who had been employed decides to stay at home and take care of the client, or client moves to an area where a day care is not available.

5. The client has improved sufficiently that other community resources will meet the needs.

6. The client meets the definition of chronic absenteeism for the third time in one year. Chronic absenteeism is defined as seven absences in one month or seven consecutive days in a two-month period.

NOTE: Policies regarding advance notice of termination, the right of appeal, etc., as outlined in Chapter I, Section A, are applicable.

II. POLICIES APPLICABLE TO ADULT DAY CARE CENTERS ONLY

The Office of Resource Management maintains the responsibility for contracts between adult day care centers and the Department of Human Resources. County workers must visit the centers as well as the client's home when re-determining and re-evaluating a client's need for service. It is not the responsibility of the county worker to ensure compliance with the contract. However, workers should be familiar with the minimum standards so they may recognize when the center falls below the agreed upon standards, and report this to the County Director. A copy of the Minimum Standards for Adult Day Care Centers is being printed separately.

[51] Revised APS Letter 2007-25
November 2007

Chapter 2 Section D: Day Care for Adult

A. Development of Adult Day Care Center Resources

The SDHR develops and publishes Requests for Proposals (RFPs) for Adult Day Care Center providers. Interested parties must register as an adult day care vendor with State Purchasing in order to insure receipt of an RFP and to be eligible for a contract.

Individuals, groups, or agencies expressing an interest in developing an adult day care center should be referred to Adult Protective Services to obtain a copy of Minimum Standards for Adult Day Care Centers.

B. Contract to Provide Adult Day Care

Following vendor selection through the RFP process, contracts are negotiated. The contract to provide adult day care is signed by the Commissioner of the Department of Human Resources. Currently, Adult Day Care contracts are negotiated for up to a period of three years.[52]

Hours of operation of the center are included in the contract and should be authorized based on the needs of the participant.

The contract applies to the place where the center is located at the time the agreement is signed. If a center is relocated, the Office of Resource Management *must* be notified in order to determine if the center continues to meet standards in the new location.

C. Allocations of Adult Day Care Slots

A specific number of slots, as determined by the Department's budget, are assigned by Adult Protective Services, SDHR, to counties by provider. Each such county is responsible for ensuring no slots are authorized in excess of the allocation. Counties using all assigned slots may request additional slots when a protective service case warrants the need for adult daycare.

When new services are needed, the county will email APS Division Director with a cc to the APS Deputy Director and Deputy Commissioner of Children and Family Services for an allocation specifying the amount of service (full-time or part-time) and the provider. If more than one provider serves a county, referrals must be rotated between the providers. Additional slots may only be awarded based on the availability of funds. Approval for additional slots may be given following a contract amendment. Amendments are made by the SDHR Resource Management Division and approved by the Commissioner of the Department of Human Resources. Refer to Appendices for the Current slot allocation.

Day care providers are required to respond to county ADC referrals within 5 working days.

[52] APS Letter 2021-13
September 2021

D. Centers Serving Clients from More than One County

Eligible adult day care clients residing in a county with no available center can be awarded day care services in an adjoining county. This arrangement can be approved provided all of the following criteria are met:

1. A slot is available in the county where the client resides or, space is available at the adult day care center.
2. The client will not have to travel an excessive distance to receive the service.
3. The contract includes the county of the client's residence

NOTE: All questions regarding compliance with minimum standards of adult day care centers, the contract to provide adult day care, attendance records, reports and the billing procedures should be directed to the Office of Resource Management. All questions regarding determination and re-determination of need for service, priorities, referral procedures, slot authorization, notification of action taken, and terminations or reductions should be directed to the county APS Division Director with a copy to APS Deputy Director and Deputy Commissioner of Children and Family Services.

E. Terminations Due to Funding

If terminations for adult day care are necessary due to funding reductions, the persons most recently authorized with the lowest priority will be the first terminated. The priorities are 1) prevention of abuse, neglect, and exploitation and 2) preventions of institutionalization.

F. Payments to Centers

Payments for adult day care can be authorized to centers provided SDHR Office of Resource Management, APS Division Director and APS Deputy Director have notified the County that the contract has been signed. This will happen after it is determined that mandatory standards are met, the center is in compliance with civil rights, and the Department and the center have entered into and executed a contract for provision of day care for adults. If the contract is terminated, SDHR Office of Resource Management, APS Division and APS Deputy Director will advise the County Department of this action.

Current Adult Day Care Center rates are as follows:

- Full-time with transportation is *$700.00* per month[53]
- Full-time without transportation is *$525.00* per month
- Part-time with transportation is *$420.00* per month
- Part-time without transportation is *$332.00* per month

[53] APS Letter 2023-02
February 2023

G. Holidays and Emergency Closing

Adult day care centers are not required to take the same holidays observed by DHR but may take a maximum of thirteen days per fiscal year. These days must be selected in advance, agreed upon and listed in the final contract. Centers cannot observe any additional holidays granted to state offices at the discretion of the Governor. Adult day care centers will be open during the hours of operation listed in the contract.

Closures allowed include unanticipated circumstances resulting from inclement weather (tornado, flood, snow, etc), or equipment breakdown (air conditioning, furnace, water pipes, etc). Each center must have in place their provisions for emergency and disaster planning as required under Alabama Act No. 2006-559. When emergencies occur which necessitate closing a center, the provider must notify the County Department immediately. After an emergency has occurred, the status of the emergency should be evaluated daily by the County staff. The provider must forward written notification of the closing to the Office of Resource Management. The County Department may recommend to that office whether the center should be paid for the period it was closed.[54]

H. Program of Activities

Adult Day Care Centers must have a regular program of planned activities for participants which will be physically and mentally stimulating yet adapted to the abilities and wishes of participants. Refer to Minimum Standards for Adult Day Care Centers and the contract narrative for information regarding both suggested and required activities.

I. Meals and Snacks for Participants

An essential part of a full-time adult day care program is a nourishing meal. All meals should be prepared in a safe and sanitary manner.

Adult Day Care Centers may contract for meals from a hospital or nursing home where a dietician is available, and special diets can be supplied. Special diets will be provided by centers to clients for whom they have been prescribed. These clients should not enroll in the facility until it has been determined that arrangements for the special diet have been made.
.
If food is catered, the local health department *must* approve the food source and method of food delivery.

J. Transportation to Adult Day Care Center

When transportation is included as part of the adult day care contract, no further determination of eligibility or need for transportation is required. If a client is authorized

[54]APS Letter 2023-02
February 2023

for transportation, the adult day care center will bill at a higher rate to include transportation. (See "Payment to Centers" for rates.)

K. Attendance Record and Reports for Adult Day Care Centers

1. Monthly Attendance Report for Adult Day Care Center Providers

Adult day care providers submit to the State Department of Human Resources and the County Department a DHR-SSC-920, "Request for Day Care Payment" (cover sheet) and a DHR-SSC-920, "Client Data Page", following the end of each month's operation. These forms list the eligible clients served and give information such as enrollment, attendance, and amount due. The DHR-SSC-920 (cover page) is carbonized and completed in quadruplicate. The DHR-SSC-920 (client data page) is a computerized sheet and is completed in quadruplicate.

The original of both forms, the canary copy of the cover sheet and a copy of the Client Data Page are mailed to the Office of Resource Management by the 5th of each month in order to avoid a delay in reimbursement. The pink copy of the cover sheet and the third copy of the Client Data Page are sent to the County Department and the golden copy of the cover sheet and fourth copy of the Client Data Page are retained by the adult day care provider. The County Department must review, note any errors, and notify the Office of Resource Management. Once County Departments review their respective day care provider invoices, the County Office will forward approved invoices to the Office of Resource Management with a copy to the APS Division Director and APS Deputy Director.

The State Department issues payment for services provided during the previous month. Reimbursement is made based on the number of days a client is enrolled and in attendance during each month, the service authorized (full or part-time adult day care), and whether or not transportation services are provided.[55] The county office can approve an exception if the ADC client is in the hospital or rehabilitation. Other short-term absences should be discussed with the APS consultant. The APS Division Director, Deputy Division Director and the Resource Division (resourcemanagement.invoiceprocessing@dhr.alabama.gov) must be notified if exceptions are granted and provide the reason for the exception. Services may not be billed prior to the effective date of approval listed on the DHR-OCG-724, "Purchase of Services Authorization" or after the effective date of the termination of services on the DHR-FSD-1968, "Notice of Reduction/Termination of Services". The center may bill for the client until the effective date of termination on the DHR-FSD-1968, or a maximum of twenty-two consecutive program days of absence, whichever comes first providing the center has a vacancy and has complied with chronic absenteeism policy. If chronic absenteeism has occurred, the provider should complete a PSD-SSC-1428, "Adult Chronic Absenteeism Reporting Form", and submit it to the County Department. Chronic

[55] APS Letter 2022-01
March 2022

absenteeism is defined as seven consecutive or nonconsecutive absences in one month. If absences are consecutive, they must be counted from one month to the next. For example, if a client is absent the last three day of one month and absent for the first four days of the following month, a report would be made to the County DHR.

2. Supplemental Billings for Adult Day Care Center Providers

If a center fails to list any clients on the regular monthly billing, they may be billed on a separate DHR-SSC-920, "Request for Day Care Payment." Supplemental billings are used for clients for whom a center did not previously bill. In order to bill on supplemental billings, the Adult Day Care Center provider completes a DHR-SSC-920 (Client Date Page only) as usual and writes "Supplemental" on the top of the form. This should be submitted with the next month's billing.

3. Adjustments for Adult Day Care Center Providers

At times it may be necessary for the Department of Human Resources or the provider to make adjustments in the monthly reimbursement claim due to reasons such as overbilling or under billing, chargebacks resulting from program monitoring, chargebacks resulting from previous financial audits, IRS tax levies, and other reasons. The State Office will process any needed adjustments. The DHR-DSP-1222, "Notice of Error(s) in Request for Day Care Payment", is to be used to make adjustments. The form is to be completed by the party (County/State staff or the provider) who discovers the error.[56]

NOTE: Attendance and billing forms are to be supplied to centers by the Office of Resource Management and to homes by the County Department.

L. Procedures Regarding Complaints about Adult Day Care Center Providers

When the County Department receives a complaint, which does not pertain to abuse, neglect or exploitation, the worker should obtain pertinent facts such as:

- Information regarding the person making the complaint (i.e., name, address, if they are a participant in the adult day care center, caregiver, neighbor, another provider, etc.) as the person is willing to share.
- The specific information they want to report (i.e., too many participants, not enough staff or equipment).
- How the individual became aware of the information reported.
- Approximate date of the incident(s), and
- How they can be reached if the worker wishes to contact them again.

The Division of Resource Management and Adult Protective Services Division should be

[56] Revised APS Letter 2007-25
November 2007

notified immediately of the complaint. The Division of Resource Management is responsible for investigating complaints except for those of abuse, neglect or exploitation.

Situations alleging abuse, neglect or exploitation in an adult day care center are to be handled by a County protective service worker, following standard procedures outlined in Chapter II, Section F, "Protective Services for Adults" of the Adult Services Manual.

M. Standard Precautions

Standard Precautions is the terminology for a set of guidelines established by the Centers for Disease Control and Prevention (CDC). CDC previously called these guidelines "Universal Precautions" – the term that became synonymous with infection control measures to protect day care workers from HIV and other blood borne pathogens.[57]

Standard Precautions apply to guidelines for infection control while in contact with blood, all body fluids, secretions, and excretions regardless of whether or not they contain visible blood. They also apply to skin cuts or sores and mucous membranes. The basic tenets of infection control are preserved in Standard Precautions, including hand washing and the use of gloves as appropriate for contact where splashing and soiling is likely to occur. Standard Precautions are designed to protect both providers and clients from all body fluids and substances through hand washing, and the use of gloves. Please see summary of Standard Precautions in the Minimum Standards for Adult Day Care Centers.

[57] Revised APS Letter 2007-25
November 2007

Payment Rates for Adult Day Care Centers Effective 03/01/2023[58]

	700	420		525	322 Days
FT w/Trans	PT w/Trans			FT w/o Trans	PT w/o Trans
1	$23.33	$14.00		$17.50	$10.73
2	$46.66	$28.00		$35.00	$21.46
3	$69.99	$42.00		$52.50	$32.19
4	$93.32	$56.00		$70.00	$42.92
5	$116.65	$70.00		$87.50	$53.65
6	$139.98	$84.00		$105.00	$64.38
7	$163.31	$98.00		$122.50	$75.11
8	$186.64	$112.00		$140.00	$85.84
9	$209.97	$126.00		$157.50	$96.57
10	$233.30	$140.00		$175.00	$107.30
11	$256.63	$154.00		$192.50	$118.03
12	$279.96	$168.00		$210.00	$128.76
13	$303.29	$182.00		$227.50	$139.49
14	$326.62	$196.00		$245.00	$150.22
15	$349.95	$210.00		$262.50	$160.95
16	$373.28	$224.00		$280.00	$171.68
17	$396.61	$238.00		$297.50	$182.41
18	$419.94	$252.00		$315.00	$193.14
19	$443.27	$266.00		$332.50	$203.87
20	$466.60	$280.00		$350.00	$214.60
21	$489.93	$294.00		$367.50	$225.33
22	$513.26	$308.00		$385.00	$236.06
23	$536.59	$322.00		$402.50	$246.79
24	$559.92	$336.00		$420.00	$257.52
25	$583.25	$350.00		$437.50	$268.25
26	$606.58	$364.00		$455.00	$278.98
27	$629.91	$378.00		$472.50	$289.71
28	$653.24	$392.00		$490.00	$300.44
29	$676.57	$406.00		$507.50	$311.17
30	$699.90	$420.00		$525.00	$321.90

[58]APS Letter 2023-02
February 2023

III. POLICIES APPLICABLE TO ADULT DAY CARE HOMES ONLY

A. Development of Adult Day Care Homes

When working toward developing day care for adults in homes, the following items need to be discussed with interested parties:

- the need for adult day care services, as seen by DHR;
- persons considered by DHR to be in need of adult day care;
- requirements regarding Minimum Standards for Day Care Homes for Adults;
- policies of DHR regarding transportation to adult day care;
- policies and procedures regarding payment for adult day care, including rates of payment, billing procedures, and exceptions regarding payment date; and
- allocation of slots to each County.

NOTE: The provider should be encouraged to secure appropriate homeowners insurance to cover the provision of rendering adult day care in the home.[59]

Copies of Minimum Standards for Day Care Homes for Adults are to be distributed when recruiting day care homes for adults or when a prospective provider inquires about providing adult day care in their home. Included in the Minimum Standards are policies on the following subjects:

- Number of participants
- Day Care Family
- Day Care Home
- Care of Participants
- Corrective Action, Hearings and Appeals
- Character and Suitability Requirements
- Medical Requirements

Adult Day Care Home providers need to be familiar with the use of Standard Precautions (Universal Precautions) for Health Care workers as issued by the Center for Disease Control (CDC) in order to prevent the spread of contagious and infectious diseases among adult day care participants. According to CDC, clean hands are the single most important factor in preventing the spread of pathogens in health care settings. Recommended hand hygiene measures or techniques and factors for disease transmission are located in the Minimum Standards.

Procedures for recruiting day care homes for adults will be the same as county procedures for recruiting foster homes for adults. (See Chapter II, Section G, "Recruiting Foster Homes"). Particular attention is called to the suggestions regarding individuals who might be helpful in identifying prospective resources, how to use some information growing out of efforts to

[59] Revised APS Letter 2007-25
November 2007

recruit homes for children, other means of alerting families to the need for resources, and some ideas about how to use some information growing out of efforts to recruit homes for children, other means of alerting families to the need for resources, and some ideas about how to avoid losing an approved home before a client is placed. Still another source of adult day care homes might be families who considered but decided against foster care for adults. They might be more interested in providing care for part of the day as compared to full time care.

B. Approval, Denial, Suspension/Revocation of Day Care Homes

1. Approval to Provide Adult Day Care

The potential provider and the day care home must meet all the requirements in the Minimum Standards for Day Care Homes for Adults and all applicable forms must be completed. Requirements include an Application to Provide Day Care for Adults, PSD-BSA-733; Agreement to Provide Day Care for Adults Eligible for Adult Protective Services, PSD-BSA-778; completed physician's statements for all household members, completed criminal history background checks for all household members; provision of three references to be contacted by the County Department. Staff should use the Initial Adult Day Care Home Approval Check List (provided in Section IV. A) to document that each step of the process prior to the home study has been completed.[60]

Following a home study in which all requirements are met, the home may be approved. "Approval to Provide Day Care for Adults," PSD-BSA-730 will be used by the County Department to notify the applicant. That form will show the number of participants for whom the home is approved. *This approval will be in effect for one year from the date of issuance* and may be withdrawn for reasonable and just cause. This approval applies to the provider's residence and household composition at the time of approval. If a change in either occurs, the provider must notify the County staff and complete a new application. The worker must determine if standards and regulations continue to be met considering the change(s) made. If the home is approved, a "PSD-BSA-730" will be issued for the remainder of the current approval year.

Temporary approval of a Day Care Home for Adults will be done only in emergency situations for homes that have met *all* requirements except the return of a completed criminal history background check and the subsequent suitability letter. Temporary approval will not be made if there is any reason to suspect that a satisfactory check will not be received. Temporary approval may be *granted only with concurrence of APS Division Director.*

2. Denial of Application to Provide Adult Day Care

[60] APS Letter 2021-13
September 2021

During the home study, it is possible that problem areas will be noted. As a worker assesses and evaluates the prospective day care family home as to whether or not a client's emotional and health needs can be met there, it may become apparent that these problems would prohibit approval of the application. The reasons for this must be discussed with the applicant in a way that minimizes the damage to the family and gives recognition of the strengths. The applicant should have the opportunity to withdraw their application voluntarily. A letter to the applicant should confirm the discussion. A Sample Denial Letter is included in Section IV., D. Adult Day Care Forms, at the end of this chapter.[61]

3. Reapproval to Provide Adult Day Care in the Home

All approvals for adult day care providers must be reviewed annually by the County DHR. Homes may be approved again if there is continued conformity to standards.

The adult day care provider should complete and submit to the County Department DHR-ASD-733, Application to Provide Day Care for Adults, *thirty days prior to the expiration date on the current approval*. The worker must assess whether the home continues to conform to adult day care policy and meets the Minimum Standards for Day Care Homes for Adults. This must be documented in the resource record on the Section IV, C. Day Care Home Reevaluation Form. References for the provider and primary substitute caregiver(s) must be contacted for each re-approval. Additional narrative recordings may be typed on green paper. The renewal process must be completed prior to the expiration date of the current approval, and a DHR-ASD-730, Approval to Provide Day Care for Adults, issued.

4. Approval to Provide Both Day Care and Foster Care for Adults

Homes are not usually approved to provide both day care and foster care for adults. Such arrangements must be made very cautiously, considering the welfare of all involved clients and the day care family. The following conditions must be met:

- The total number of day care and foster clients combined must be no more than four.
- In a single provider family, the back-up person required by day care policies must be available.
- There must be assurance that no one client will require so much attention that the day care family cannot provide the attention needed by each client in care.

A home that provides both day care and foster care must meet the standards of both programs. County staff must document that the standards have been met, and the home must be approved to provide day care and foster care for adults.

5. Suspension/Revocation of Day Care Home Approval

[61] Revised APS Letter 2007-25
November 2007

After a home has been approved to provide day care for adults, problems which impact the family's ability to supervise and promote the client's health, safety, comfort, and well being may be observed or reported. The home may cease to meet minimum standards or the agency may receive reports of inadequate or improper treatment of the client(s). When problems arise, the worker, in an interview with the day care provider(s), shall clearly state the problems and, if appropriate, offer solutions. The day care home approval shall be revoked if the provider proves unable or unwilling to make recommended corrective action or if the worker's assessment is that a safe and caring environment is not being provided. The decision along with the reason(s) for revocation shall be confirmed by letter to the provider(s). Policy and procedures regarding investigative hearings apply to situations where the approval is to be revoked as a result of a protective services investigation. (See "Procedures for Protective Services Investigations Hearing", Chapter II, Section F, Adult Services Manual.)[62]

C. Resource Case Record for the Day Care Family

When an individual has requested an application to Provide Day Care for Adults, a resource case record is to be established for the day care family and a case number assigned (if the individual does not already have an assigned case number in another unit within the county department). As development of the resource progresses, the following will be filed in the resource record:

- PSD-BSA-733, Application to Provide Day Care for Adults.
  PSD-BSA-778, Agreement to Provide Day Care for Adults Eligible for Adult Protective Services.
- DHR-ASD-730, Approval to Provide Day Care for Adults (The original is given to the provider and a copy is kept in the resource record on the left side.) or a letter advising that the application cannot be approved and why.
- Physician's statement regarding health of the household members of the day care family. This statement or other verification must include the date and whether the household member is free of communicable disease.
- DHR-ASD-666, Record of Foster Home for Adults (adapted by pen and ink to be used for day care), that will provide a record of persons placed in and removed from the home, as well as an up-to-date list of persons in the day care home at any one time. It will also serve as the cover page to narrative recordings.
- Initial Adult Day Care Home Approval Check List, Section IV. A.
- Adult Day Care Home Study. After approval, information regarding supervision of the day care home, the family's experience in providing day care and services given by the worker to the day care added to the comment section the Adult Day Care Home Study Form located in Section IV. B.

[62] APS Letter 2016-01
March 2016

- Adult Day Care Home Reapproval Form, completed for each renewal year using the form in Section IV.
- A copy of DHR-APS-779, Adult Day Care Transportation Agreement.
- A copy of PSD-BFM-676, Requisition for Medical Examinations, amended to reflect Day Care Transportation, if appropriate.
- A copy of DHR-ASD 500, Emergency Information, Adult Day Care/Foster Care. The original is given to the day care provider and a copy is also in the client's file.

The resource case record of the day care family will be kept open as long as the family provides day care for adults. When day care is discontinued, the decision regarding closing the record of the day care family will be made in accordance with DHR standard procedures regarding closing service records.[63]

D. Supervision of Day Care Home for Adults

When possible, it is advisable to have a resource service worker supervising the approval and reapproval of the adult day care home and a caseworker to supervise the placement of the client. It is also advisable for these two workers to coordinate the visits to the day care home.

A family that has not previously provided adult day care will probably need considerable interpretation from the resource worker regarding what the agency expects of the family, what the family can expect of the agency, the family's responsibilities to the client, and in general terms, what the family can expect from the client. The resource worker and the caseworker will need to stay in contact with the new adult day care family to provide understanding and support to both the client and the adult day care family.

Many problems may be avoided if the resource worker will carefully review with the day care family, initially and periodically, all of the requirements of a day care home in the Minimum Standards for Day Care Homes for Adults. Such a review will give the family an opportunity to ask questions and allow the resource worker the opportunity to emphasize some points of particular importance. Special attention should be called to the following: the need for supervision of participants; procedures to be followed if a client or participant becomes ill while in day care; the need for another adult (substitute caregiver) to be available in the event of an emergency; and the records that are to be prepared and submitted.

The resource worker must also be sure that the day care family understands how to use the information reported on the DHR-ASD-500, Emergency Information, Adult Day Care/Adult Foster Care. Confidentiality of information regarding the client and his or her family must be discussed. The Health Insurance Portability and Accountability Act of 1966 (HIPAA) and its relevant regulations should be discussed with the applicant. The need to safeguard protected health information (PHI) of the client must be explained, as well as the need for providers to sign the Business Associate Agreement (BAA). (See the

[63] Revised APS Letter 2007-25
November 2007

form in Minimum Standards for Day Care Homes.) The BAA must be signed prior to the application approval and will be in effect as long as the individual is approved to provide Adult Day Care. The resource worker may need to help the day care family prepare the client file required for each participant.[64]

E. Program of Activities

Adult day care is a program tailored to the participants' needs and interests. Each day's program should include some physical exercise, a nourishing meal, companionship, mental stimulation and assistance with activities of daily living, if needed.

Adult day care participants must also be allowed time during the day for rest and relaxation and to attend to personal care needs. The only practical arrangement may be a schedule of activities for everyone, but plans must be flexible enough to allow for long rest periods or more frequent ones for participants who need them.

Adult day care homes are not required to have a formal program of planned activities, but participants should be encouraged to visit with each other, to get some physical exercise and to make use of their mental abilities. Choices of participants in planning activities should be taken into consideration to the extent that it is practical to do so. Television may occasionally be used as a supplement to other activities.

Adults in need of adult day care may need considerable encouragement to take part in activities. Reasons for non-participation in activities should be evaluated to determine whether it reflects personal preference or the need for a change in activity. (See Minimum Standards for Day Care Homes for Adults.)

F. Health Care

Home day care for adults is expected to protect the health of participants. Formal health care programs are not required; however, many adult day care participants will need assistance in following their own programs of health care, as prescribed by their doctor. Assistance needed may include reminding the client to take medicine at the proper time, helping the client to understand and follow a prescribed special diet, helping the client secure medical appointments, and reminding them to keep appointments. Although medication is not to be administered by persons providing day care, liquids can be provided to help the client with swallowing.

When an adult day care participant becomes ill or has an accident while at the adult day care home, the provider must notify the person listed as the emergency contact on the DHR-ASD-500 to decide how to proceed. A participant with symptoms of a communicable disease must be isolated. Adult day care providers need to be familiar with the use of Standard Precautions developed for health Care workers. (See "Standard Precautions" in Minimum Standards for

[64] Revised APS Letter 2007-25
November 2007

Day Care Homes for Adults.)

When changes occur in the client's behavior or appearance which may cause the adult day care provider to have questions about a client continuing in adult day care, the matter must be brought to the attention of the DHR service worker.

G. Meals and Snacks for Participants

The amount paid for adult day care is considered to include the cost of one meal per day and snacks. If the participants are in adult day care for more than four hours, the meal must be supplemented by one or more snacks, including a beverage with each snack. A nourishing meal during the day is an essential part of a program of full-time adult day care and must contain at least the equivalent of one-third of the nutritional requirements for the day. Meals and snacks are to be prepared in a safe and sanitary manner. An adult day care home might be able to offer the clients some choice of what will be served and perhaps even a role in preparing and serving. Tasks of this nature are not to be required of adult day care participants. Clients for whom special diets have been prescribed should not enroll into adult day care until it has been determined that arrangements for the special diet have been made.[65]

H. Attendance Record and Reports for Adult Day Care Homes

Adult day care homes to which payments are made by DHR must record attendance daily on PSD-BSA-726, "Adult Day Care Attendance Record." The original is to be submitted to reach the Director of the County Department by the 5th of the month following the month covered by the report. The provider retains a copy.

It is permissible for two part-time participants to occupy one full-time adult day care slot.

When any adult day care participant for whom DHR is making payment is absent and the provider receives no explanation for that absence, the person to be notified in the event of an emergency (as listed on the DHR-ASD-500) is to be contacted. If for any reason the participant is absent for seven consecutive or within a month, the provider must report that information by telephone to the County Department worker who is responsible for investigating the situation to determine whether the client's place in adult day care is to be held. The provider should confirm the telephone call in writing. If the participant in an adult day care home is absent for seven consecutive, or non-consecutive program days, and the provider does not report this to the County Department within one program day, the provider shall not be paid for any days past the seventh day of absence until the client returns.

If the client's absence is due to illness and the client can reasonably be expected to return to adult day care by the time his or her absence would total no more than 22 program days, and

[65] Revised APS Letter 2007-25
November 2007

if adult day care continues to be an appropriate part of the client's service plan, the provider can be asked to hold the slot and payment can be continued. If absence is expected to extend beyond a total of 22 program days, adult day care should be terminated, following the procedures outlined in Chapter I, Section A, page 17, "Reduction or Termination of Services." Payment can be continued until the effective date of the termination on the DHR-FSD-1968, "Notice of Reduction or Termination of Services", or a maximum of 22 program days, whichever comes first.[66]

If the client chooses to be absent (for instance, visiting a relative) for more than two weeks, adult day care should be terminated. This should be done whether or not the provider is advised ahead of time of the planned absence. Payment to an adult day care home can be made until the effective date of termination on the DHR-FSD-1968.

Day care services may also be terminated or reduced because of chronic absenteeism, as this prevents the client from benefiting from the service. (See Chapter I, Section A, "Reduction or Termination of Services.") Chronic absenteeism is defined as seven consecutive or nonconsecutive absences in one month. If absences are consecutive, they must be counted from one month to the next. Adult Day Care providers are required to report chronic absenteeism to the County Department. The report must be made in writing, or by telephone followed by a letter.

I. Payments to Homes

1. Requirements Prior to Payments

Payments for adult day care can be authorized to homes provided all of the following have been accomplished:

- The County Department has determined and documented that the home meets the requirements outlined in Chapter II, Section D, "Day Care For Adults", and in the Minimum Standards for Day Care Homes for Adults, and
- A DHR-ASD-730, "Approval to Provide Day Care for Adults" (signed by the County Director or his or her designee) is issued and
- The County Department is within its allocation of adult day care slots.

2. Amounts of Payment

The adult service worker is responsible for keeping day care families informed regarding payment amounts and procedures to be followed in requesting payment. Maximum payments by DHR for adult day care in the home are:

- Full-time care (defined as care at an adult day care home averaging more that

[66] Revised APS Letter 2007-25
November 2007

twenty-five hours per week) - *$150.00 per month*.

- Part-time care (defined as care at an adult day care home averaging twenty-five hours or less per week) - *$75.00 per month*

NOTE: Payment to the adult day care home is made by submitting, by the 10th of the month, a completed DHR-BFM-676, "Requisition for Medical Examination", to SDHR Finance Division. Adjustments must be made to this form when completing it. Refer to Chapter VI, DHR-BFM-676, for these instructions.

J. Day Care Home Transportation

Payment may be made for transportation to the adult day care home. The provision of transportation will allow many people to take part in an adult day care program who would otherwise be unable to do so. The service worker must work with the day care home to help determine whether transporting participants is a viable plan. Payments can only be made for transportation actually provided. It is important, therefore, for accurate records to be maintained by the provider. Clients are asked to notify the family when transportation is not needed. If a client fails continually to do so, the matter should be brought to the attention of the DHR service worker.[67]

The maximum amount the Department can pay per individual to the adult day care home is *$.60 (sixty cents)* one-way and *$1.00* (one dollar) round trip within a four mile radius.

1. Agreement to Transportation to an Adult Day Care Home

   After the adult day care provider and the county DHR staff have agreed that transportation will be provided, a DHR-APS-779, Adult Day Care Transportation Agreement, should be prepared and signed by the day care home provider and the County Director or his or her designee. When there is an agreement to provide transportation, the DHR worker is responsible for providing the forms to be used in requesting payment for transportation and helping the provider understand when and how the forms are to be prepared and submitted.

   The effective date transportation service should begin will be the date of the signature of the County Director or his or her designee.

2. Automobile Insurance

   It is essential that the vehicle used to transport DHR clients to the adult day care home have uninsured motorist insurance and adequate liability and medical insurance coverage. The provider is responsible for making the insurance company aware that the automobile will be used to transport adult day care participants. The provider must show verification of insurance coverage before adult day care transportation is authorized. If for any reason the motor vehicle's insurance (any or all) is allowed to lapse, the provider must agree to notify

[67] Revised APS Letter 2007-25
November 2007

the County Department immediately and cease transporting adult day care clients. The adult day care home provider may resume transportation after the required automobile insurance has been reinstated and verified by the County Department.[68]

3. Authorization of Transportation for Individual Client

Payment for adult day care transportation may be made only when transportation is actually provided. It is important, therefore, that the service worker help the client, or someone acting on the client's behalf, understand that the day care home provider must be notified if transportation will not be needed on a certain day. If a client consistently fails to notify the provider when transportation is not needed, then their transportation to the adult day care home will be terminated.

DHR-ASD-781, Authorization of Adult Day Care Transportation, must be completed for each client before transportation can be provided. Copies of this form will be given to the adult day care home provider and the client. One will also be filed in the client's case record. This form must be updated if a change occurs in the client's schedule or address. Each time the case plan is re-evaluated, the DHR-ASD-781 must be reviewed.

4. Procedures for Requesting Payment for Transportation

The DHR-ASD-780, Request for Payment for Adult Day Care Transportation, is to be prepared in triplicate by the provider of adult day care. Two copies must be submitted to the County Department by the 5th of the month following the month for which payment is being requested. The adult service worker should assist the provider in completing the form, if needed. It will be necessary for the provider to keep accurate records showing the dates on which transportation was provided and whether it was one-way or round trip. These records should be retained by the adult day care provider for one year and made available to the County upon request.

NOTE: Attendance, billing and transportation forms are to be supplied to the adult day care home provider by the County Department.

K. Complaints about Care in Adult Day Care Homes

When the County Department receives a complaint about care in a day care home which does not pertain to abuse, neglect or exploitation, the worker receiving the call should obtain pertinent facts, such as:

- Information regarding the person making the complaint (i.e., name, address, if they are a participant at the day care home, if they are related to a participant at the home, neighbor, another provider, etc.);

[68] Revised APS Letter 2007-25
November 2007

- The specific information they want to report, such as too many adults in care;
- How the individual became aware of the information reported;
- Approximate date of incident(s); and
- How they can be reached if the worker needs to contact them again.

The worker for the adult day care home should discuss the complaint with the provider. The worker should also secure additional information as needed from the provider and from references to determine the validity of the complaint and whether Minimum Standards have been violated.

Situations in which alleged adult abuse, neglect or exploitation are reported as occurring in an adult day care home are to be handled by a protective service worker. This worker should be someone other than the worker who approved or currently supervises the adult day care home. Refer to Chapter II, Section F, "Protective Services for Adults," concerning policies governing adult abuse, neglect or exploitation investigations. The worker supervising the day care home should be notified of the complaint when it is received. After the investigation has been completed, the worker supervising the adult day care home must be given a final report as to whether the allegation(s) are indicated, not indicated or undetermined.[69]

L. Corrective Action, Hearings, and Appeals

1. Corrective Action

If standards are not met in the adult day care home, the following must occur:

- The deficiencies must be discussed with the provider.
- A written agreement made about the corrective action (s) to be taken and the time frame for completion.
- Appropriate follow-up must be made by the worker to assure that corrective action is taken as planned.

When a violation of the Minimum Standards is identified by the County Department or other authorized inspectors such as sanitation, building, and fire safety inspectors, the County Department must:

- Notify adult day care provider in writing the nature of the violation and request corrective action be taken
- Determine, in consultation with the day care provider, the date by which corrective action must be completed based on the severity of the violation and the effect of the violation on the participants.
- Completion of the corrective action must be no later than 30 days after the written

[69] Revised APS Letter 2007-25
November 2007

notification.

When a violation presents a clear and immediate danger to the participant's health or safety, the provider is required to take immediate corrective action. After the violation has been discussed, and a specific time has been set for additional corrective action, written notification will be sent to the provider.

When a violation does not directly endanger the participants, such as a violation of administrative or record keeping standards, the provider is required to take corrective action no later than 90 days after the written notification.

If the provider shows a pattern of failing to take the corrective action or has not demonstrated any significant effort to initiate or complete the corrective action within the time specified, steps will be taken to revoke the approval.[70]

Information must be recorded in the resource case record narrative documenting all discussions of the specific standards not met, the corrective action(s) needed, time frame(s) agreed upon, and whether or not corrective action was taken. Include information regarding efforts made by the worker and provider to correct the condition(s).

The Adult Protective Services Consultant is available to review the case material and, if needed, offer appropriate suggestions for additional follow-up. The review will help to ensure that the decision being made is sufficiently documented and conform to the Minimum Standards for Day Care Homes for Adults.

NOTE: The County Department does not need to seek State Office review by Adult Protective Services before suspending or revoking an adult day care home approval or before denying an application.

2. Suspension of Approval to Provide Adult Day Care

The Department has the authority to suspend the approval of the adult day care home without notice and without a hearing prior to the suspension if an inspection discloses any condition, deficiency, dereliction, or abuse which is, or could be hazardous to the health, safety, or the physical, moral, or mental well-being of the adult in care at the facility being inspected. (§ 41-22-19(c)(d), Code of Alabama. See "Suspension of Approval to Provide Adult Day Care" in this section.

The suspension shall remain in effect for a period of not longer than 120 days and shall not be renewable within one year based on the same or similar facts. A hearing shall be scheduled as soon as possible to give the provider an opportunity to show why the approval should not be revoked. (See §41-22-19S(c)(d), Code of Alabama. The County Department should send a letter, signed by the County Director or his or her designee, to the provider with a copy to the hearing officer, confirming the suspension of the approval. The provider

[70] Revised APS Letter 2007-25
November 2007

will also be advised that the Office of Administrative Hearings will send a notice of the hearing to them. A copy of the letter from the provider should be sent to the hearing officer. Procedures for the hearing, as outlined earlier in this section, will be followed.[71]

3. Hearing

When the County Department decides to revoke an approval, a hearing must be offered. The purpose of the hearing is to provide both adequate notice of the intended revocation and provide sufficient opportunity for the provider to show why the action should not be taken. The provider should be given the opportunity to voluntarily surrender the approval or to withdraw the application for renewal.

The County Department is to send a letter advising the provider of the planned action and the reason for the action. A copy of this letter to the provider should be sent to the Office of Administrative Hearings in the State Office, Attention: Hearing Officer. The provider must be informed that the Office of Administrative Hearings will also send a notice to them regarding the pre-revocation hearing.

The County Department should begin immediately to prepare their case for presentation at the hearing. The procedures for the preparation and conduct of the hearing are basically the same as those for investigative hearings. County staff should review Chapter V, "Hearings", of the Adult Services Manual. The Adult Protective Services Consultant will provide assistance to the County Department, as needed, in preparation for the hearing.

A representative from the Office of Administrative Hearings will be the hearing officer. Notice of the hearing will be sent to the provider by certified mail unless the provider waives the hearing. A copy of this letter and all subsequent correspondence will be sent to the County Department.

During the hearing, the hearing officer will hear testimony from the County Department as to specific findings upon which the intended revocation is based. The County Department will cite specific minimum standards that are not met. The provider or designated representative will be given the opportunity to present objections to the Department's intended action and to refute findings upon which the decision was based. All witnesses will testify under oath.

If, after having received notice of the hearing, the provider chooses not to have a hearing, the provider must notify the hearing officer verbally or in writing. The hearing officer will send a letter to the provider and the County Department confirming the cancellation of the hearing and advising the provider that the intended action will be taken. The County Department will then notify the provider of the effective date of the intended action.

4. Procedures to be Followed After Receipt of Request for Hearing

[71] Revised APS Letter 2007-25
November 2007

Any hearing request made to the County Department should be reported to the Adult Protective Services Division, by telephone, the day it is received. The procedures for the preparation and conduct of a hearing, requested by an adult day care home applicant or provider, is the same as that for a fair hearing. Upon receipt of a request for a hearing, county staff should review Chapter V, "Hearings," of the Adult Services Manual.

The Adult Protective Services Consultant will provide assistance to the County Department, as needed, in preparation for the hearing.[72]

[72] Revised APS Letter 2007-25
November 2007

IV. ADULT DAY CARE HOME FORMS[73]

A. Initial Adult Day Care Home Provider Approval Check List

Prospective Provider Name: _____ **Case No.** _____

	YES	NO	DATE (M/D/Y)
Inquiry received	☐	☐	
Application provided to applicant	☐	☐	
Completed and received	☐	☐	
Orientation for applicant and substitute caregiver			
Arranged by phone or mail	☐	☐	
Completed (enter place)	☐	☐	
Initial training for applicant and substitute caregiver			
Arranged	☐	☐	
Completed (enter place)	☐	☐	
Minimum Standard booklet issued and reviewed with applicant	☐	☐	
Criminal History/Background Check			
Arrange for fingerprinting			
Mandatory Criminal History Check form signed			
Applicant	☐	☐	
Applicant's household members	☐	☐	
Substitute caregiver	☐	☐	
Criminal History Consent and Release form signed			
Applicant	☐	☐	
Applicant's adult household members	☐	☐	
Substitute caregiver	☐	☐	
Fingerprinting completed			
Two complete sets of fingerprint card or live scan done			
Applicant	☐	☐	
Applicant's household members	☐	☐	
Substitute caregiver			

[73] Revised APS Letter 2007-25
November 2007

	YES	NO	DATE (M/D/Y)[74]
Cards and forms mailed or live scan process completed			
Applicant	☐	☐	
Applicant's household members	☐	☐	
Substitute caregiver	☐	☐	
AAN/E and CAN Central Registry Clearance			
Applicant	☐	☐	
Applicant's household members	☐	☐	
Substitute caregiver	☐	☐	
Medical Forms Completed and Received			
Applicant	☐	☐	
Applicant's household members	☐	☐	
Substitute caregiver	☐	☐	
Verification of Rabies Vaccinations for all Pets			
Pet No. 1	☐	☐	
Pet No. 2	☐	☐	
References Contacted (3 required)			
Applicant	☐	☐	
Substitute caregiver	☐	☐	
Home Study			
Completed	☐	☐	
Home meets standards	☐	☐	
HIPAA BAA Signed	☐	☐	
Application approved	☐	☐	
Letter of approval or denial sent	☐	☐	
Transportation (if to be provided)			
Valid Alabama Driver's verified	☐	☐	
Vehicle liability insurance verified	☐	☐	
Vehicle uninsured motorist insurance verified	☐	☐	

[74] Revised APS Letter 2007-25
November 2007

For additional requirements see Minimum Standards for Day Care Homes for Adults[75]

B. DAY CARE HOME FOR ADULTS HOME STUDY

County _____

Case No. _____

Worker _____

Dates of Interviews _____

Applicant/SSN: _____

Applicant/SSN: _____

Address: _____

_____

Telephone Number(s) _____

I. Day Care Family

1. Applicant(s) can read and write? Yes ☐ No ☐
2. Applicant(s) is age of majority Yes ☐ No ☐
2. Number of household members: _____
3. Total family income: _____
4. Applicant(s) have experience or training with elderly and disabled? Yes ☐ No☐

   When, where, type: _____
5. Transportation to be provided? Yes ☐ No☐
6. If yes, does applicant have Alabama Driver's License Yes ☐ No ☐

   Liability Insurance? Yes ☐ No ☐
7. Substitute caregiver name/SSN: _____

   Address: _____
8. Comments regarding family attitudes related to possible participants and to the agency

_____

_____

_____

[75] Revised APS Letter 2007-25
November 2007

II. Health, Fire, and Safety Features/Standards[76]

Check to indicate compliance, non-compliance or not applicable.

	Yes	No	N/A
1. HOME			
a. Screened windows if used for ventilation	☐	☐	☐
b. Screened fireplace	☐	☐	☐
c. Screened heaters	☐	☐	☐
d. Well lighted	☐	☐	☐
e. Comfortably heated/cooled	☐	☐	☐
f. Adequate ventilation	☐	☐	☐
g. Exits available and accessible to all	☐	☐	☐
h. All heaters vented	☐	☐	☐
i. Smoke detector standards met			
Proper placement and number	☐	☐	☐
Operational	☐	☐	☐
j. Fire extinguisher standards met			
Proper placement	☐	☐	☐
Operational	☐	☐	☐
k. Cleanliness and sanitation	☐	☐	☐
l. Mobile home standards met			
Aluminum plate attached	☐	☐	☐
Complies with anchor/tie down requirements	☐	☐	☐
m. appropriate space and furnishings to accommodate needs of day care participants as noted in policy	☐	☐	☐
2. GROUNDS			
a. Free of abandoned cars, household appliances, etc	☐	☐	☐
b. Free of exposed lumber with nails, etc.	☐	☐	☐
c. Covered wells, cisterns, etc.	☐	☐	☐
3. SAFEGUARDS			
a. Guns, explosives, medications locked away	☐	☐	☐
b. Household cleansers, chemicals poisons inaccessible	☐	☐	☐
c. Non-skid rugs	☐	☐	☐
d. Banisters/Bars			
Stairs	☐	☐	☐
Outside steps	☐	☐	☐
Bathroom	☐	☐	☐
e. Emergency plan developed	☐	☐	☐
f. Swimming pool standard met			
Use supervised by person trained in CPR	☐	☐	☐
Otherwise inaccessible to clients	☐	☐	☐
g. No animals posing threat	☐	☐	☐

Comments: _____

_____

[76] Revised APS Letter 2007-25
November 2007

III. References for Applicant(s) [77]

1. Name/Relationship: _____
   Address/Phone No.: _____
   Comments: _____

****

2. Name/Relationship: _____
   Address/Phone No: _____
   Comments: _____

****

3. Name/Relationship: _____
   Address/Phone No: _____
   Comments: _____

****

IV. References for Substitute Caregiver(s)

1. Name/Relationship: _____
   Address/Phone No: _____
   Comments: _____

****

2. Name/Relationship: _____
   Address/Phone No.: _____
   Comments: _____

****

3. Name/Relationship: _____
   Address/Phone No.: _____
   Comments: _____

****

V. Minimum Standards for Adult Day Care Homes for Adults

Home meets Standards and Regulations Yes ☐ No ☐

[77] Revised APS Letter 2007-25
November 2005

If no, explain: _____

VI. Worker's Assessment [78]

Strengths and weaknesses of prospective provider(s), type of client to be considered for placement, appropriateness of the home, etc. _____

_____

_____

_____

_____

_____

_____

_____

****

VII. Disposition

Application Denied: Date: _____ Reason: _____

_____

Approved: _____

Date Number of Clients Limitations acceptable

Re-approval Due: _____

_____

Worker's Signature Date

[78] Revised APS Letter 2007-25
November 2007

C. ADULT DAY CARE HOME RE-EVALUATION [79]

County _____

Case No. _____

Worker _____

Dates of Interviews _____

Address: _____

_____

Telephone Number(s) _____

DAY CARE FAMILY

1. Application to provide adult day care completed Yes ☐ No☐

2. Note changes in family composition, finances, employment, character and suitability:

_____

_____

_____

4. Medical statements current? Yes ☐ No☐

DAY CARE HOME

1. Any changes in provider's residence Yes ☐ No☐

2. Note changes in space provided for clients, transportation, provision f meals, substitute caregivers, etc. _____

_____

_____

_____

Minimum Standards for Day Care Home

1. Does home continue to conform to standards and regulations? Yes ☐ No☐

If not, explain: _____

_____

2. Current certificate of vaccination as required by law reviewed? Yes ☐ No☐

If not, explain: _____

3. Fire extinguisher checked by worker and in working order? Yes ☐ No☐

[79] Revised APS Letter 2007-25
November 2007

If not, explain: _____

4. Smoke detector tested by worker and operated properly? Yes ☐ No☐

REFERENCES FOR APPLICANT(S)[80]

1. Name/Relationship: _____
   Address/Phone No.: _____
   Comments: _____

****

2. Name/Relationship: _____
   Address/Phone No: _____
   Comments: _____

****

3. Name/Relationship: _____
   Address/Phone No: _____
   Comments: _____

****

REFERENCES FOR SUBSTITUTE CAREGIVER(S)

1. Name/Relationship: _____
   Address/Phone No: _____
   Comments: _____

****

2. Name/Relationship: _____
   Address/Phone No.: _____
   Comments: _____

**********3.

Name/Relationship:
Address/Phone No.: _____

Comments: _____

[80]APS Letter 2007-25
November 2007

Worker's Assessment [81]

Number of clients served, strengths and weaknesses of provider(s), quality of care provided, problem areas, etc. _____

_____

_____

_____

_____

****

Disposition

Not Re-approved: Date: _____ Reason: _____

_____

Re-approved: _____
Date Number of Clients

Next Re-approval Due: _____

_____
Worker's Signature Date

[81] APS Letter 2007-25
November 2007

D. ADULT DAY CARE HOME TRANSPORTATION AGREEMENT[82]

The _____Adult Day Care Home,
(name of home)
located at _____hereby agrees to provide transportation
(address)
to and/or from this home for persons for whom this service is authorized by the
_____County Department of Human Resources.
(name of county)
The following conditions will be met:

1. The driver will hold a valid Alabama driver's license.
2. The vehicle used for transporting clients will be safe and in good working condition.
3. The driver and all Department of Human Resources clients will use safety belts at all times when the vehicle is in motion.
4. All passengers will enter and leave the vehicle from the curbside.
5. The driver will wait until the client enters the building (client's home or the day care center/home).
6. The number of passengers will be limited to the legal vehicle capacity.
7. All doors will be locked whenever the vehicle is in motion.
8. No Department of Human Resources client will ever be left unattended in a vehicle, either before or after transporting.
9. Insurance will be provided by _____
(name of insurance company)

The center/home agrees that it will indemnify and save harmless the County Department and the State Department of Human Resources against any and all liability, loss, damages, costs, or expenses which the County Department and the State Department may hereafter sustain, incur, or be required and ordered to pay;

(1) by reason of any service recipient's suffering personal injury, death, or property loss or damage while being transported to and from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the center/home or any officer, agent, employee, or volunteer thereof; or

(2) by reason of any service recipient's causing injury to or damage to the property of another person at any time when the center/home, or any officer, agent, employee, or volunteer thereof has undertaken or is furnishing the transportation called for under this agreement; or

(3) by reason of any officer, agent, employee, or volunteer thereof suffering personal injury, death, or property loss or damage.

In the event that any action, suit, or proceeding is brought against said State Department or the County Department upon any matter herein indemnified against, said State Department shall as

[82] APS Letter 2007-25
November 2007

soon as practicable cause notice in writing thereof to be given to the center/home by certified mail.[83]

The home shall comply with all applicable laws, ordinances, and codes of the federal, state, and local government.
The Department of Human Resources will be billed only for transportation actually provided.
The State Department of Human Resources will make adult day care transportation payments at the following rates: _____per one-way trip per client _____per round trip per client.
This agreement will be effective until such time that either party terminates Adult Day Care Transportation services.

County Director Date

Provider for the Home Date

[83]APS Letter 2007-25
November 2007

E. A Sample Letter for use on County Letterhead to secure Medical Information

Dear Dr._____:

The individuals listed below are part of a household that has applied to become an approved DHR Adult Day Care Home. Our policy requires that all members of the home be free of communicable and infectious disease and that the applicant or provider is able to provide care for an elderly or disabled person. [84]

Medical Statement

Household Members
1. _____, (applicant/provider)

2. _____

3. _____

4. _____

These individuals have been found to be free of communicable and infectious diseases. If not, please explain below and indicate if there are any particular groups or individuals who should or should not be served in this family home.

Other Comments:

Physician's Signature _____ Date:_____

[84] APS Letter 2016-01
March 2016

F. Department of Human Resources HIPAA PRIVACY AUTHORIZATION[85]

Client Name: _____ **ID Number:**_____

We understand that information about you and your health is personal, and we are committed to protecting the privacy of that information. Because of this commitment, we must obtain your special authorization before we may use or disclose your protected health information for the purposes described below. This form provides that authorization and helps make sure that you are properly informed of how this information will be used or disclosed. Please read the information below carefully before signing this form.

USE AND DISCLOSURE COVERED BY THIS AUTHORIZATION

*A representative of the **Alabama Department of Human Resources** must answer these questions completely before providing this authorization form to you. DO NOT SIGN A BLANK FORM. You or your personal representative should read the descriptions below before signing this form.*

Who will disclose the information? The person(s) or class of persons authorized to disclose the information is described below:

(DHR staff working on case)

Who will use and receive the information? The person(s) or class of persons authorized to use and receive the information is described below:

(ISP/case planning team members, court officials, and attorneys)

What information will be used or disclosed? The description below should be in enough detail so that you (or any organization that must disclose information pursuant to this authorization) can understand what information may be used or disclosed:

(All medical information)

(Psychiatric or psychotherapy notes and reports)

[85] APS Letter 2007-25
November 2007

What is the purpose of the use or disclosure? The purposes for which the information will be used or disclosed are described below:

(Case planning, treatment, payment, monitoring)

When will this authorization expire? The date or event that will trigger the expiration of this authorization should be described below.

(When DHR case is closed)

SPECIFIC UNDERSTANDINGS

By signing this authorization form, you authorize the use or disclosure of your protected health information as described above. This information may be redisclosed if the recipient(s) described on this form is not required by law to protect the privacy of the information.

You have a right to refuse to sign this authorization. Unless services are court ordered, eligibility, availability, treatment, and payment for department services is conditioned on your signed authorization.

You have a right to see and copy the information described on this authorization form in accordance with our record access policies. You also have a right to receive a copy of this form after you have signed it.

If you sign this authorization, you will have the right to revoke it at any time, except to the extent that we have already taken action based upon your authorization. To revoke this authorization, please write to your Department of Human Resources caseworker.[86]

SIGNATURE

I have read this form and all of my questions about this form have been answered. By signing below, I acknowledge that I have read and accept all of the above.

_____
Signature of Client or Personal Representative

_____
Print Name of Client or Personal Representative

_____
Date

_____
Description of Personal Representative's Authority

[86] APS Letter 2007-25
November 2007

CONTACT INFORMATION[87]

The contact information of the client or personal representative who signed this form should be filled in below:

Address:	Telephone:
_____	_____ (daytime)
_____	_____ (evening)
_____	Email Address (optional):
_____	_____

THE CLIENT OR HIS OR HER PERSONAL REPRESENTATIVE SHOULD BE PROVIDED WITH A COPY OF THIS FORM AFTER IT HAS BEEN SIGNED.

[87] APS Letter 2007-25
November 2007

G. Sample Denial Letter on County Letterhead [88]

_____

(Date)

_____

(Applicant Name)

_____

(Street)

_____

(City, State, Zip Code)

Dear _____

Thank you for your recent interest in becoming an Adult Day Care Home Provider. Your concern for others and your desire to help some of our vulnerable clients is truly appreciated. However, because of other factors that we have discussed, we are not able to approve your home as a day care home at this time. If your situation changes in the future, please feel free to contact us again.

Sincerely,

_____

Social Worker

Approved:

_____

Supervisor

[88] Revised APS Letter 2007-25
November 2007

H. Sample Letter of Suspension or Revocation of Approval on County Letterhead [89]

Date

BY CERTIFIED MAIL AND REGULAR MAIL

Name of Adult Day Care Home Provider
Address

RE: (SUSPENSION) (REVOCATION) OF APPROVAL TO OPERATE ADULT DAY CARE HOME at: _____
_____

Dear _____:

This letter is to inform you that the Department of Human Resources has sufficient reason to believe that the approval issued to you effective (date) to (date) for the operation of adult day care at (address) should be (SUSPENDED)(REVOKED). The statutory authority for this (SUSPENSION)(REVOCATION) is found in the Code of Alabama 1975, Section 38-2-6 (18) and 41-22-19 (c)(d).

The basis (bases) for this (SUSPENSION) (REVOCATION) is that a safe and caring environment has not been provided because:
Example: On (date) you failed to prepare meals as required. In addition, during inspection by me on (date) it was discovered that your home was not in a safe and clean status and that your fire extinguisher and smoke detectors were not in working order. You have failed to remedy these situations within the agreed time.
In accordance with the Code of Alabama 1975, Section 38-2-6(18) and Section 41-22-19, you are entitled to a hearing. In addition, you may voluntarily relinquish your approval. You must notify us in writing within ten (10) departmental working days of the date of the receipt of this letter at the address shown at the top of this letter if you wish to have a hearing in this matter. Your written request must be received by the Department by the 10th day. You will be notified of the date, time, and place of the hearing by the Administrative Hearing Officer by separate letter.

If you have any questions, please contact (social worker) at (telephone #).

Sincerely,

_____
(Social Worker's Signature)

_____
Approved: (County Supervisor's signature)

[89] Revised APS Letter 2009-02
March 2009

ATTACHMENTS (if any)

Copies to:
Deputy Commissioner for
Children and Family Services
Director for Adult Protective Services
Chief Legal Counsel
Administrative Hearing Officer

_____, Director, _____County
Department of Human Resources
[90]

[90] Revised APS Letter 2008-14
November 2008

Chapter 2 Section E

I. Introduction

Targeted case management (TCM) is a program of services to assist specifically identified groups of persons in gaining access to needed medical, social, educational, and other services. The Alabama Medicaid Agency (AMA) provides reimbursement for provision of targeted case management services to Medicaid eligible persons who meet specified criteria.[91]

The AMA State Plan was amended effective April 1, 1994 to identify adult protective service individuals as a specific group of persons eligible for targeted case management services.

II. Target Population

The specific adult population to be served through TCM consists of individuals 18 years of age or older who are:

a) At risk of abuse, neglect, or exploitation; or
b) At risk of institutionalization due to his or her inability or his or her caretaker's inability to provide the minimum sufficient level of care in his or her own home.

A person in this targeted group may reside in his or her own home, the household of another, or a supervised residential setting as well as in total care environments such as nursing facilities, hospitals, and residential programs.

III. Provider Qualifications

In order for any provider to receive reimbursement for provision of targeted case management services to adult protective service individuals, the provider must be certified as a Medicaid provider meeting certain criteria which include: demonstrated management, demonstrated experience, supervision, administrative capacity, financial management system, documentation, ability to provide freedom of choice, and capacity to service the population.

The Department of Human Resources meets these criteria to provide targeted case management for adults. Individual case managers must meet the following minimum qualifications:

1) Hold a Bachelor of Arts or a Bachelor of Science Degree, preferably in human services field (BSW degrees meet these criteria),or

2) Be employed as a social worker who is licensed as a social worker by the

[91] Revised
October 2014

State of Alabama or exempt from licensure, and

3. Complete training in a case management curriculum approved by the Department of Human Resources, the adult protective service department authorized by statute, and the Alabama Medicaid Agency.

IV. Assurances Necessary for Federal Approval to Provide TCM

In order for the Health Care Financing Administration to approve the AMA's State Plan amend choice of providers. Specifically, individuals will have free choice of providers of targeted case management and of other medical care under the Medicaid State Plan.[92]

Individual requests for assignment of another case manager within the Department or for transfer to another entity approved to provide targeted case management service to adult protective service individuals must be honored. Currently, there are no other agencies or private individuals who are TCM providers for adult protective service individuals through the Medicaid Agency.

In addition, payment for TCM can be made to public agencies or private entities under other program authorities for the same purpose when different services are provided.

Targeted Case Management services may be provided, and Medicaid may reimburse the Department for TCM services to clients receiving case management through a Waiver so long as both case managers are performing different types of activities and functions based upon the case managers' distinct focus.

Further, reimbursement may not be claimed from both an insurance provider and the Alabama Medicaid Agency. No Medicaid reimbursement may be made to the Department if a client has health insurance which covers targeted case management services. Inquiring with the client is one way to determine if their insurance covers TCM services.

The Department will continue to fulfill its responsibilities to adults in need of protective services regardless of eligibility for Medicaid or other reimbursement for provision of those services.

V. Client Eligibility

All clients receiving adult protective services (including preventive protective services) or clients at risk of institutionalization are eligible for targeted case management services. Medicaid provides reimbursement to the Department for services to those individuals who are Medicaid recipients and who meet certain additional conditions and who have an encounter during a month as defined later in this chapter.

The "Application for Services", DHR-FSP 1966 (revised 6/20), is required for each client in order for the Department to receive reimbursement for TCM provided. The following are required on

[92] Revised
October 2014

the application:

1. Targeted case management must be listed under "Services Requested" as part of an audit trail; and

2. Third Party Health Insurance information as reported by the client must be recorded ; and

3. A Social Security number must be recorded when available in order to verify Medicaid eligibility.

Applications for TCM should be completed on all clients receiving protective services or services to reduce the risk of institutionalization except for:

Individuals assisted at Intake as Information and Referral and no case is opened for services.

Except as noted above, an application for TCM should be taken on all clients regardless of their Medicaid eligibility.

Applications may be signed by a relative or responsible person if the client is unable or unwilling to do so if that relative or responsible person has been involved in planning the provision of services to the client. Workers may not sign applications on behalf of clients.

Foster care providers may not sign TCM applications on behalf of the client.

If the client, relative, or responsible person refuses to sign an application for TCM services, investigative and TCM services may be provided to that client in accordance with existing policy.

The application may be taken at any time during an AANE investigation or APS prevention. However, more client cooperation can be expected after some rapport is established with the client. In no way should the taking of an application interfere with the progress of an investigation.

A "Notice of Action Taken on Services", DHR-FSD-1967, should be sent to clients when TCM services are initiated.

If an individual applies for TCM and does not meet the criteria of being at risk of abuse, neglect, or exploitation or institutionalization, a DHR-FSD-1968 "Notice of Reduction/Termination of Services" should be sent denying the application. When TCM services are provided and the case is closed, a 10-day advance notice should be sent to the client as it would be for other Departmental services.[93]

VI. Provision of TCM

Targeted case management services may be provided to an Adult Protective Services client as often as necessary but the client must be seen monthly and the case plan evaluated once every six

[93] Revised
October 2014

months to help ensure the protection of the client or decrease the risk of institutionalization. APS Policy states that clients must be seen monthly or as often as necessary to assess the safety and well-being of the client as long as the case is open to services. Refer to policy for **frequency of contacts** for other specific case services.[94]

VII. Core Element Functions of TCM

Targeted case management is delivered through a variety of case management functions. These functions are referred to as the core element functions of TCM. For documentation and audit purposes it is important to identify the type of core element function taking place. These core element functions may be delivered in any setting, including the client's home, a foster home, nursing home, day care center, social service agency, doctor's office, DHR office or a relative's home.

Core element functions include:

***assessing the need for services** - The case manager will develop a written comprehensive assessment of the person's assets, deficits, and needs for medical, social, educational, or other services. Specific assessment activities include: taking client history, identifying the needs of the individual, and completing related documentation. Assessment also includes gathering information from other sources such as family members, medical providers, and educators, if necessary, to form a complete assessment of the individual. Assessment includes investigation of abuse, neglect, or exploitation. Composing an initial report to accompany a petition is an example of an assessment function. The following areas must be addressed in the assessment when relevant:

1) Identifying information,

2) Socialization or recreational needs,

3) Training needs for community living,

4) Vocational needs,

5) Physical needs,

6) Medical care or nutritional concerns,

7) Social or emotional status,

8) Housing or physical environment,

[94] APS Letter 2021-11
August 2021

9) Resource analysis and planning,

10) Transportation and other service needs.

***case planning** - The case manager will develop a systematic, client-coordinated plan of care which lists the actions required to meet the identified service needs of the client. The plan is developed through a collaborative process involving the recipient, his family or other support system, and the case manager and is reviewed at least every six months. The case plan must identify needs which have not been adequately met and a time frame to reassess service needs, and may include activities such as ensuring the active participation of the individual.

***arranging services** - Through linkage, the case manager will connect the client with the appropriate persons and agencies through calling or visiting these persons or agencies on the client's behalf. This service includes arrangements with neighbors, relatives and other available resources. Making referrals to providers for needed services and scheduling appointments may be considered case management. Conferring with an attorney prior to a hearing is an example of the arranging function.

***social support** - The case manager will conduct thorough interviews with the client and significant others, determine whether the client possesses an adequate personal support system. If this personal support system is inadequate or nonexistent, the case manager will assist the client in expanding or establishing such a network through linking the client with appropriate persons, support groups and agencies.

***reassessment/follow -up** – This component includes activities and contacts that are necessary to ensure the case plan is effectively implemented and to adequately address the needs of the individual. The case manager will evaluate through interviews and observations the progress of the client toward accomplishing the goals listed in the case plan at every six months but as often as the case situation requires. Gathering information for a subsequent court report is follow-up. In addition, the persons or agencies providing services to the client will be contacted and the results of these contacts, together with the changes in needs shown in the reassessments, will be utilized to accomplish any needed revision to the case plan. Document in the narrative when there are circumstances beyond the worker's control that prevent Case Manager contact with a service provider.

***monitoring** - The case manager will ascertain on an ongoing basis what services have been delivered and whether they are adequate to meet the needs of the client. Adjustments in the plan of care may be required as a result of monitoring.[95]

The following are **NOT** targeted case management core element functions:

1. Transportation only - Contact in which transportation or escort service is provided to the client directly by the case manager is not a TCM core element function.

[95] Revised
October 2014

2. Counseling - Contact for the sole purpose of counseling is not a TCM core element function. For example, advising the client on the pros and cons of alternative living arrangements and why a move needs to be made is not a TCM core element function. However, providing information and assisting the client in developing a case plan related to housing is a TCM core element function of "case planning".

3. Case Manager activities related to approval and reapproval of a foster home are not TCM core element functions.

VIII. TCM Encounter

AMA has agreed to reimburse DHR for TCM core element functions when an encounter with an eligible client takes place during a month. DHR and AMA have defined an encounter as a face-to-face or telephone contact with the client or on the client's behalf with a family member, significant other (includes foster care provider), or another agency from which the client receives or may receive services during which a core element function is performed.[96]

IX. Reimbursement for TCM Encounters

The Alabama Medicaid Agency (AMA) will provide reimbursement for one encounter per month for Medicaid recipients served under the following circumstances:

1) the individual resides in his or her own home, the household of another, or a supervised residential: as well as in total care environments such as nursing facilities, hospitals, and residential programs;

2) the encounter is provided by a service worker certified to provide targeted case management for adults; and

3) there is a current case plan which identifies the medical, nutritional, social, educational, transportation, housing and other service needs which have not been adequately met. The case plan must also include a time frame to reassess service needs.

4) a signed DHR-FSP-1966 (revised 6/20) Adult Protective Services Application form

X. Documenting TCM Encounters

Targeted case management encounters may be documented on the worker day sheet and must be included in the referral or case narrative.

[96] Revised
October 2014

1. Worker Day Sheets (DHR-DFC-1669 Revised 5/90)

Targeted case management encounters may be recorded on the worker's day sheet. In the "Comments" column for TCM contacts, indicate the specific core element function of Assessing, Case Planning, Arranging, Social Support, Reassessment or Follow-up, or Monitoring for assistance in narrative recording. The location of the encounter must also be recorded by checking either Office, Field or Phone on the DHR-DFC- 1669 form.[97]

2. Documenting TCM Encounters in FACTS

Each month FACTS automatically bills the first TCM encounter that is entered on the referral or case narrative screen for Medicaid eligible APS clients who are eligible for TCM services. Encounters should be entered in the month in which they occur in order to be billed in a timely manner. If an adult is not Medicaid eligible at the time of the encounter, FACTS will hold the encounter in a "pending" status for up to 365 days and bill if retroactive Medicaid eligibility covers the time the encounter was completed.

- TCM encounters must be documented in FACTS by the worker who actually completed the encounter. If a TCM encounter is made by a worker other than the primary worker, the other worker must be given secondary assignment to the case so the TCM encounter can be entered.
- Verification must be made to ensure the client is receiving Medicaid and once verified it **must be** documented on the client's insurance screen using the following path: Client>Health>Insurance Screen (Please refer to Verification and Documentation of Client's Medicaid Status Roadmap)
- Make sure to enter the client's Medicaid number, Social Security number and Gender on the General Info screen, Client Details tab and that documentation regarding the client's living arrangements is correct on the Residence tab.
- Adult TCM encounters should be documented for all clients, no matter if DHR-FSP 1966 (revised 6/20) Adult Protective Services Application is received or if not received, if it is signed or not.
- Adult TCM encounters can be billed after a case has been opened and the APS Case Plan screen, Additional Information tab indicates that the DHR-FSP-1966 (revised 6/20) has been signed.
- On the Case Goal tab of the APS Case Plan, make sure you have checked that the client is authorized to receive TCM services and documentation to show if a DHR-FSP-1966 (revised 6/20) Adult Protective Services Application is received.
- Before the 15th day of the month that a TCM encounter is due; complete the following steps in the Case module for each adult in an assigned caseload.

[97] Revised October 2014

- When a TCM encounter is **not** entered in FACTS by the 15th of the month it is due, the worker will receive an alert that the TCM encounter is due. If the encounter is not entered by the 20th of that month, each supervisor will receive an alert for all encounters that have not been completed by workers under their supervision.
- For TCM encounters entered in a Referral (investigation), the path to access the screen is Referral > Narrative.

3. Referral or Case Narrative

Each TCM encounter should be recorded in the referral or case narrative within 45 days of the encounter date of contact to support what is recorded on the worker day sheet. Refer to Chapter I, Section C, for recording in the narrative guidelines. The first encounter of the month should be specifically documented in the case narrative by date and nature of contact.[98]

Documents which represent a face to face contact with the client or collateral which can be used as verification of an encounter include copies of referral forms or application forms signed by the client or client's representative during face to face contact with the client. The date of the TCM encounter and the signature of the client or the client's representative must be on the document.

Each TCM recipient's case record must contain a current comprehensive service plan which identifies the medical, nutritional, social, educational, transportation, housing and other service needs which have not been adequately met and a time frame to reassess service needs. The DHR-ASD-1897 "Client Assessment Summary" is optional; however, addresses all required areas of TCM assessment.

It is important that narrative recordings reflect the provision of TCM core element functions. Using TCM terminology such as "assessing, planning, arranging, supporting, providing follow-up, or monitoring" in narrative recordings will provide a clear audit trail of TCM service provision.

Examples include:

"Arrangements were made for Ms. Jones' neighbor, Mrs. Smith, to prepare her breakfast every Saturday and Sunday."

"I assessed Mr. Jones' ability to protect himself from neglect."

"I contacted the East Day Care Center to follow-up on Mr. Jones' reported absence."

"Together Mr. Jones and I planned actions to be taken to improve his home environment over the next two months."

A core element, or elements, may be repeated each month. When documenting a TCM

[98] Revised
October 2014

core element, use the key word for the activity which best represents the function being performed that is located in the "contact type" drop down boxes (purpose and contact type fields need TCM wording).

XI. Third Party Insurance Reimbursement of Targeted Case Management for Adults

The Alabama Medicaid Agency is a payer of last resort. Therefore, if a client has Medicaid and health insurance which covers targeted case management services, the Department must seek reimbursement for services from that insurance provider prior to making a claim with Medicaid.

If a client has health insurance, it will be necessary to obtain sufficient information from the insurance company to determine whether they provide TCM coverage. If it is determined the client has coverage, it will be necessary to seek reimbursement from the insurance company. Call the SDHR/APS for assistance with claiming procedures.[99]

XII. TCM Data Collection

Data should be collected on encounters during each month with all clients receiving targeted case management regardless of their Medicaid eligibility. Collecting data on encounters with all TCM clients is an important part of the TCM rate setting process. NOTE: TCM encounters may not be reported on individuals assisted at Intake when no case is opened to service. These individuals are ineligible for TCM.

The worker day sheet (DHR-DFC-1669) is a useful tool to track the date of the first encounter during the month for TCM clients.

When the worker day sheet is used as the TCM data collection instrument, the day sheet must be eligible and the following information recorded:

- the client's SSN (if available);
- the client's full name;
- client's case number;
- case manager's name; and
- case manager's SSN.

Reimbursement for TCM for adults is limited to an encounter with one Medicaid eligible person per family unit per month.

When a worker sees multiple clients in a congregate setting who are not members of a family unit, an encounter may be reported for each client for whom a TCM core element function is performed. Reassessments completed in an adult day care center are examples of TCM provided in a congregate setting.
The encounter dates are entered by the APS worker into the Family, Adult, and Children Tracking

[99] Revised
October 2014

System (FACTS) within 45 days of the encounter and no later than the 15th calendar day of each month following the month of service.

XIII. TCM Encounter Billing Process

AMA will reimburse DHR according to an agreed upon rate when there is at least one encounter between a certified provider and a Medicaid TCM recipient or collateral during any given month.[100]

Information collected by County Departments must be documented in FACTS.

A system match is completed to determine Medicaid eligibility of each client. FACTS then identifies the TCM encounters with Medicaid eligible clients by certified case managers. These encounters are then submitted to HP Enterprise Services (HPES), Medicaid's fiscal intermediary, for reimbursement.

HPES determines whether there has been any other TCM claim paid for an eligible Medicaid recipient for the date in which DHR is claiming reimbursement. If targeted case management is billed by more than one agency for the same client in the same month, the Alabama Medicaid Agency will reimburse DHR and another agency for the same month as long as services are different. Other agencies claiming TCM for adults are the Department of Mental Health, the Department of Public Health, Department of Rehabilitation Services and the Department of Senior Services.

In accordance with policy in Chapter I, Section C, regarding "Case Records During Out-of-County Placements", the county of the client's origin retains responsibility for the case. The county of placement may elect to accept the case except when the placement is court ordered. If the case is a court ordered placement, the county with the order should carry responsibility for the case and contact the county of placement when the reevaluation is due.

XIV. Entering Client Data in FACTS

As recorded in the policy for Family, Adult, and Child Tracking System (FACTS), it is necessary for all client data to be entered correctly in order for TCM reimbursement. Please refer to the FACTS Roadmap on how to enter client data in FACTS.

XV. Entering Case Plan in FACTS

As recorded in the policy for the Family, Adult, and Child Tracking System (FACTS), case plans are to be documented using the Roadmap detailed. Case plans must be submitted to the supervisor and approved by the date that the plan is due in order to comply with timeliness standards in policy.

XVI. ERD Reports for Targeted Case Management

[100] Revised
October 2014

ADSV026: Case Plans Due
ADSV302: Worker Actions Due & Past Due
TCM031A: All Clients with Documented TCM Encounters
TCM031B: All Open Clients with No TCM Encounters
TCM031C: TCM Encounters Summary
TCM7746A: APS TCM Encounter Occurrence Summary (monthly)

Chapter 2 Section F

I. Legal Base for Adult Protective Services[101]

A. Introduction

Adult protective services casework is a complex matter requiring detailed knowledge of the Adult Protective Services Act of 1976 and Amendments, as well as the Alabama Uniform Guardianship and Protective Proceedings Act, the Protection from Abuse Act, and the Mental Health Civil Commitment Law. The Adult Protective Services Act provides the mechanism for receiving and investigating reports of alleged abuse, neglect and exploitation of adults, while the other laws may be used to find the solution to the individual client's particular problem.

The Adult Protective Services Act of 1976 and Amendments (Section 38-9-2 through 38-9-11, Code of Alabama) are designed to prohibit the abuse, neglect or exploitation of aged and disabled adults; to provide protective services for such persons; to require mandatory reporting by physicians, other practitioners of the healing arts, and caregivers of abuse, neglect or exploitation of such persons; to exempt persons reporting such abuse, neglect or exploitation from civil or criminal liability in connection with such reporting; to prescribe penalties for the abuse, neglect or exploitation of aged or disabled adults; and to provide penalties for failure of physicians and other practitioners of the healing arts to report such abuse, neglect or exploitation.

Further, the Act "is designed to establish those services and assure their availability to all persons when in need of them, and to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, neglect and exploitation."

The adult protective service worker should be knowledgeable of social work practice skills necessary for the provision of adult protective services. The intent of this section is to enable workers to preserve the rights of protective service clients and provide quality services while ensuring their protection from abuse, neglect, and exploitation.

B. Definition of Protective Services for Adults

Protective services for adults provided by the Department of Human Resources are defined as those services directed toward the following goals:

1. Preventing or remedying neglect, abuse, or exploitation of elderly or disabled individuals 18 years of age or older who are unable to protect their own interests, or who are harmed or threatened with harm through the action or inaction by another

[101] Revised APS Letter 2007-06
January 2007

individual or through their actions due to ignorance, incompetence or poor health, if such action or inaction results in:

a. Physical injury, or serious physical injury,
b. Neglect or maltreatment,
c. Failure to provide adequate food, shelter, or clothing,
d. Deprivation of entitlements,
e. Wasting of their resources, or
f. Exploitation.

2. Preventing or delaying institutionalization, which could result from the inability of an individual or his or her caretaker to provide care sufficient to enable the individual to live safely outside of an institution. [102]

Services may include:

- Identifying those in need of such services,
- Investigating their situations,
- Assessing their situations and service needs,
- Providing casework and counseling services and diagnostic and evaluative services to them and to others on their behalf;
- Arranging for mental health counseling;
- Arranging transportation necessary for the worker to provide the service;
- Arranging appropriate living arrangements,
- Arranging for medical care and other community resources,
- Arranging for guardians or conservators,
- Arranging for protective placement,
- Arranging emergency shelter care - limited to 28 days per fiscal year;
- Providing advocacy to assure receipt of rights and entitlements, including legal representation for the Department,
- Receiving and filing adult protective service reports;
- Petitioning the Court for protective services or providing placement
- Making required reports to the court; and
- Information and Referral.

In combination with these services, certain other services may be appropriate to include in the case plan for a protective service client. Day care, foster care, or other services may be offered to prevent or remedy abuse, neglect, or exploitation, or to prevent or delay institutionalization.

[102] Revised APS Letter 2007-06
January 2007

C. Eligibility

Eligibility for adult protective services is based on the non-financial need for service (including service-specific criteria for individual services) of elderly or disabled individuals who are 18 years of age or older, and who are at risk of abuse, neglect or exploitation or are at risk of institutionalization. Refer to policy on individual services for specific eligibility criteria for that service. The Department of Human Resources is excluded from the requirement that the legal immigration status of APS clients must be verified when APS services are provided. Adult Protective Services is specifically authorized to "harbor, shelter, move, or transport" any alien unlawfully present in the U.S. pursuant to state law (Act. # 2011-535).[103]

A completed and signed DHR-FSD-1966 (revised 6/20), Application for Adult Protective Services should be secured if at all possible. The client's failure or inability to complete or sign a DHR-FSD-1966 (revised 6/20) does not make the client ineligible for limited protective services

D. Purpose of Protective Services for Adults

The specific purposes for providing or securing protective services are:

1. To prevent injury to self and others or institutionalization;
2. To ensure that emergency care is provided to meet acute physical, mental or other needs that the individual cannot arrange;
3. To protect the individual's due process rights if legal action is needed;
4. To prevent neglect, abuse, or exploitation of the individual;
5. To protect the individual's financial resources.

E. Legal Definitions

Adult in Need of Protective Services, as defined in Section 38-9-2, Code of Alabama, is "A person 18 years of age or older whose behavior indicates that he or she is mentally incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others; or who because of physical or mental impairment is unable to protect himself or herself from abuse, neglect or exploitation; sexual abuse, or emotional abuse by others, and who has no guardian or relative or other appropriate person able, willing, and available to assume the kind and degree of protective supervision required under the circumstances."

Abuse, as defined in Section 38-9-2, Amended, is defined as "The infliction of physical pain, injury or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health."

[103] Revised APS Letter 2011-11
July 2011

Abuse can include but is not limited to hitting, slapping, kicking, knocking down, burning with hot water or cigarettes and other kinds of torture that result in bruises, cuts, black eyes, fractures, brain damage, internal injuries or even death.

Sexual Abuse, as defined in Section 38-9-2, Amended, is "Any conduct that is a crime as defined in Sections 13A-6-60 to 13A-6-70, inclusive." of the Code of Alabama. Forms of sexual abuse include rape, incest, sodomy, and indecent exposure.

Emotional Abuse, according to the Code of Alabama Section 38-9-2, Amended, 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."

Any act that would embarrass or humiliate a reasonable person is considered mental anguish. Mental anguish might result from the physical abuse mentioned above or from deliberate misrepresentation or distortion of facts or withholding of vitally important information.[104]

Neglect, according to Section 38-9-2, Amended, means "The failure of a caregiver to provide food, shelter, clothing, medical services or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself when the failure is the result of the person's mental or physical inability." Lack of supervision, while not specifically defined in the statute, may meet the definition of neglect when lack of supervision results in lack of food, shelter, clothing, medical services or health care.

The observer may become aware of neglect because of clothing that is insufficient or inappropriate for the weather, or extremely dirty; extreme dirtiness of bedding, of the client's body, or of dishes and cooking utensils. There might also be signs of insufficient food and drink, or food that is not edible. Neglect can also result in human or animal waste on floors and furniture, infestations of rats, roaches and other insects and housing that does not protect the client from the weather. Additionally, drug and alcohol abuse as well as suicidal tendencies may render a person unable to provide for his basic needs. Suicide threats and attempts may be considered self-neglect. Such conditions can result in serious damage to the health and well being of the client.

Exploitation, as defined in Section 38-9-2, Amended, is "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, "without the express voluntary consent of that person or his or her legally authorized representative or the admission of or provision of care to a protected person who needs to be in the care of a licensed hospital by an unlicensed hospital after a court order obtained by the State Board of Health has directed closure of the unlicensed hospital." The term, "licensed inpatient hospital" shall

[104] Revised APS Letter 2009-11
July 2008

mean a licensed acute care hospital, long-term acute care hospital, rehabilitation hospital, inpatient hospice, skilled nursing facility, intermediate care facility, assisted living facility, or specialized care assisted living facility.

Many elderly or incapacitated adults are susceptible to loss or wasting of their resources by others who take resources from them or persuade them to use resources in such a way that they are not available when needed. The exploited adult may or may not be aware of what is happening. However, in either case, the adult client will be unable or unwilling to control the situation to prevent or correct serious deprivation.

Misappropriation of Property of a Nursing Home Resident, as defined in Section 38-9-2, Amended, is "The deliberate misplacement or wrongful, temporary, or permanent use or withholding of belongings or money of a resident of a nursing home without the consent of the resident." This definition applies to any personal property or money in the nursing home as opposed to personal property, money or other resources located outside the nursing home.

Neurodegenerative Disease, [105]relating to or being a progressive loss of neurologic function.

Protected Person, is "Any person over 18 years of age subject to protection" under the provisions of Sections 38-9-2, Code of Alabama, Amended, "or any person including but not limited to persons 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 or herself or others."

Caregiver, according to Section 38-9-2, is "An individual who has the responsibility for the care of a protected 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."

Employee of a Nursing Home, as defined in Section 38-9-2, Amended, is "A person permitted to perform work in a nursing home by the nursing home administrator or by a person or an entity with an ownership interest in the facility, or by both. A person shall be considered an employee whether or not he or she receives compensation for the work performed."

Nursing Facility, according to Section 38-9-2, Amended, is "A facility which is licensed as a nursing home by the Alabama Department of Public Health pursuant to Article 2 of Chapter 21, Title 22."

[105]APS Letter 2018-04
May 2017

Physical Injury, as defined in Section 38-9-2, Amended, is the "Impairment of physical condition or substantial pain."

Serious Physical Injury, as defined in Section 38-9-2, Amended, is a "Physical injury which creates a risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss of the function of any bodily organ, or the impairment of the function of any bodily organ." Intention is significant in establishing violation of the statute and penalty for conviction.

Intentionally, is defined in Section 38-9-2, Amended, as "A person acts intentionally with respect to a result or to conduct described by a statute defining an offense, when his or her purpose is to cause that result or to engage in that conduct."

Recklessly, according to Section 38-9-2, Amended, is "A person acting 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 shall be of such nature and degree that its disregard 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 solely by reason of voluntary intoxication, as defined in subdivision (e) (2) of Section 13A-3-2, acts recklessly with respect thereto." This term is also used in establishing violation of the statute and penalty for conviction.

The Alabama Criminal Code Section 13A-3-2(e)(2) defines "voluntary intoxication" as "intoxication caused by substances that the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them under circumstances that would afford a defense to a charge of crime."

F. Penalties for Abuse, Neglect and Exploitation[106]

While prosecution is not the function of this Department in providing protective services, referrals to local law enforcement officials and district attorneys should be made as stipulated under "Role of District: Attorney or Law Enforcement" in this section.

Effective August 1, 2000, Section 38-9-7 of the Code of Alabama was amended to state, "for the purposes of this section" (violation and penalties), residence in a nursing home, mental institution, developmental center for the developmentally disable, or other convalescent care shall be prima facie evidence that a person is a protected person."

The penalties for abuse, neglect or exploitation are as follows:

1. Any person who intentionally abuses or neglects a person in violation of the Adult Protective Services Act resulting in serious physical injury can be convicted of a Class B felony.

[106] Revised APS Letter 2008-11
July 2008

2. Any person who recklessly abuses or neglects a person in violation of the Adult Protective Services Act resulting in serious physical injury can be convicted of a Class C felony.

3. Any person who intentionally abuses or neglects a person in violation of the Adult Protective Services Act resulting in physical injury can be convicted of a Class C felony.

4. Any person who recklessly abuses or neglects a person in violation of the Adult Protective Services Act resulting in physical injury can be convicted of a Class A misdemeanor.

5. Any person who emotionally abuses a person in violation of the Adult Protective Services Act can be convicted of a Class A misdemeanor.

6. Any person who exploits a person in violation of the Adult Protective Services Act can be convicted of a Class C felony if the value of the property, assets, or resources, or illegal services provided to a protected person by an unlicensed hospital exceeds $100.

7. Any person who exploits a person in violation of the Adult Protective Services Act can be convicted of Class A misdemeanor if the value of the property, assets, or resources, or illegal services provided to a protected person by an unlicensed hospital if less than $100.[107]

The penalties ascribed to conviction of Class B and C felonies and Class A misdemeanors are as follows:

Class B Felony - Imprisonment of not more than 20 years nor less than 10 years and a fine of not more than $10,000.
Class C Felony - Imprisonment of not more than 10 years nor less than 1 year, 1 day, and a fine of not more than $5,000.
Class A Misdemeanor - Imprisonment of not more than 1 year and a fine of not more than $2,000.

Any agency or individual that knowingly provides treatment in an unlicensed hospital to a person in need of care rendered by a licensed hospital may be subject to a civil penalty imposed by the Board of Health not to exceed one thousand five hundred dollars ($1,500) per instance. All civil monetary penalties collected shall be paid to the Department and held in a dedicated fund for the sole purpose of making disbursements to assist protected persons.

[107] Revised APS Letter 2008-11
July 2008

G. Responsibilities of Department of Human Resources Pursuant to Adult Protective Services Act of 1976, Amended 1989

1. Receive reports of suspected abuse, neglect or exploitation.
It is the responsibility of Department staff to receive and properly record allegations of suspected abuse, neglect, or exploitation. Such reports may be submitted by law enforcement, neighbors, relatives, or any other persons when in the course of their contact with a client, it appears that the situation has deteriorated to the point that abuse, neglect or exploitation may have occurred. These reports may be received orally or in writing. Mandated reporters are required by statute to make an oral report immediately followed by a written report to the county department. Receipt of the written report confirms the verbal information and may also become part of the information presented to the court when a petition for services is necessary.

2. Investigate, by face-to-face contact with the person identified to be at risk, all reports received alleging abuse, neglect, or exploitation:

   a. Investigate all reports of suspected abuse, neglect, or exploitation immediately when the allegations indicate the adult may be in immediate danger. If the investigation reveals that immediate danger exists, the worker must arrange for emergency protective services. See "Emergency Protective Services" in this section.

   b. Investigate *by seeing and interviewing the alleged victim* within seven calendar days of the receipt of all reports of suspected abuse, neglect, or exploitation. Highly unusual circumstances that prevent face-to-face contact with the alleged victim must be carefully documented to explain why this was not accomplished.

   Within seven calendar days the investigation shall be made to include the following:[108]
   a. name, age, and address of the alleged victim;
   b. nature and extent of the injury to the alleged victim; and
   c. any other facts or circumstances known to the reporter which will aid the Department to determine appropriate action.

   Within the seven-day time frame, the worker should reach the point where a preliminary decision can be made regarding:
   a. whether the client is in imminent danger;
   b. whether the client is an adult in need of protective services; and

[108] Revised APS Letter 2008-11
July 2008

c. whether emergency protective services or placement are necessary and if so, intervene immediately to provide protective services. (Refer to "Emergency Protective Services" in this section).

It is likely that the worker may still need to do further work to complete the investigation, such as interview a collateral witness, obtain medical or psychological evaluation, secure bank records, etc., after the seven day period. However, all investigations should be completed, recorded and approved by a supervisor within 60 calendar days of the date the report is received by the County Department. If the alleged perpetrator (referred to on FACTS as the person alleged to be responsible) is indeed responsible for ANE and is due the opportunity for a protective services investigative hearing, a preliminary disposition should be recorded on FACTS until this process is completed. .[109]

3. Determine whether abuse, neglect or exploitation has occurred. The worker must decide whether the situation warrants the provision of protective services to prevent abuse, neglect or exploitation, whether other Department services are more appropriate, or whether the case should be closed.

4. Determine during the course of the investigation whether a client meets the definition of "adult in need of protective services." That is, determine whether the client is physically and mentally capable of protecting himself or herself from abuse, neglect or exploitation or whether there is a caregiver able, willing and available to provide any needed protection. The reasons for determining that an individual is able to protect himself or herself, or has a caregiver who can and will protect him or her should be carefully documented.

   If the individual meets the definition of "adult in need of protective services," it is the responsibility of the worker to determine what protection and supervision are required in the case. The case should be kept open long enough to insure that the client is protected and services are no longer needed. A decision to close the case can be made only after insuring that other persons are able, willing and available to provide necessary care.

5. If the client is an adult in need of protective services, the Department must develop and implement a case plan to protect the client. The degree of DHR involvement will be determined by the type of intervention required and

[109] Revised APS Letter 2015-01
January 2015

availability of other persons who are willing and able to provide necessary care. In emergency protective service situations, it is the responsibility of the Department to immediately intervene to provide protective services.

6. Arrange for emergency protective services with the consent of the person whose health or safety is in immediate danger. If the person cannot or does not consent, the Department shall petition the court for an order authorizing the Department to arrange for care for such person immediately.

7. Arrange for the placement of the adult in need of protective services in a related home, an approved foster home, licensed nursing home, or other similar facility with the person's consent or by court order. A court may enter orders granting the department additional time to locate an appropriate licensed facility in which to place a person living in an unlicensed facility. A coordinating council of interested state and local agencies, established by the Department of Human Resources Commissioner, will meet to coordinate resources, identify placements, increase supportive services, and assure community coordination for placement of persons, living in an unlicensed facility, in licensed facilities.

8. Cooperate with the court in securing available resources for the person to be served.

9. File a report to the circuit court every six months when a client is in a court ordered protective placement.

10. Receive monetary penalties imposed by the Alabama Board of Health on licensed inpatient hospitals whose staff knowingly refer an individual to an unlicensed health care facility who needs care of a licensed facility as well as penalties imposed on any licensed hospice or certified home health agency that knowingly provides treatment in an unlicensed health care facility to a person in need of care from a licensed health care facility.[110]

11. Make grants or disbursements from the above monetary penalty fund to assist protected persons with appropriate placement or relocation from an unlicensed facility into a licensed facility or relocation from a facility undergoing license termination, suspension, or revocation to an appropriate setting

II. Theory and Practice of Adult Protective Services

[110] Revised APS Letter 2020-06
March 2020

It is important to remember that adult protective service clients have a right to make decisions for themselves and to direct their lives. Although the caseworker must assess a situation and assist the client in defining the problems and in identifying solutions, it is the adult client who should select the manner of solving the problem that is right for him or her and not one that meets the caseworker's standards or that is easier to arrange. The client retains this right unless it is determined by the Court that there exists immediate danger to his or her health and safety and the client is unwilling to consent or unable to give informed consent to services necessary to insure his or her protection. Even when emergency protective services are necessary, the least drastic alternative should be considered.

The following principles help to determine the course of action that is right for an individual client.

- When interests conflict, the adult client is the person to be served; not the community concerned about safety, the landlords concerned about property, citizens concerned about crime or morality, or families concerned about their own health or finances.

- When interests conflict, the adult client is in charge of decision making until he or she delegates responsibility voluntarily to another or the court grants responsibility to another.

In making an assessment of the client's ability to protect himself or herself, the best source of information is the client himself or herself. He or she will generally be able to tell what his or her income is, how he or she manages it, what his or her problems are and what he or she is doing to resolve them. If he or she cannot speak or makes irrational statements, other means of verification must be sought.[111]

If the client or others interested in his or her welfare need assistance to effectively communicate due to hearing or speech impairment, it may be necessary to secure the services of an interpreter. These services are to be arranged at no cost to the Department if possible. If there are no free services available, the Department may pay for these services. An approved invoice and a completed PSD-BFM 676 should be submitted to the SDHR Finance Division. The Alabama Institute for the Deaf and Blind is a resource for interpreters. See "Community Resources" in this section.

The Department has resources for interpreter services for clients who speak a language other than English and who have limited ability to read, write, speak or understand English. DHR is able to provide written translations for department materials as needed or determined appropriate in a number of languages including Spanish. If this resource is needed, the County APS supervisor should contact their county department Language Assistance Coordinator. For oral interpretation, staff should utilize volunteers or community interpreters at no cost to the agency whenever possible. Friends or relatives of the client may be utilized if that is the preference of the client or in an emergency situation. Use of children under the age of 12 is prohibited. When face-to-face translation is necessary, the Language Assistance Power Point can be assessed through LETS for additional guidance.

[111] Revised APS Letter 2025-06
April 2026

The agency may receive reports of AANE involving non-citizens for whom it is difficult to find resources. Catholic Social Services may be contacted for possible solutions or suggestions. It may also be necessary to contact the Consulate of the client's native country or an International Social Service agency for assistance in returning the client to his or her home. The county consultant may be contacted if needed to assist in locating the appropriate resources.

The adult protective service client must be observed in his or her home environment if possible. Such observation allows the worker to assess how the client is managing at home, whether it is sanitary and free of hazards, and whether he or she has adequate plumbing, heating or cooling, and a means of preparing meals and meeting the basic necessities of life.[112]

Unless the caseworker has known the adult protective service client for a period of time, it is sometimes difficult to determine whether the client is eccentric or whether there has been deterioration in his or her abilities to care for himself or herself and his or her affairs. Friends, neighbors, and relatives may assist in assessing a client's ability to protect himself or herself and can be resources in that protection.

Assessment by other professionals may be necessary in order to determine a client's ability. Professional assessments should be sought when assistance is needed in developing a case plan or when there is a question about the nature and degree of incapacity. Opinions may be sought from the client's physician, psychiatrist, psychologist, home health agency, mental health counselors, or other social service agency representatives. When a client does not have a relationship with a physician or other professional, it may be necessary to arrange an appointment for him or her for evaluation purposes. Refer to "Diagnosis and Evaluation" in this section.

Many conditions may be temporary or reversible. They may also be drug or alcohol related. The caseworker should determine the cause of the condition by securing professional opinions on what treatment is indicated, and what services would help in alleviating the condition. For example, a disoriented client may appear to be incapable of living alone. If the disorientation is due to an insulin imbalance, it might be appropriate to consider homemaker or home delivered meal services and home health services to maintain a proper diet and medication regimen. A change in living arrangement would not be considered until other support services are initiated and found to be ineffective.

When it is determined that the client or his or her resources are in danger, an appropriate plan must be developed with him or her to ensure that the client and his or her resources are protected. The caseworker should be resourceful in exploring all possible alternatives for the client and in presenting them to him or her for consideration. When the client cannot participate in a case plan, relatives or responsible caregivers should be contacted to assist. The Department of Human Resources may petition the Court for protective placement or services if the client "has no guardian or relative or other appropriate person able, willing and available to assume the kind and degree of protection and supervision required under the circumstances." The Department is required by

[112] APS Letter 2008-11
July 2008

law to act in emergency situations when it is determined that the client's health and safety is in immediate danger and the client cannot or does not consent. (Section 38-9-5, Code of Alabama.) Family or other interested persons may be encouraged to co-petition; however, the Department must not delay petitioning for emergency protective services or placement while waiting for them to join in this action.

When it is necessary for the client to move to another location in order to protect himself or herself or to be protected, a move should only be made with the client's informed consent or by court order. A responsible caregiver or family member may request planning or moving assistance from the Department; however, the Department should not make a placement at the request of the family or caretaker but should maintain a supportive role in implementing the caregiver's or relative's plan to protect the client.

The following Code of Ethics for Adult Protective Services was developed by the National Adult Protective Services Association (NAPSA) and printed here with permission.

Code of Ethics Adult Protective Services Ethical Principles and Best Practice Guidelines
Dedicated to the memory of Rosalie Wolf

Adult Protective Services are those services provided to older people and people with disabilities who are or are in danger of being mistreated or neglected, are unable to protect themselves, and have no one to assist them.

Interventions provided by Adult Protective Services include, but are not limited to receiving reports of adult abuse, exploitation or neglect, investigating these reports, case planning, monitoring and evaluation. In addition to casework services, Adult Protection may provide or arrange for the provision of medical, social, economic, legal, housing, law enforcement or other protective, emergency or supportive services.

Guiding Value: Every action taken by Adult Protective Services must balance the duty to protect the safety of the vulnerable adult with the adult's right to self-determination.[113]

Secondary Value: Older people and people with disabilities who are victims of abuse, exploitation or neglect should be treated with honesty, caring and respect.

Principles

- Adults have the right to be safe.
- Adults retain all their civil and constitutional rights unless some of these rights have been restricted by court action.
- Adults have the right to make decisions that do not conform with societal norms as long as these decisions do not harm others.
- Adults are presumed to have decision-making capacity unless a court adjudicates otherwise.

[113] Revised APS Letter 2008-11
July 2008

- Adults have the right to accept or refuse services.

Practice Guidelines

- Recognize that the interests of the adult are the first concern of any intervention.
- Avoid imposing personal values on others.
- Seek informed consent from the adult before providing services.
- Respect the adult's right to keep personal information confidential.
- Recognize individual differences such as cultural, historical and personal values.
- Honor the right of adults to receive information about their choices and options in a form or manner that they can understand.
- To the best of your ability, involve the adult as much as possible in developing the service plan.
- Focus on case planning that maximizes the vulnerable adult's independence and choice to the extent possible based on the adult's capacity.
- Use the least restrictive services first – community based services rather than institutionally based services whenever possible.
- Use family and informal support systems first as long as this is in the best interest of the adult.
- Maintain clear and appropriate professional boundaries.
- In the absence of an adult's expressed wishes, support casework actions that are in the adult's best interest.
- Use substituted judgment in case planning when historical knowledge of the adult's values is available.
- Do no harm. Inadequate or inappropriate intervention may be worse than no intervention.

III. Reports of Abuse, Neglect, and Exploitation (ANE)

Reports of suspected abuse, neglect, or exploitation of adults received by County Departments are to be recorded online in the Family, Adult and Child Tracking System (FACTS) [114] within 3 working days of the receipt of the report. Once a report is received, it must be investigated.

A. Reporting to County Departments

l. Mandated Reporters

Section 38-9-8, Code of Alabama, requires physicians, other practitioners of the healing arts, and caregivers to report or cause a report to be made when they have reasonable cause to believe that an "adult in need of protective services" has been subjected to abuse, neglect, or exploitation. Long Term Care Ombudsmen are also mandatory reporters. (See "Reports from the Ombudsman Program" later in this chapter.) All such reports are to be made orally (by telephone or otherwise) immediately, followed by a written report and may be made to the County

[114] Revised APS Letter 2015-01
January 2015

Department of Human Resources or to the chief of police or the sheriff. Reports received by law enforcement officials are to be forwarded to the County Department of Human Resources within 24 hours.

Any physician, other practitioner of the healing arts, or any caregiver who knowingly fails to report as required is, upon conviction, subject to imprisonment for not more than 6 months or a fine of up to $500.

Other statues also require reporting of suspected adult abuse, neglect, and exploitation to DHR. The Alabama Department of Senior Services is required by Code of Alabama 38-3-8 (9) to "report immediately any suspected abuse, neglect, and exploitation to the Department of Human Resources as a mandatory reporter as specified in Section 38-9-8". Code of Alabama Section 22-5A-4 (b)(2) requires local Long Term Care Ombudsmen "To report immediately instances of fraud, abuse, neglect, or exploitation to the Department of Human Resources for investigation and follow-up pursuant to Chapter 9 of title 38, the Adult Protective Service Act of 1976…". (See "Reports from the Ombudsman Program" later in this chapter.) Additionally, Code of Alabama, Section 8-6-172 requires investment financial professionals who reasonably believe that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, to promptly notify DHR and the Securities Commission. See "Protection of Vulnerable Adults from Financial Exploitation" later in this chapter.[115]

The name of the reporter must not be released, except by order of the court, or by permission of the reporter. Refer to the "Confidentiality" section of this chapter.

2. Optional Reporters

Private individuals, social services agency representatives and other interested persons may also make protective service reports. They may use DHR-ASD-798 but they are not required to do so. Providers of contract services are required by their contract to report suspected abuse, neglect, or exploitation.

If the reporter provides his or her name or other identifying information, (e.g. phone number, relationship) that information must be recorded in the case record. The worker will assure the reporter that this information will be protected and held confidential unless there is a court order to release it, the reporter gives permission, or the information is required by law enforcement or regulatory groups such as DPH.

3. Anonymous Reporters

[115]APS Letter 2016-11
June 2016

A person making a report may prefer not to reveal his or her name. The worker must still enter the report on FACTS and the report must be investigated.

4. Reports by DHR Workers

The Adult Protective Services Law does not list social workers among mandatory reporters of suspected abuse, neglect, or exploitation. However, Department policy requires that DHR workers make a report when they have reasonable cause to believe an "adult in need of protective services" has been subjected to abuse, neglect, or exploitation.

5. Reports by Law Enforcement

In accordance with Section 38-9-8, Code of Alabama, the chief of police and county sheriff are also authorized to receive and investigate reports of abuse, neglect, or exploitation. Usually, reports initially received by law enforcement are referred to the Department for investigation. Reports are to be sent to the County Department within 24 hours and must include:

a. Name, age, and address of the person on whom the report is received;
b. Name and extent of that person's injury; and
c. Any other facts or circumstances known to the reporter which may aid in the determination of appropriate action.

"A Report of Adult Suspected to be Abused, Neglected, or Exploited" (AANE) is to be entered on FACTS[116] for each report received from law enforcement and an investigation must be completed so that a determination can be made as to whether the victim is an "adult in need of protective services."

6. Second Reports

When a protective service investigation is in process, a second Report of AANE should be completed only if the reporter makes an allegation that was not part of the initial report. New allegations may be added to the existing referral in FACTS when there is sufficient time remaining in the 60 day investigation period to complete investigation of the new allegations within 60 days of the initial report. When there is insufficient time remaining during the investigation period to complete a thorough assessment of the new allegations, a new referral should be completed and a new first victim contact completed.

A second report would not be appropriate if the initial report alleged the client was beaten with a stick but investigation revealed a different implement was used. See "Disposition for Alleged Perpetrators" in this section for procedures to follow when the investigation reveals a different alleged perpetrator than named in the initial report.

[116] Revised APS Letter 2015-01
January 2015

Each contact with a reporter who makes the same report should be entered in the narrative and no second report completed.

A Report of AANE should be completed when allegations of abuse, neglect, or exploitation are received, if the case was not opened to services after the initial protective services investigation. In instances where the same reporter establishes a pattern of periodically making the same allegations, a decision on whether or not a new report is appropriate should be made on a case-by-case basis. This must be documented in the client's case file.

7. Request to Withdraw Report or Prevention

Adult Protective Services referrals, including abuse, neglect, and exploitation reports and requests for prevention assessments, may not be withdrawn and must be investigated or assessed. Requests for prevention assessment are referrals which have no specific abuse, neglect, or exploitation allegations, but are situations in which if no action or intervention occurs, abuse, neglect, or exploitation may develop. (See Section V-A, Provision of Preventative Protective Services, page 57).[117]

B. Immunity

"Any person, firm or corporation making or participating in the making of a report pursuant to this chapter or participating in a judicial proceeding resulting there from shall in so doing be immune from any liability, civil or criminal, that might otherwise be incurred or imposed." (Section 38-9-9 Code of Alabama)

"Any officer, agent or employee of the department, in the good faith exercise of his duties under this chapter, shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or care to any person." (Section 38-9-11 Code of Alabama)

C. Intake in Protective Services

[118]Intake begins when the County Department receives a report or complaint of abuse, neglect, or exploitation. A Report of AANE must be completed on FACTS within 3 working days of receipt of the report. DHR-ASD-1756, Adult Services Intake Form, is an optional form that may be used in addition to AANE report on FACTS. The worker should gather as much information about the victim and the victim's living situation as is known by the reporter.

[117] Revised APS Letter 2007-06
January 2007

[118]APS Letter 2017-01
March 2017

1. Identification (name, age, address, and telephone number) of the person reported to be in need of protection, as well as similar information about others who can verify the report or who may have information about the client's need for protection. Information as above about the alleged perpetrator including his or her relationship to the client.
   Note: Document, in the narrative, any allegations involving a PAR under the age of 14. This allows consistency with Child Protective Service (CPS) policy. When such a case is reported to APS, a referral is to be made to CPS for an assessment.

2. Contents of the report – exactly what happened or is happening; where or when the alleged incidents occurred (date and time); frequency (one time or multiple occurrences); nature and extent of injury suffered by the client; and any treatment that has been received.

3. The reporter's opinion as to whether the client is currently in danger.

4. A physical description of the person who is the subject of the report; including the client's surroundings, behavior, availability of resources to meet his or her needs such as food, shelter, medicine, and medical care, and the ability to handle his or her daily affairs.

5. Information about the person making the report - name, address, telephone number, relationship to person reported on and source of the information provided (told by victim, personally observed, or hearsay, etc.). The worker should explain to the reporter that his or her identity will be kept confidential unless there is a court order to release it or permission is given by the reporter, or the reporter's name is requested by law enforcement or the facility's licensing or certifying agency to aid in the prevention, discovery, or prosecution of abuse, neglect, or exploitation. When a person refuses to reveal his or her identity, the report is still taken and an investigation completed.

6. Other demographic information verification [119]Intake workers must check the person, who is the subject of the report, on the Department of Public Safety Public Sex Offender Registry website, www.alea.gov/home/, and a copy of the verification result is scanned into FACTS. Once identifying information is entered, press the "Search" button. The results will appear below in red font. Print the results page and scan this page into FACTS filing cabinet using the following scanning instructions: Referral>Clients> Client>Other. Name the document *yyyymmdd Sex Offender Clearance,* using the date of the search.

   Following the clearance, workers shall document in the narrative section of FACTS that Department of Public Safety Public Sex Offender Registry has been cleared and scanned into the file cabinet.

[119] Revised APS Letter 2013-09
September 2013

Intake workers are cautioned about attempting to "screen out" reports of abuse, neglect and exploitation. However, if after thorough questioning of the reporter, the intake worker determines there are no allegations involving elements of abuse, neglect, or exploitation as defined in the Adult Protective Services Act or that the adult does not meet the definition of an adult in need of protective services, the intake worker should then explore whether the concerns of the reporter are appropriate for other services offered by the Department or by another community agency. The case may be opened for preventive purposes even though the circumstances given by the reporter do not support the worker completing a Report of AANE. See "Provision of Preventive Protective Services" in this section.

Reports may be made online through the DHR website www.dhr.alabama.gov. The reporter sends the completed report by email to aps@dhr.alabama.gov. SDHR researches FACTS for history and send the report to the appropriate County.

In addition, Financial Investment Professionals may make an online report of investment financial exploitation using "Alabama Securities Commission and Department of Human Resources Report of Adult Suspected to be Financially Exploited." These reports are sent to www.dhr.alabama.gov for similar processing to County Departments as well as to the Securities Commission. See Chapter 2, Section F, IV. "Additional Issues Related to Adult Protective Services", Section H. "Protection of Vulnerable Adults from Financial Exploitation Code of Alabama, Section 8-6-170." This form may be located on iDHR and DHR website

The following are situations that would NOT constitute an abuse or neglect report:[120]

1. Accidents

An allegation of abuse does not exist unless it is possible to establish intent to harm or a conscious disregard of a substantial and unjustifiable risk of harm. Whenever possible, a determination should be made at intake as to whether the caregiver was following proper procedures or protocol in providing care to the client. If procedures were properly followed, any injury to the client may have been unavoidable and may be considered an accident. If sufficient information is not available at intake to determine if the client's injury was accidental, an investigation of the incident should be conducted.

2. Self defense

If the adult individual was injured by the caregiver in an appropriate act of self-defense, there is no allegation of abuse. Considerations include indications of an altercation between the caregiver and the person receiving care; the behavior of the caregiver was appropriate under the circumstances; and the caregiver used a reasonable degree of force when defending himself or herself.

3. Protection and Supervision

A critical component in determining at intake whether an abuse or neglect report has been received is identifying whether the adult individual has an appropriate person who is able, willing, and available to assume the kind and degree of protection and supervision required under the circumstances. In some situations, a relative, a caregiver or other responsible person may have taken immediate action to remedy a problem prior to the situation being reported to the Department. If such immediate action has been taken, the adult would NOT be an adult in need of protective services, and no report should be taken. If there is any doubt that action necessary to protect the vulnerable individual has been taken, an investigation should be conducted.

4. Report of Deceased Individual

No DHR investigation is initiated when a person has died prior to a report being made to the County Department. A referral should be immediately made to law enforcement. The individual reporting the death should be referred to law enforcement and a follow up call made by the worker to ensure the information has been received by law enforcement.

[120] Revised APS Letter 2012-01
January 2012

D. DHR Response Times[121]

Designated response time is the timeframe within which in-person initial contact shall be made with the person identified to be at risk of abuse, neglect, or exploitation.

Designated response times are "immediate" and "within seven" (7) "calendar days" for person identified to be at risk of abuse, neglect, or exploitation. "Immediate" is defined as "as soon as" the circumstances indicate, not to exceed 12 hours. "Within seven" (7) days means 7 days from the exact date, hour, and minute from the date and time of day the intake information was received.

FACTS will calculate both immediate and with 7 calendar days response time from the date and time intake information is received. If the first contact is not made and entered in FACTS prior to the required exact day, and exact time of day, the response time will be considered as not met.

The response time is determined by analyzing the information collected at intake (including the review of existing records).

AANE

Initial in-person contact with person identified in the AANE report as allegedly abused, neglected, or exploited must be made within one of the following response times.

a. Immediate

   Worker shall respond immediately when intake information indicates serious danger to health and safety will likely occur to the person identified in the report as allegedly abused, neglected or exploited.

Examples of situations require immediate response include but are not limited to: reports from law enforcement on the scene of an incident; mandated reporters who indicate an adult is unsafe now or in immediate danger; reports of an incapacitated adult left alone; and reports of an incapacitated caregiver of an incapacitated adult.

b. within seven (7) Calendar Days

[121] APS Letter 2016-02
April 2016

For situations in which an immediate response is not required, staff shall respond as quickly as the intake information warrants and no later than seven (7) Calendar Days calculated in exact date, hours, and minutes in FACTS from the date the intake information is received.

E. After Hours Intake

Each County DHR must have an established procedure for receiving and investigating after hours emergency reports. Local law enforcement officials should be made aware of the Department's responsibility in adult protective services and know how to make or refer reports to the County Department.

The County Department should develop with the circuit court a procedure for filing emergency protective placement petitions. The presiding judge should be requested to authorize a backup procedure to be used when the assigned circuit judge is unavailable. The County Department should also work with probate court to develop a procedure for filing emergency commitment petitions and having these petitions heard in a timely manner. The County Department should contact Adult Protective Services, SDHR, if problems are encountered in the implementation of established procedures for working with the court.

F. Procedures for Special Case Situations

1. Report of a Victim in Another County

A person may call County A to make a report about an incident of suspected adult abuse, neglect, or exploitation that occurred in County B. It is the responsibility of the DHR worker to receive the report and contact County B by phone the day the report is received to inform them of the impending report and to learn the name of the supervisor in that county to whom the case should be assigned. The worker should complete the Intake on FACTS.[122] County A will transfer the Intake to County B (see Roadmap: assign-Transfer Primary Responsibility). A printed copy of the Report of AANE and the narrative recording will remain in County where the report was received. The report must then be investigated by County B which has been assigned the referral and which will be responsible for all case planning.

2. Report of a Victim Involving Two or More Counties

For cases involving out-of-home placements in other counties, please see the following areas of the Adult Services Manual Chapter I C, "Case Records During Out-of-County Placements;" Chapter 2 F, "Special Procedures for Out-of-Home Care Investigations and Investigations Involving Other State Agencies" in the

[122] Revised APS Letter 2015-01
January 2015

"Investigations" section; and Chapter 2 F, "Placement Resources" under "Caseworker Services."

There will also be instances in which a county has received an APS report of an incident which occurred in that county, but the alleged victim's residence is in another county. The question then arises as to which county is responsible for investigation and for the on-going case plan. While it is not possible to cover all contingencies, the following is offered as a guide.

The focus of Adult Protective Services is on the protection of the adult. The guiding principle in these situations is that the county best able to meet the needs of the client by arranging for or providing for protection and services should do so. In order to ensure that adults receive the services they need in the most expedient manner, the county in which the incident occurred would usually be responsible for the investigation. However, if there is a case file and the client is or has been an APS client in the county in which he or she lives, that county would logically be responsible for case planning and assume responsibility for the case overall. However, if court action is required and the Court insists that the court action be taken in the county in which the client is currently placed, the County DHR where the client is physically located would be asked to assist with the filing. These situations may require a high degree of cooperation and coordination between the two counties depending on the circumstances. Keeping in mind that the goal of APS is to assess the adult's situation and to determine if protective services are needed, it is vital that the county providing the assistance does so in a prompt and thorough manner.[123]

The following are examples of the types of cases that may occur.

a. County A receives a report that an elderly or disabled individual living in County B owns property in County A. The allegation is that a person in County A who manages the property is exploiting the individual. In this situation, County A would make the investigation of the allegation but might request assistance from County B in interviewing the alleged victim and perhaps others involved depending on the circumstances.

b. An elderly or disabled woman who lives in County B is visiting a daughter in County A when the daughter beats her. County A would investigate the report of abuse. However, County B may assist County A in developing a case plan and ongoing services for the client in the county in which she lives and plans to return.

c. The hospital in County A makes a report that a patient who lives in County B has been grossly neglected by her caregivers in County B. This situation would be investigated and the case plan developed by County B, no matter which county

[123] Revised APS Letter 2007-06
January 2007

received the report. If County A received the report, procedures should be followed as listed in "Report of a Victim in Another County" above. If a court order is required in County A because the victim is physically located there, County B can request assistance from County A.

If the counties disagree about who has responsibility for the investigation and are unable to resolve the issue, the appropriate consultant(s) should be contacted immediately so that the assigned consultants can confer and make a final decision.

3. Report of a Victim Residing in Another State

When the Department receives a protective service report of an individual who resides in another state, the worker receiving the report should obtain as much information from the reporter as possible. It is not necessary to complete a Report of AANE on FACTS, [124] but an I & R shall be documented on FACTS for narrative recording. The Adult Protective Service agency in the other state must be notified by telephone informing them of the report. This information must then be confirmed by email or fax. The name of the reporter is not to be released without specific permission of the reporter since other states may not have the same laws to protect the reporter as Alabama. If there is no adult protective service agency listed in the Public Welfare Directory for the other state, the letter is to be sent to the agency that provides services to adults. A copy of the letter to the other state should be sent to Adult Protective Services, SDHR.

4. Client Moves during Investigation or While Receiving Protective Services

If a client moves to another county in the state during an investigation, the original county of residence must make every effort to complete the investigation. If unable to do so, a disposition of "undetermined" should be made and the worker's efforts documented in the narrative. The case may be transferred to the receiving county by using FACTS procedures discussed in the previous section (Report of a Victim in another County). Depending on the specific circumstances of the case, the referral will be considered as a protective service report or as a request for preventive protective services. See "Provision of Preventive Protective Services" later in this section. If the client's new address is unknown and efforts to locate are unsuccessful, the receiving county can take no action except to establish a case record until a specific place of residence or location becomes known.

If a client moves out of state during an investigation, the adult protective service agency in the other state must be informed by telephone and the information confirmed by fax or email of the report and a brief summary of the investigative efforts of the Department. The name of the reporter must not be provided. A copy of the information sent to the other state is to be sent to Adult Protective Services

[124] Revised APS Letter 2015-01
January 2015

at SDHR. The worker should indicate on the FACTS that the report is "Undetermined" because the client moved before a determination of "Indicated" or "Not Indicated" could be made.

When an adult who is receiving protective services moves out of county or out-of-state, the county providing service shall notify the county or state where the client has moved. A summary of services provided, any allegations of abuse, neglect or exploitation, the current case plan and a request for follow-up services should be sent to the county or state of residence by certified mail, return receipt requested. The rules of the Department governing confidentiality must be followed. Refer to "Disclosure and Release of Confidential Information" in this section.

Refer to "Termination of Court-ordered Protective Placement" in this section regarding clients who move out-of-state while in a court-ordered protective placement.[125]

5. Reports on Individuals Receiving Services from Agencies or Facilities Licensed or Certified by Other Agencies

Investigations of suspected abuse, neglect, or exploitation in out-of-home care refers to action taken on reports received while the adult receives care from or resides in a home or agency or facility that is subject to licensing or approval or certification by a state agency or other care facilities not subject to licensure. Facilities subject to licensing in which the Department has investigative responsibility include foster homes, assisted living health facilities, mental health facilities that are not state owned and operated, home health agencies and public and private hospitals. The Department's investigative responsibility is to investigate allegations against Person(s) Allegedly Responsibility (PARs), not the facility as a whole, and includes investigation of allegations made against staff members or employees of the facility, or any person whose actions at such facility are at question. DHR may have investigative responsibility in some nursing home reports. Care facilities not subject to licensure but in which DHR also has investigative responsibilities include day care facilities not approved for DHR payment, boarding homes, and temporary housing shelters.

Please refer to the chart in Chapter 2 Section F which provides information on the additional entities that must be informed of reports.

The following general procedures should be followed when protective service reports are received on residents of facilities licensed and or certified by another agency:

a. Intake

[125] APS Letter 2020-02
March 2020

The County Department will investigate reports of suspected abuse, neglect or exploitation received on *all* individuals in out-of-home care settings, with the following *exceptions*:

Reports concerning allegations of abuse, neglect and exploitation that occurred in State owned and operated correctional facilities, or city or county jails. Investigations of reports concerning possible abuse, neglect or exploitation that occurred in city or county jails are conducted by the governmental entity responsible for the care and supervision of the residents. Callers wishing to make a report concerning situations of this nature should be referred to the appropriate governmental entity for the facility, which has the responsibility for receiving and investigating the report.

Reports concerning allegations of abuse, neglect or exploitation that occurred in facilities owned and operated by the State Department of Mental Health. DMH currently owns and operates three (3) facilities in the state, which serve persons 18 years old and older. Those facilities are *Bryce Hospital, Taylor Hardin Secure Medical Facility, and Mary Starke Harper Geriatric Psychiatry Center.* Reports on these DMH facilities will be received and investigated by DMH. County Departments should send copies of Reports of AANE concerning residents of state owned and operated Mental Health facilities received from DMH directly to SDHR APS Intake.[126]

Reports concerning residents of nursing homes when the allegations contained in the report pertain to abuse, neglect or misappropriation of property of the resident by an employee of the nursing home. (See the section entitled “Legal Definitions" earlier in this chapter) Misappropriation of property of a nursing home resident is defined by law as the deliberate misplacement or wrongful, temporary, or permanent use or withholding of belongings or money of a resident of a nursing home without the consent of the resident. The Department of Public Health is responsible for receiving and investigating reports of this nature, in accordance with policies set forth by the Department of Public Health. Those wishing to make reports concerning a nursing home employee who may have abused, neglected or misappropriated the property of a nursing home resident should be referred to the Department of Public Health.

County Departments of Human Resources are responsible for investigating reports of financial exploitation or neglect that result from family members’ failure to complete Medicaid applications or provide information to the Medicaid Agency. These reports should be made when the nursing home facility determines they are unable to work with family members or the local Ombudsman to resolve payment issues. When payment issues cannot be resolved, we have requested that referrals be made as soon as possible but no later than the date the nursing home issues an

[126]APS Letter 2020-02
March 2020

eviction notice. Normal investigative procedures will apply in these situations, i.e. initiate an investigation within 7 days of receipt of a report, make a determination on the allegations within 60 days, and make protective service filings as necessary.

The Department also is responsible for the investigation of financial exploitation concerning nursing home residents, including reports that identify an employee of the nursing home as the alleged perpetrator. Financial exploitation is defined by law as the expenditure, diminution, or use of the property, assets or resources of a person subject to protection under Sections 38-9-1 through 11, Code of Alabama, Without the express voluntary consent of that person or his or her legally authorized representative. Although there is a subtle difference in the definition of Exploitation and Misappropriation, the distinction generally is that "Misappropriation" has to do with property in the facility, whereas "Exploitation" has to do with property external to the facility. In the event of a nursing home closure, County Departments of Human Resources are responsible for petitioning the court for a protective placement on behalf of a resident or residents of the facility who are unable to consent to another placement and have no one available and willing to make a plan on their behalf. [127]

For all reports concerning individuals who are receiving out-of-home care where the Department has investigative responsibility, the County Department of Human Resources which receives the report should obtain as much descriptive and identifying information about the incident being reported as possible. Based on the information provided by the reporter, the intake worker will determine whether the incident being reported meets the definition of adult abuse, neglect, or exploitation. In making this determination, the intake worker should employ the same standards as those that are used to evaluate situations that occur in community settings

b. Completing the Report of AANE

When reports of suspected abuse, neglect or exploitation are received on individuals who reside in out-of-home care settings, a Report of AANE should be completed *for each individual* on FACTS Intake as usual, taking care to document the following:

The state agency to which the report is being sent will be documented under the Intake Narrative section of FACTS. Under this section, choose "Notification" and enter the appropriate information.

c. Referral/Case Records

Case records will be set up for individuals identified as suspected victims of abuse, neglect or exploitation in out-of-home care settings. If no specific victim is identified by the reporter, a case record must be established for each suspected

[127] Revised APS Letter 2019-13
October 2019

victim once names are learned. Completion of the Intake may be delayed until the names are determined. Spouses that are both suspected victims can be entered in the same referral and in one case. Risk Assessments and case plans are completed on each spouse who is reported to be an adult in need of protective services.

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d. Investigations

Directions for the investigation of reports of suspected abuse, neglect or exploitation of clients in approved DHR foster homes are provided in Chapter II, Section G, Foster Care for Adults. A worker who approves an adult foster care home may not conduct APS investigations in that home.

Joint investigations with other state agencies may be conducted when both DHR and another state agency have investigative responsibilities. Conducting a joint investigation with another agency does not relieve this Department of its responsibility to initiate an investigation within 7 days of the receipt of the report.

The worker assigned to investigate a report concerning a client in out-of-home care should always begin the investigation in an agency or facility by notifying the administrator or his or her designee of the worker's presence in the facility. In addition, when an investigation is being conducted in a nursing home, assisted living facility, or group home, the investigating worker should use DHR-ASD-1789, DHR Investigation of Report Received Alleging Adult Abuse, Neglect, or Exploitation, and provide this form to the facility administrator or his or her designee at the time of the worker's initial visit to the facility. The DHR-ASD-1789 will identify the general nature of the complaint received by the Department and serve to clarify the agency's legal authority and responsibility in the investigation. Upon leaving the facility, the investigating worker should notify the facility's administrator, or his or her designee. [128]

When an abuse, neglect or exploitation report for which the Department holds investigative responsibility as specified in this section is received on a client who was placed by the Department in a nursing home outside his or her county of residence, the County Department where the abuse, neglect or exploitation is alleged to have taken place is responsible for conducting the investigation of the incident. The County Department which placed the client in the facility should be notified of the report and assume responsibility for any action necessary as a result of the reported incident, such as removal of the client from the facility.

The worker investigating the report will follow guidelines provided later in this chapter regarding interviews with the alleged victim, the alleged perpetrator, and any possible witnesses of the reported incident. For protective service investigations concerning residents of health care facilities or other facilities to include Mental Health Group Homes in which the perpetrator is someone other than

[128] Revised APS Letter 2015-04
March 2015

an employee of the nursing home. Medical expertise and testing are often required in order to determine whether abuse or neglect has occurred. The patient's chart, physician's orders, and test results should be reviewed by the investigating worker in most cases. When an investigation cannot be resolved due to delay outside of the worker's control in obtaining necessary documents, the investigation may be suspended with supervisory approval. This must be thoroughly documented in the Family Service Record. During the suspended investigation the AANE status in FACTS must have a disposition entered pending outcome of the investigation. (Refer to Suspension Protocol for AANE Reports). The Department of Public Health or the other out-of-home facility should be notified of the pending status of this Department's investigation. After the Department receives necessary documentation to complete the investigation, the county will enter a final finding in the case. In such cases, the disposition should be made on the Department's report, and an administrative hearing offered when appropriate. Refer to "Procedures for Protective Services Investigative Hearings", in this section regarding release of results of a protective service investigation.[129]

6. Role of the Community Ombudsmen in APS Investigations

Section 22-5A-3 Code of Alabama and the Older Americans Act authorize the State Long-Term Care Ombudsman and the Alabama Department of Senior Services to investigate complaints concerning long-term health care, assisted living facilities or residential facilities. This includes any nursing facility, assisted living facility, boarding home facility or hospital subject to regulation or licensing by the State or County Department of Public Health. Community ombudsmen are selected, trained, and certified by the Department of Senior Services and are located throughout the state. The community ombudsman is required by law to immediately report any instances of abuse, neglect, or exploitation to the County DHR for investigation and follow-up.

Refer to "Disclosure and Release of Confidential Information" in this section to determine what information should be released to the community ombudsman following a protective service referral. In all situations, an acknowledgment of the receipt of the referral and its investigation shall be given to the ombudsman. The County Department can share information regarding whether protective services are or are not being provided; however, the disposition of the report cannot be released unless the alleged perpetrator has been provided with an opportunity for an administrative hearing. Additional information may be released to the ombudsman if the ombudsman is in a position to protect the client, and the information released will assist the ombudsman in ensuring the client's safety. There are certain situations where the community ombudsman will need to be aware of particular conditions in a facility in order to assist in protecting facility

[129] APS Letter 2020-15
November 2020

residents. The ombudsman, in many instances, will be visiting in a facility more frequently than DHR staff and can provide valuable information to assist the Department in providing protective services. If agreed upon by the worker and the community ombudsman, the ombudsman's visits to a particular nursing home or with a particular protective service client can be a part of that client's case plan. [130]

7. Referrals to Appropriate Licensing or Certifying Agency or Agencies

If the Department has no investigative responsibility for an individual who is receiving services from an agency or facility licensed or certified by another agency, reporters of suspected abuse, neglect or exploitation should be referred to the appropriate licensing or certifying agency or agencies. If the Department does have investigative responsibility, such as facilities with which MH contracts for services for their clients, the County Department will notify the SDHR APS Intake and proceed to investigate. Facilities or agencies licensed or certified by other agencies include hospitals, nursing homes, assisted living facilities, mental health facilities, home health agencies, or other similar facilities or agencies. SDHR APS will notify all appropriate state agencies that have licensing or certification or operating responsibility that a report has been received. Also, County Departments should refer to the SDHR APS Intake those reports involving State owned and operated mental health facilities. The responsibilities, contact position and mailing addresses for state regulatory agencies follow.

The following chart has been included to assist staff in identifying which agencies must be notified for reports in each type facility.

[130] APS Letter 2020-06
March 2020

TYPE FACILITY	AGENCIES TO BE NOTIFIED[131]			
Nursing Home	Dept of Public Health	AG/MFCU (physical abuse, neglect, financial exploitation in facility by nursing home employee or family member)	Medicaid	
Assisted Living	DPH	AG/MFCU		
Hospitals	DPH	AG/MFCU	Medicaid	CMS*
Home Health	DPH	AG/MFCU (physical abuse, neglect and financial exploitation by Medicaid providers and staff in client's home)	Medicaid	
Mental Health	Dept of MH	AG/MFCU	Medicaid	DPH
		{If certified to	*Receive Medicare/ Medicaid}*	
Prisons	Dept of Corrections			
County Jails	Alabama Attorney General			Alabama AG Office

*Center for Medicare and Medicaid Services Address follows under "Hospitals"

Department of Public Health (DPH) also investigates all complaints involving facilities subject to their licensing or certification including nursing homes, assisted living facilities, and hospitals. The address for all DPH contacts is

Unlicensed Health Care Facilities
Supervisor of Assisted Living Facility
Unit Alabama Department of Public
Health 201 Monroe Street,
Suite 700 RSA Tower
Montgomery, AL 36104

[131]APS Letter 2020-06
March 2020

Telephone: (334) 206-5366

Bureau of Health Provider Standards
Alabama Department of Public Health
P.O. Box 303017
Montgomery, AL 36130-3017

Nursing Homes
Complaints Supervisor
Division of Health Care Facilities
Telephone: 1-800-356-9596 Fax (334)-206-5088
Bureau of Health Provider Standards Complaint Hotline
Telephone: 1-800-356-9596

Assisted Living Facilities
Director
Assisted Living Facility Unit
Telephone: 1-866-873-0366 Fax (334)-206-5088

Hospital and Home Health Agencies
Complaints Supervisor
Division of Health Care Facilities
Montgomery, AL 36130-3017
Telephone: 1-800-356-9596 Fax:334 206-5219

Reports regarding hospitals should also be sent to:
Hospital Complaints
Center for Medicare and Medicaid Services
Federal Center 61 Forsyth St. SW, Suite 4T20
Atlanta, GA 30303-8909

Note: The Jefferson County Public Health Department licenses boarding homes in that county. There is no regulation of boarding homes statewide.[132]

See "Placement Resources" in this section for the level of care provided appropriately by boarding homes and assisted living facilities.

The Attorney General's Medicaid Fraud Control Unit (AG/MFCU) investigates reports involving agencies or facilities certified to receive Medicaid funds. Agencies or facilities certified to receive Medicaid funds include nursing homes, hospitals, home health agencies and those Mental Health facilities that receive Medicaid funds. The MFCU may also investigate crimes against the residents of board and care facilities.

[132] APS Letter 2020-06
March 2020

Attorney General's Medicaid Fraud Control Unit
P.O. Box 300152
Montgomery, AL 36130
Telephone: (334) 353-8793
E-mail: MFCU@ago.state.al.us

The AG/MFCU is responsible for investigating and prosecuting allegations of financial exploitation by employees and physical abuse or neglect that occurs in Medicaid funded facilities. The AG/MFCUI also investigates financial exploitation of residents by family members outside the facility.

The AG/MFCU also investigates and prosecutes allegations of physical abuse, neglect, and financial exploitation by Medicaid providers and their employees that might occur in a recipient's home. For example, AG/MFCU has prosecuted home health workers who were either employed by a Medicaid provider or who have stolen from a Medicaid recipient while providing homebound services.

Alabama Department of Mental Health investigates reports involving facilities owned and operated by their Department as well as facilities in which they contract for services for their client.

Alabama Department of Mental Health
Director
Rights Protection and Advocacy Services
Department of Mental Health
P. O. Box 301410
Montgomery, AL 36130-1410
Telephone Contact: 1-800-367-0955 Fax: 334-242-3025

Alabama Department of Corrections investigates reports involving state owned and operated correctional facilities.

Department of Corrections Commissioner
Investigation and Intelligence Division
P. O. Box 301501
Montgomery, AL 36130
Telephone: 334-353-8912

Attorney General of the State of Alabama receives reports involving county jails, their staff, and facilities' operations.

Attorney General of the State of Alabama
P.O. Box 300152
Montgomery, AL 36130-0152
Telephone Contact: 334-242-7100
ConstituentAffairs@AlabamaAG.gov

Knowledge of any facility or agency operating without statutory licensing or certification required by another agency must also be reported to the SDHR APS Intake. A protective service report is not appropriate in these instances unless there are allegations of abuse, neglect, or exploitation

8. Reports of AANE Involving Department Employees

When a report of abuse, neglect or exploitation is received which involves a current employee of the Department, including a member of his or her immediate family, the County Department will immediately notify Adult Protective Services, SDHR, so that a joint decision can be made regarding who will conduct the investigation, provide follow-up services and maintain the case record. Immediate family is defined as spouses, children, parents or grandparents, brother or sister, mother-in-law and father-in-law, niece, nephew, and brother-in-law or sister-in-law. The County Director may also request assistance in other sensitive situations such as a report received on a former employee.[133].

In most situations, an adjoining county will be asked to conduct an investigation of a report involving a DHR employee. Once the decision of who will conduct the investigation is made, requests for any further assistance should be directed to the Adult Protective Services, SDHR

Records of the Department employee and his or her immediate family in regards to a protective service investigation should be secured so that access to them is restricted only to those conducting the investigation or providing follow-up services. In addition, such cases should be restricted on FACTS by the County Director or his designee.

9. Reports of Abuse, Neglect or Exploitation Received in Cases Already Open to Child Protective Services

The Department's responsibility to provide adult protective services to elderly and disabled individuals is not altered by the fact that the elderly or disabled person's family may already be receiving child protective services from the Department.

If an adult protective service report is received on behalf of a parent or other adult household member in an active CPS case, an adult protective service investigation must be completed. Appropriate follow-up must be provided by the Department as determined necessary by the investigation.

The presence of minor children in the home does not alter the Department's responsibility to provide adult protective services.

[133] APS Letter 2020-06
March 2020

Appropriate adult protective services must be provided to adult children with disabilities in the home who are at risk even though a family is receiving child protective services because of abuse or neglect of minor children.

In homes where both adult services and child protective services are being provided, the county director or his or her determines whether one worker will handle all services to the family or whether it will be necessary to involve specialized staff from both program areas. There must be close coordination between adult and CPS workers in these cases. Workers should be sensitive to the effect that the allegations and the disposition of the report may have on all household members, especially the children and vulnerable adults.

10. Reports of Illegal Alien Victims

Adult Protective Services is mandated by the Code of Alabama, §38-9-4(b), to "…seek out the adults in the state who are in need of care and protection because of the danger to their health or safety…" In addition, under United States Code, Title 8, §1621(b), services will not be denied to aliens if necessary for the treatment of an emergency medical condition and for the protection of life or safety. Therefore, reports of AANE on illegal aliens or other non-citizens must be accepted and investigated, followed by the development of an appropriate case plan for those determined to be adults in need of protection. These situations do present a special challenge since they are not eligible for SSI or Medicaid. Assistance may be available from charitable organizations such as Catholic Social Services or by volunteer support from the community. The APWA International Social Work Office may also be a resource. Once the country of origin is determined, it may be necessary to contact the consulate of that country for assistance in returning the client to his or her home. The consultant may also be contacted if needed to assist in locating the appropriate resources.[134]

11. Reports from the Ombudsman Program

Section 22-5A-3, Code of Alabama, and the Older Americans Act authorize the State Long-Term Care Ombudsman and the Alabama Department of Senior Services to investigate complaints concerning long-term health care, assisted living facilities or residential facilities. This includes any nursing facility, assisted living facility, boarding home facility or hospital subject to regulation or licensing by the State or County Department of Public Health. Community ombudsmen are selected, trained, and certified by the Department of Senior Services and are located throughout the state. If the Ombudsman suspects abuse, neglect or exploitation they are required by statute to make a report to DHR. For additional information

[134] Revised APS Letter 2007-06
January 2007

about the role of the community ombudsman, refer to the section "Duties and Responsibilities of Community Ombudsman" later in this chapter.

12. Reports on Military Personnel

Abuse, Neglect or Exploitation investigations on military installations are governed by military regulations and working agreements with military authorities. Agreements should be established locally.

13. Other Times Reports Are Required

There are three additional instances where policy requires the completion of a Report of AANE:

Request for Investigation of Guardianship or Conservatorship Petitions
The probate court may request that the County Department evaluate petitions for guardianship or conservatorship. If the information provided by the probate court indicates the subject of the petition is physically or mentally incapable of caring for him or herself or is a possible victim of abuse, neglect, or exploitation, a Report of AANE should be completed. The report should contain as much detailed information about the situation as can be obtained from probate court.

In rare instances, the information provided by probate court may not indicate that the person who is the subject of the petition is incapable of caring for him or herself, or is not a possible victim of abuse, neglect, or exploitation. No Report of AANE should be completed in these situations; however, the worker will interview the person who is the subject of the petition, the petitioner, and the person nominated to serve as guardian or conservator. In addition, a visit will be made to the current and proposed residence of the person who is the subject of the petition. If the worker discovers any evidence of abuse, neglect, or exploitation during this process, a report of AANE should be completed. See "Appointment of DHR as Court Representative" in this section.

- **Emergency Shelter Care**

Documentation on the Report of AANE should indicate that the client's health and safety is in immediate danger and that the client is in need of protective placement because no other placement resources are available.

It is not necessary to complete a second report if emergency shelter care placement is the result of the investigation of a protective service report.

- **Medicaid Termination of Nursing Home Participation**

The Department has agreed to petition the court for protective placements on behalf of any residents of a nursing facility that is being closed who are unable to consent

to placement in another facility and who have no one ready, willing, and available to assume planning responsibility for them. The allegation on the Report of AANE should indicate that the client is at risk of self-neglect due to the potential loss of shelter and medical care. Similarly, protective service reports and investigations should be completed on residents of licensed or unlicensed assisted living facilities being closed when the resident is at risk of self-neglect because he or she is unable to plan for himself or herself and has no one to plan for him or her.

- **Relocation of Residents from an Unlicensed Health Care Facility**

To promote coordination, placement, and service delivery for persons living in unlicensed facilities and needing placement in a licensed facility, the Department shall establish a coordinating council.

Effective August 2008 the definition of exploitation has been changed to include the admission of or provision of care to a protected person who needs to be in the care of a licensed health care facility after a court order obtained by the State Board of Health has directed closure of the unlicensed facility or the Department of Human Resources Commissioner deems it necessary to convene the coordinating council. The council shall meet at times designated by the Commissioner for coordinating purposes identified by the Commissioner including identifying resources and placements, increasing needed supportive services, and assuring maximum community coordination of effort in placing an individual in a licensed facility person living in an unlicensed facility. When such a court order is obtained from the Circuit Court, the Department will work collaboratively with the Department of Public Health, the local Ombudsman, and other agencies to locate appropriate placements for residents who cannot act for themselves and who have no one to assist them. The Department must petition the circuit court for orders for placement as needed. The Circuit Court may enter an order granting additional time as needed to locate appropriate placements. However, once the State Board of Health has obtained an injunction to prohibit the operation of an unlicensed facility, the closure of the facility may occur very quickly. It will be necessary to allocate sufficient resources to work with the facility, agencies, families, and clients so that placements are accomplished as quickly and smoothly as possible.

A fund, established through monetary penalties, may be used to assist with appropriate placement of individuals from an unlicensed facility or from a facility undergoing licensure termination. Contact your APS Consultant for assistance in accessing this fund.[135]

G. Reporting to Adult Protective Services, SDHR

County Departments must notify Adult Protective Services, SDHR Intake within twenty-four (24) hours or next business day in the following circumstances:

[135] APS Letter 2020-06
March 2020

- Death of a client during an open referral including AANE reports and preventions.
- An APS referral received on an adult foster care client.
- Any adult foster care provider or any household member of the adult foster home is named as an alleged perpetrator.
- An APS referral received involving an adult day care home or day care center.
- An APS referral or case that has come to the attention of the media or
- As otherwise requested by Adult Protective Services, SDHR.

Initial notification should be email to the APS Consultant with a copy to DHR_APS (in global address book), the APS Division Director, DHR Chief Legal Counsel, Deputy Commissioner for Children and Families, and Deputy Commissioner for Field Administration within 24 hours or next business day of occurrence of the incident. The Office of Communications should also be copied on cases that may come to the attention of the media. Complete the form "SDHR/APS Notification Form" which may be found on Online Documents in the Forms section of "Appendices, Forms, and Templates", scan and attach to the email notification.

H. Role of District Attorney or Law Enforcement

The County Department must establish written referral procedures with the District Attorney's office or local law enforcement officials regarding protective service reports. However, unless otherwise specified by written protocol, all allegations of abuse, neglect, and exploitation, in which the alleged perpetrator is named as someone other than "Self" must be referred to law enforcement or the District Attorney's office. Referrals must be made at Intake and documented on the FACTS Allegation Information screen/Initial Notifications box. Copies of APS completed investigations must be sent to law enforcement at their request.[136]

See Appendix B for a sample District Attorney/Law Enforcement Referral Protocol. This sample may be modified to meet the needs and agreements of each County. The completed protocol should be reviewed periodically and updated. Election of a new District Attorney or Law Enforcement official requires review of the protocol.

An Adult Abuse, Neglect and Exploitation report may involve joint investigations between the Department of Human Resources and law enforcement agency (LEA). These investigations may require additional time to obtain DNA test results, needed documentation or interviews with the PAR by LEA, which may require a suspension of the AANE report to determine the disposition finding of indicated or not indicated. (See APS

[136] APS Letter 2020-15
November 2020

Suspension Protocol for ANNE reports). When there are situations of this nature contact APS consultant to discuss.

Law enforcement is also involved with missing persons. The Missing Senior Citizen Alert ACT 2018-456 effective June 1, 2018, Sections 26-19A-2 and 16-19A-4, Code of Alabama 1975 provides for the reporting of a missing senior citizen or missing person suffering from Alzheimer's disease or dementia regardless of age made to the Alabama Law Enforcement Agency (ALEA) as soon as a concerned party or caregiver believes the person to be missing. Upon the submission of the report, a search in the missing person's local area will begin immediately, and ALEA may expand the search to include areas outside of the missing person's local area if needed. [137]

Once DHR is aware of a missing senior citizen or missing person with Alzheimer's disease or dementia, notification must be made by DHR APS staff to the local Law Enforcement Agency within twenty-four (24) hours. Additionally, a missing persons report is to be made by APS staff when it is believed that as APS client regardless of diagnosis when the client's disappearance is not considered voluntary pursuant to Ala. Code 12-19-1.

The Alabama Office of the Attorney General may be an additional resource for possible prosecution in cases of abuse and exploitation of the elderly and disabled. Guidance should be sought from the APS Consultant before any referral is made to the Office of the Attorney General.

At any time, the County Department may request the assistance of local law enforcement to complete an investigation. When there is any indication that the worker's safety may be compromised, law enforcement must be notified and requested to accompany the worker conducting the investigation. In addition, any threat to the Department or to its staff must be referred to law enforcement.

Act 2013-307, also known as the Protecting Alabama's Elders Act, establishes the crimes of financial exploitation of an elderly person as well as elder abuse and neglect in the first, second, and third degree. While District Attorneys may continue to prosecute cases under the APS Act, this Act provides an additional tool for law enforcement and District Attorneys. **This Act does not change DHR's duties and responsibilities pursuant to the APS Act**.

This Act defines an elderly person as a person 60 years of age or older for criminal statute purposes only. It also defines financial exploitation to include breach of fiduciary duty to an elderly person by the person's guardian, conservator, or person who holds power of attorney which results in an unauthorized appropriation, sale, or transfer of the elderly

[137] APS Letter 2018-03
May 2018

person's property. The Act also defines deception, intimidation and undue influence. See Appendix B for a copy of the Act.

Definitions of this Act **are used for law enforcement and prosecution purposes only and <u>are not</u> to be confused with the APS definitions for DHR investigation and protective services. The definitions of the APS Act are unchanged and will continue to be used in determining whether an adult is in need of protective services.**

I. Policy Regarding Photographs and Audio/Video Tapes

Photographs and video or audio tapes can be taken with the client's permission to record the interview, to document circumstances such as physical injuries to client or neglectful conditions of the client or the client's home during a protective service investigation. If appropriate, law enforcement may be asked to take photographs and to audio or videotape. When essential to the investigation, a petition may be filed in court for an order authorizing photographs or audio or videotaping. All narratives related to photographs or audio or video taping must document under what authority the images were captured (i.e. client agreement, law enforcement, or court order.) [138]

In out-of-home care or substitute care investigations, including investigations in assisted living facilities, mental health group homes and other such facilities, the facility must also give permission for photographs or audio or video taping. If permission is not secured, law enforcement may be asked to take the photographs, or the worker will need to file a petition for a court order authorizing this to be done.

Photographs should be taken with a digital camera if available, preferably one that is designed for use by law enforcement and investigative agencies such as DHR. Digital images should be downloaded directly onto a computer hard drive as soon as possible to avoid loss. County Departments shall have in place local procedures that address security and deletion of digital pictures saved on computer hard drives for periods of time (i.e., three months, six months, etc.) after the initial printing. Pictures from the digital camera should be printed and filed in the client's record.

Instant pictures are only acceptable when taken in conjunction with a digital camera or traditional camera if a digital camera is not available. Instant or Polaroid pictures should not be used as the only photographic documentation due to their poor color resolution and a tendency to fade over time. When instant pictures are taken, the narrative recording should reflect that they were taken in conjunction with a digital or traditional camera.

If a traditional camera is used, the developer must sign a confidentiality agreement before processing the film or making copies. The agreement must state that the photographs will not be shared in any manner with anyone other than the Department of Human Resources.

[138] APS Letter 2018-03
May 2018

If the processing will be completed by a mass-market company through a local retailer, the retailer must sign a confidentiality agreement which outlines how their personnel will handle and ensure the confidentiality of the materials while in their possession. Staff should be aware of any agreements that may already exist between their county office and local processors. If none exists, County Departments may contact local law enforcement agencies to request copies of any agreements that they have with local photographic processors

Each photograph must be properly labeled on the back of the photograph. The worker must write the name of the subject, DHR case number, date, and time the picture was taken and the reason the photograph was taken. A sufficient number of photographs shall be taken during the investigation to adequately document the extent of the injuries. All photographs are part of the investigation and should be stored in the AANE record. Narrative recording should reflect that pictures were taken with client's permission or by law enforcement. These photographs should be properly secured and remain with the case file.

Information gathered from the audio or videotape must be summarized and recorded in the case narrative. The tape must be properly labeled as noted above with photographs. The worker should begin the tape with a statement that includes that information. Tapes must be secured in a manner that fully insures their confidentiality and remain part of the case file.

J. Departmental Policy Regarding Signing of Criminal Warrants

In most adult protective service cases, the signing of criminal warrants is not an appropriate function for the Department. Indictment by a grand jury is the usual method for initiating criminal prosecution. Cases where a warrant may be appropriate include but are not limited to: 1) cases where a person under investigation interferes with or disrupts the Department's program operations, 2) cases where the applicable criminal statute of limitations will run out before the grand jury meets to consider the case or 3) assault and harassment of a social worker. County Departments must consult with the State Office consultant assigned to their county who has responsibility for adult protective service consultation before signing a warrant.

Departmental personnel have the right as individuals to sign warrants against persons for crimes or acts of violence or destruction of personal property committed against them. The County Director and the Adult Protective Services consultant assigned to the County Department should be notified as soon as possible after the warrant has been filed.

IV. PROCEDURES OF INVESTIGATIONS AND DISPOSITIONS

A. Conducting the Investigation

The purpose of the investigation is to establish facts that will be useful in determining whether the reported victim has been abused, neglected, or exploited and is an adult in need of protective services. The focus of the investigation is on the client and his or her welfare. It is important that the worker secure sufficient information to determine what, if any, interventions are required by the agency, whether to seek court action, and to reach a disposition for each allegation and each person allegedly responsible. If a decision is made to present a petition to a court, sufficient information must be documented for a court decision that will serve the client's best interests.

1. Evaluate the Report with the "Person Identified At Risk of Abuse, Neglect, or Exploitation"

All adults in need of protection who are the subject of abuse, neglect, or exploitation reports must be seen and interviewed "Immediately" or "within 7 days". "Immediate" is defined as "as soon as the circumstances indicate, not to exceed 12 hours". "Within seven" (7) calendar days means from the exact date, hour, and minute. The "Person Identified At Risk of Abuse, Neglect, or Exploitation" must be seen monthly or as often as necessary to assess the client's safety and well-being during the referral. Unannounced investigative visits must be made to get the full picture of the home and the situation of the victim. There will be very limited circumstances when the worker's supervisor directs the worker to make an appointment. In most cases, a private interview is essential. The worker must discuss with the client each allegation that is part of the protective service report. Any other incidents of abuse, neglect, or exploitation reported by the client should be recorded on the FACTS Report of AANE and also investigated. See "Second Reports" in this section. Whenever possible, when the person allegedly responsible is a member of the household, the worker should arrange to observe the interaction between the client and that person after the individual interview.[139]

Where allegations of physical abuse are made, the worker will need to personally observe the affected areas (i.e. if allegation states bedsores on back, worker should observe this area). This must be done with the client's permission and preferably in the presence of another person. The client's voluntary agreement to have their person and injuries viewed by the worker should be carefully documented at that time. In addition, the worker must assess the client's orientation as to time and place and the client's apparent

[139] APS Letter 2021-11
August 2021

ability to understand and knowingly consent to be viewed. The worker should be sensitive to the client's needs and feelings. If the victim does not wish to be examined by the worker, an offer should be made to allow the examination to be done by the victim's physician or other health care professional. A court order can be sought for a medical examination if necessary. An examination may be more appropriately completed by a physician or other medical professional and is always necessary in instances of alleged sexual abuse where there may be physical evidence. Signs of physical abuse include but are not limited to abrasions, bruises, burns, involuntary confinement, and overmedication. Psychological abuse may include but is not limited to verbal assault, threats, humiliation, isolation, and intimidation. Forms of sexual abuse may include rape, incest, and indecent exposure.[140]

If there are allegations of neglect or self-neglect reported, the worker will need to observe for signs of deprivation of food, clothing, medications, or medical care. Supplies of food and medications should be checked as well as the condition of the victim's home including the kitchen, bathroom, and client's bedroom. Hazardous and unsanitary housing conditions, and improper or lack of supervision are also signs of neglect. Signs of exploitation include but are not limited to the care of the elderly or disabled adult is not commensurate with the money or income available, valuable personal belongings are missing and there is a noticeable lack of amenities that the person can afford, such as a television or radio.

The worker should also observe for behavioral signs of mistreatment, such as anxiety, withdrawal, increasing depression, hostility, confusion, and unresponsiveness. While any of these factors alone may not indicate abuse, the severity of any one factor, or the presence of more than one, especially in the presence of the person allegedly responsible may be valuable in the assessment of the validity of the report.

Periodically, reports are received alleging that a vulnerable client is being inappropriately left alone. If the report indicates the client is currently alone, the worker should immediately go to the home to assess the situation. If the client is not alone at that time, an attempt should be made to learn from any available collateral sources (physicians, home health agency, dialysis workers, neighbors, etc.) when the client is left alone and if the client appears to be in danger while alone. At the time of the visit, if there is no response to a request to enter, but there is strong evidence that a person

[140] Revised APS Letter 2007-12
May 2007

is in the home, further attempts should be made to gain entrance. Additional actions such as a call from a cell phone may be successful or a neighbor may have helpful information. A neighbor may have access to the home or knowledge of the situation. If efforts to determine if the client is in the home are unsuccessful but the worker has reason to believe a person is in the home, law enforcement should be contacted.

If the alleged victim refuses to talk to the worker or to allow access to the home, a systematic method should be used to gain acceptance. It is important to continue to seek entry by showing compassion and understanding to the client or caregiver who may feel threatened by "someone from the State." The worker should look for a person who is respected, e.g. a relative, a minister or church member, or a neighbor. Sometimes involving the supervisor or another worker is beneficial. The worker must not force his or her way into a home and place his or her safety in jeopardy. Difficulties encountered in gaining access to the client and all efforts made to interview the client and observe his or her condition or situation must be carefully documented and fully detailed in the narrative.

In some instances, the alleged victim may refuse to discuss the allegations with the worker. The client may be unable to communicate or may make a conscious decision not to do so because of fear, shame, or a sense of failure and uncertainty. The worker should continue with the investigation unless it appears that immediate court action for treatment, evaluation, or placement should be taken.

If the alleged victim has a disability or a language barrier that makes communication difficult, services of an interpreter or some form of assisted communication should be arranged. Interpretive services should be arranged at no cost to the Department whenever possible. However, when free services are not available, the Department may pay for these services. An approved invoice should be submitted to Finance along with the PSD-676.[141]

If a worker is denied access to the client because a caregiver or other person refuses to permit contact by the worker or because of locked doors, assistance should be requested from law enforcement officials. According to Code of Alabama 1975, Section 13A-10-2, obstructing government operations by means of intimidation, physical force, or interference where a person intentionally prevents a public servant from performing a government function is a Class A criminal misdemeanor. A petition must

[141] Revised APS Letter 2007-12
May 2007

be filed in circuit court to gain access to the client to complete the investigation if all other strategies fail.

Occasionally, an alleged victim dies prior to the completion of the investigation. At that point, since there is no longer an "adult in need of care and protection," the case should be closed with a disposition of "undetermined" and referred to law enforcement if appropriate. The worker should determine if there is anyone else in the home that is at risk of ANE and, if so, make a report to that effect.

2. Interview the Person Allegedly Responsible[142]

The person allegedly responsible should be interviewed individually and in person. All allegations of the report should be addressed, and responses should be recorded in detail. The worker should be attuned to the attitude of the person allegedly responsible toward the alleged victim. Especially in cases of physical abuse by a household member or caregiver, the person allegedly responsible may react to the worker's intervention by further mistreatment of the client. Notation should be made of any signs of pathology or aberrant mental functioning, substance abuse, mental illness, etc. A decreased tolerance for frustration, stress overload due to the demands of giving care, the lack of social support, and a negative attitude toward the elderly or disabled are all factors considered to indicate or lead to physical or psychological abuse. If concerns arise that interviewing, the person allegedly responsible would further endanger the client, consideration should be given to arranging a voluntary placement for the client prior to conducting the interview. It may be necessary to file an emergency petition for placement if the client will not agree to a voluntary placement. When a domestic violence situation is known or suspected to exist, plans for interviewing the person allegedly responsible should be discussed with the Adult Services Supervisor, law enforcement or the Adult Protective Services consultant prior to confronting the person allegedly responsible.

If the person allegedly responsible gives a statement regarding the incident to law enforcement, a copy of the statement should be requested. If the person allegedly responsible confesses to all allegations, it may not be necessary to investigate further before establishing an "Indicated" finding for the person allegedly responsible. However, it still may be necessary to interview the person allegedly responsible in order to gather all facts pertinent to the case. Any request from law enforcement to delay interviewing a person allegedly responsible due to a criminal investigation should be carefully documented in FACTS. This action will require the suspension of the AANE Investigation due to law enforcement (LEA) involvement. The county shall follow the Suspension Protocol for AANE

[142] APS Letter 2020-15
November 2020

Reports and notify the Adult Service consultant. Contact is to be maintained with law enforcement so that the interview and the AANE dispositional finding can be completed as soon as allowed.

It may be appropriate to interview some persons allegedly responsible in the County Department as the office setting emphasizes the authority of the agency. In the rare instances when the worker cannot interview the person allegedly responsible, the supervisor should be notified, and this notification must be documented in the narrative.

The person allegedly responsible shall be notified of the final disposition of the AANE report by certified mail or hand delivered and this notification must be recorded in the case narrative. No details of the investigation may be released.

3. Interview All Other Adults in the Home[143]

The worker will need to use caution when requesting information from other household members and will need to determine the validity of the information. Each household member shall be interviewed individually in person.

4. Interview Witnesses

The worker will need to obtain information from persons outside the household who are in a position to know facts surrounding the report. These references might include neighbors, relatives, and friends who may be contacted by telephone or in person.
The worker should strive to get factual information including exactly what those interviewed have actually seen and how they have had occasion to observe or know about the incidents they relate. The worker must be respectful of confidentiality when talking to references and must guard against sharing information about the family with persons from whom he or she is receiving information.

5. Obtain Information from Professionals, Other Sources

Professionals who have firsthand knowledge of the adult or his or her present situation as well as those who have records containing information of value to the investigation are important sources or knowledge. Included are physicians, home health care staff, mental health centers, hospitals, ombudsmen, law enforcement, and the probate court for legal documents. In most cases it will be essential to contact the client's physician. Examples

[143] APS Letter 2021-04
March 2021

of information to request include the diagnoses; treatment plan including medications; whether the client can understand and follow the treatment plan. If there is a caregiver, is that person(s) providing the appropriate level of care under the circumstances and as ordered by the physician? Similar information may also be provided by other involved professionals based on their observations.

When a petition has been filed by the Department in circuit or probate court, a subpoena may be requested to secure information, medical records, bank statements, etc. to complete a protective service investigation when that information cannot otherwise be obtained.

6. Contact Reporter

It is not necessary for the investigating worker to contact a reporter unless it is necessary to clarify information previously given or to secure additional information. If the reporter requests information on actions by DHR, the investigative worker should notify the reporter that the Department has acted on the report. DHR-APS-2203 should be completed by the investigative worker and sent to the reporter who requests information. In addition, DHR-APS-2203 should be completed and sent to mandatory reporters, including staff of the Department of Public Health who makes reports of suspected ANE.[144]

The preliminary disposition of the investigation cannot be shared with the reporter unless they are a mandatory reporter. If the reporter is in a position to protect the client or prevent further abuse, neglect, or exploitation of the client, appropriate information can be shared if it will assist the reporter in ensuring the client's safety. If the reporter is not in a position to protect the client, no details of the investigation should be shared. After due process, if the reporter is a mandatory reporter, the County Department will send a mandatory letter advising of the dispositional outcome. Refer to "Disclosure and Release of Confidential Information" in this section.

B. Disposition of the Investigation

The worker must use the information gathered during the investigation to make the disposition of indicated, not indicated, or undetermined on each allegation of abuse, neglect, or exploitation as well as on the person allegedly responsible. Each reported allegation and each reported person allegedly responsible must have a disposition when the investigation has been completed. This does not mean that the allegation and the person allegedly responsible must have the same disposition. For example, abuse allegations may be indicated but determined not inflicted by

[144] AS Letter 2025-07
May 2025

the person allegedly responsible named. The rationale for the disposition must be documented and must be based upon concrete and supporting evidence gathered by the worker during the investigation and the worker's professional judgment. It is important for the worker to carefully distinguish between verifiable facts, unconfirmed suspicions, and hearsay information. Hearsay is defined as statements that an individual has heard someone else say rather than what he or she personally experienced.

1. Dispositions for Allegations

a. Indicated

This disposition is used when preponderance of the substantial evidence (e.g., eyewitness account, medical report, professional evaluation) and the professional judgment of the social worker (based on facts gathered during the course of the initial assessment) indicates that abuse, neglect, or exploitation has occurred and that the adult is physically or mentally impaired or aged. A determination of "indicated" cannot be based solely on hearsay evidence. Hearsay evidence can only be used in circumstances such as a victim or witness who is unavailable due to privilege (spouses,[145] pastor and counselor), refusal to testify, loss of memory, illness or absence. Substantial evidence means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that an adult was abused, neglected, or exploited. While a determination of "indicated" does not require that a court has determined that abuse, neglect or exploitation has occurred, if a court finds that abuse, neglect or exploitation has occurred, that evidence will automatically justify the disposition of "indicated." It is not necessary that the person allegedly responsible be identified in order to make an indicated disposition.

The following are examples of concrete evidence that would be used to support the determination that an allegation of adult abuse, neglect, or exploitation is indicated:

Abuse - Concrete evidence of physical abuse would show that the victim has bruises, cuts, bites, abrasions, burns, bone fractures, or dislocations etc. that are the result of being slapped, pushed or shoved, beaten, kicked, burned, tortured, involuntarily restrained, overmedicated, etc. Concrete evidence of sexual abuse would be obtained from a medical professional whenever there was physical evidence present. Evidence of psychological abuse would show that the victim has been verbally assaulted, threatened,

[145] Revised AS Letter 2015-04
March 2015

humiliated, intimidated, embarrassed, or isolated.

Neglect - Concrete evidence supporting neglect would include the victim lacking adequate personal care or hygiene, inappropriate clothing, unsanitary living conditions, inadequate or unsafe housing, improper supervision, etc.

Exploitation - Concrete evidence indicating that an allegation of exploitation is indicated includes that the victim's money was not used on his or her behalf, that the money was misused or used without the victim's consent, possessions were stolen or borrowed without consent, etc.

Supporting evidence includes statements made by the victim, person allegedly responsible, family member, witnesses, and professionals.

Professional judgment would include the worker's knowledge and observations of behaviors exhibited by the alleged victim that may indicate the allegation is indicated. Behaviors that the victim may exhibit include fear of the person allegedly responsible, withdrawal, lack of trust, confusion, and unresponsiveness.

Even with an indicated report, it is possible that appropriate actions may have already been taken to protect the client and that the client is not an adult in need of protective services. The decision not to open the case for protective services must be carefully documented. [146]

b. Not Indicated

This disposition is used when the evidence and the worker's professional judgment does not substantiate that abuse, neglect or exploitation has occurred or that the client is physically or mentally impaired or aged. Workers must clearly document the reason for making this disposition. A case may be open to preventive protective services although the report was not indicated. See "Provision of Preventive Protective Services" in this section.

c. Undetermined

This disposition is used only when:

1.) client cannot be located due to lack of identifying information.

2.) client moves before complete information can be obtained from him or her and the client's whereabouts are unknown.

[146] Revised AS Letter 2007-12
May 2007

3.) the client moves out of county or out of state, and efforts to complete the interview with the client are unsuccessful.

4.) when there is conflicting information which cannot be resolved. Every reasonable effort should be made to resolve conflicting evidence prior to considering a case undetermined. This must be supported by documentation in the case record.

5.) when the client dies after the report has been made but before the investigation has been completed. If there are concerns about the situation, that case should be referred to law enforcement.

2. Dispositions for Person Allegedly Responsible

a. Indicated

This disposition is used when the preponderance of the substantial evidence (e.g., eyewitness account, medical report, professional evaluation) and the professional judgment of the social worker (based on facts gathered during the course of the initial assessment) indicate that abuse, neglect, or exploitation has occurred and that the adult is physically or mentally impaired or aged.

A determination of "indicated" cannot be based solely on hearsay evidence. Hearsay evidence is what the witness has heard someone else say, rather than what he has personally experienced.

No disposition can be supported by 100 percent hearsay (second-hand) evidence, with the following exceptions. Hearsay evidence can only be used in circumstances such as a victim or witness who is unavailable due to privilege (spouses,[147] pastor, and counselor), refusal to testify, and loss of memory, illness, or absence. When a disposition is based on an eyewitness account, there must be a reasonable expectation that the eyewitness is willing to testify in a court or administrative hearing, if asked. The worker must document facts to support the indicated disposition.

Substantial evidence means that the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that an adult was abused, neglected, or exploited. Substantial legal evidence must support the action.

[147] Revised AS Letter 2015-04
March 2015

Substantial evidence is relevant evidence that a reasonable person would accept as conclusive proof and it must be based on more than a suspicion or trace of information that abuse, neglect, or exploitation will be established. While a determination of "indicated" does not require that a court has determined that abuse, neglect or exploitation has occurred, that evidence will automatically justify the disposition of "indicated."[148]

Supporting evidence could include statements by the victim, family members, witnesses, and professionals.

Professional judgment is based on all the facts gathered during the investigation including the worker's knowledge and observation of the behaviors and characteristics exhibited by the person allegedly responsible, which may indicate adult abuse, neglect, or exploitation. For example, the person allegedly responsible may have a negative attitude toward the victim, lack understanding of the elderly and or feel overburdened or isolated.

b. Not Indicated

This disposition is used when the evidence and the worker's professional judgment does not substantiate the person allegedly responsible was responsible for the abuse, neglect, or exploitation. Workers must clearly document the reason for making this decision.

In some instances, evidence gathered during the investigation will indicate a different person allegedly responsible for the allegations of abuse, neglect, or exploitation. When this occurs, a separate Report of AANE must be completed.

c. Undetermined

There is insufficient evidence to make a disposition because:

1.) a client cannot be located due to lack of identifying information
2.) there is conflicting information which cannot be resolved. Every reasonable effort should be made to resolve conflicting evidence prior to considering a case undetermined. This must be supported by documentation in the case record.

C. Recording the Investigation

[148] Revised AS Letter 2015-04
March 2015

> A determined effort must be made to record complete and accurate details of the protective service investigation. Regardless of whether the allegations are proven indicated, not indicated, or undetermined, facts on which the conclusion is based must be clearly documented.[149]

The narrative recording of the investigation must be entered on FACTS and all applicable information, such as the FACTS Risk Assessment completed. In addition, if a case is to remain open for continuing Protective Services, the DHR-APSP-1897, APS Case Plan, Initial and Reviews must be completed. The worker may refer to duplicate information on the DHR-APSP 1897 by indicating "See Risk Assessment" on FACTS. The recording should include all of the following elements:

1. Information on how the report came to be made – in what capacity the reporter knows the adult; the source of the reporter's information, i.e. personal observation or secondhand information; how the report reached the Department, i.e. written or oral report; and whether made by an anonymous, optional, or mandated reporter. It is not necessary to restate the allegations as entered on FACTS.

2. Description of alleged victim and identifying information to include:
   a. Living arrangements, physical environment, personal appearance:
      Does the client live alone, with friends, or family? What is the condition of the home? Does it appear safe?

   b. Caregiver family resources:
      Who is responsible for the client's care or who can the client contact when he needs assistance?

   c. Medical history
      What are the client's health problems? What treatment is he or she receiving and from whom? What activities of daily living (feed, bathe, dress, toilet, etc.) can the client do without assistance?

   d. Mental history:
      Does the client have a history of mental problems, commitment, or other treatment? What is his or her mental status now? Is he or she oriented to time, person, place? To what extent does he or she need assistance in managing daily living tasks?

   e. Income resources
      What assets are available to the client? Does he or she have a payee, guardian, or conservator? Does he or she appear to need one? Why?

[149] Revised APS Letter 2010-1

f. Other problems or agencies involved
It is likely that if a report is received on an open service case, Report of AANE information is already contained in the client's record. A brief summary that provides a description of the client and his or her home environment may be sufficient here.

If other problems were discovered during the investigation, these should be recorded. Does the client have a neighbor or relative who may be contacted in emergencies? Does the client receive home delivered meals, home health nurse visits, or other services from other agencies? Specify agency involvement.

3. Person interviewed and findings should be recorded including the responses to the allegations by the client and the person allegedly responsible; information obtained from witnesses; and worker's observations, which must be specific, clear, and accurately descriptive of the situation.

A specific finding of "Adult in Need of Protective Service" or "Not an Adult in Need of Protective Service" must be recorded and explained.

4. Initial emergency action taken must be recorded. Were services accepted voluntarily or was legal action required? Were protective services court ordered? If so, what action was taken by the circuit or probate courts?

5. Disposition of investigation – a disposition must be made on all allegations made in the report. Therefore, it is possible to have more than one disposition. A disposition must also be made on the person allegedly responsible. The rationale for determining a report to be indicated, not indicated, or undetermined must be fully documented.

Note: If the person allegedly responsible is due the opportunity for a protective services investigative hearing, a disposition shall be entered on the Disposition Findings screen on FACTS[169]; placing the referral in suspended status pending the outcome of the Due Process Hearing. Refer to roadmap-Document Due Process.[150]

6. Action taken must be recorded. The decision may be to close the case for services because none are needed, or the client is not "an adult in need of protective services". In a case with an "indicated" disposition, the decision may be to open the case for protective services, possibly initiate court action, and make referrals to other agencies for additional services. In situations in which it is determined that ANE has not occurred, the case may be opened for preventive protective services or referrals to others if the

[150] APS Letter 2020-15
November 2020

client appears to be at risk of abuse, neglect or exploitation.

D. Suspension Protocol for AANE Reports

Adult Abuse, Neglect and Exploitation (AANE) reports are sometimes received by the Department of Human Resources that will require a joint investigation or collaboration between the Department of Human Resources, Securities Agencies and Law Enforcement Agency (LEA), as well as other out-of-home agencies: Alabama Department of Public Health (ADPH), Alabama Department of Mental Health (ADMH), etc.[151]

Definitions:

A. (LEA) Law Enforcement Agency defined in the Code of Alabama § 36-21-40 as "The state Department of Public Safety, the Alabama Board of Corrections, the police department of each incorporated city or town, the department of each sheriff of the state, including all deputy sheriffs, the Enforcement Division of the State Department of Conservation and Natural Resources, the Public Service Commission, and each public agency in the state charged with the enforcement of any laws and the officers or employees of which have power as such officials or employees to make arrests. The term does not include the National Guard or any military organization."

B. Other Out-of-Home Agencies:
   1) Alabama Department of Public Health is the primary state health agency for the U. S. state of Alabama. It provides a number of public health services to Alabama residents.
   2) Alabama Department of Mental Health is the state agency responsible for serving Alabama citizens with mental illnesses, intellectual disabilities, and substance use disorders.

NOTE: To suspend an APS case in FACTS, only the supervisor or other administrative staff designated by the County Director can document information on the Suspension screen. This will include **suspension reason, request for suspension**, as well as **approval of suspension. The worker should not enter any information on the Suspension screen.** Entry in FACTS using the LEA designation will be limited to the following situations:

[151] APS Letter 2020-15
November 2020

A. Referrals where DNA results in a sex abuse case is pending and the results may assist in determined "indicated or not indicated;"

B. Pending criminal investigation related to an AANE report suspended at the request of LEA. Refer to Adult Protective Services Policies and Procedures, Chapter 2 Section F: Investigations, Role of District Attorney or Law Enforcement, Interview the Person Allegedly Responsible, Due Process and Administrative Hearings.[152]

AANEs in LEA or suspension status in FACTS must be reviewed at least quarterly. FACTS narrative must be updated after each review to reflect the status (e.g., new developments or changes) in the case status. Worker must follow policy in maintaining monthly visits with client while the case is in suspension status.

County Directors shall ensure the suspension status is reviewed by appropriate supervisory staff at least quarterly to determine the appropriateness of continuation of the case in suspension status. County Directors and supervisors should access ERD report INVS302 periodically in determining what cases have been placed in suspension. The worker shall follow up with law enforcement for verification and the APS State consultant for guidance.

County staff shall contact their APS State consultant if they have questions about the suspension status of a particular case.

E. Suspension for Administrative Hearings

Referrals may be suspended for Administrative Hearing (Due Process) only after the PAR has requested an Administrative Hearing and that date has been documented in FACTS. Only the supervisor may document information on the Suspension screen. The worker should not enter any information on the Suspension screen.

Note: The County Office will use templates for the Indicated Letters to the PAR until FACTS moves the letters from the Suspension Screen to the Due Process Screen.

[152] APS Letter 2020-15
November 2020

F. Procedures for Protective Services Investigative Hearings

1. Written notification of an opportunity for a departmental adult protective services investigative hearing must be given to the person allegedly responsible before the Department can share the results of the adult protective services investigation with that person's employer, prospective employer, approving agency, or licensing or certifying agency or group in all in-home care or out-of-home care settings (licensed or unlicensed), e.g., nursing homes, assisted living facilities, foster homes, day care centers, group homes, home health care, etc. under the following circumstances.[153]

2. Persons who qualify for an Administrative Hearing:

a. Any person who is approved, licensed, or certified to care for adults; any person who is employed (i.e., professional, non-professional, contract) by, serves as a volunteer for, or is connected with (e.g., students completing an educational practicum, board members) any facility, agency, or home which cares for and controls any adults and the facility is licensed, approved, or certified by the state; operated as a state facility; or is any public, private, or religious facility or agency that may be exempt from licensing procedures must be offered a hearing when they have been identified as the person allegedly responsible for abuse, neglect and exploitation and the preliminary Adult Abuse, Neglect or Exploitation (ANNE) disposition is "indicated". These individuals must be offered a hearing if they were reported to have abused, neglected, or exploited their own relatives; and

b. The adult protective services report involves any adult in any setting; and

c. The investigation involves one of the following situations:

1.) The disposition of a pending adult protective services investigation tentatively appears to be "indicated" for the person allegedly responsible; or
2.) The Department determines that a concluded "indicated" investigation already entered into the adult protective services departmental files without a hearing being offered to the person allegedly responsible should be shared for the protection of elderly and or disabled or other vulnerable persons; or
3.) Individuals who later seek employment in the field of assisting elderly and disabled persons may be entitled to a hearing before a finding can be released or

[153]APS Letter 2023-03
February 2023

4.) 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 suitability of the person allegedly responsible to have regular and substantial contact with elderly and or disabled or other vulnerable persons in in-home or out-of-home care situations. No hearing is necessary if there are no facts or information to be provided to an employer, prospective employer, etc. in an undetermined or "not indicated" investigation.

3. Persons who do not qualify for a hearing:

A hearing will not be offered in the following instances: when written consent or a release has been obtained from the person allegedly responsible, the person allegedly responsible fails to request a hearing within ten (10) departmental days or when the person allegedly responsible does not have employment (paid or voluntary) with vulnerable individuals. If the person is not employed (paid or voluntary) working with vulnerable individuals, the individual will be offered a record review. The record review will be conducted by the State Reviewer and the County Director or designee. (See details of the notice to be provided to the person allegedly responsible in #4 below). [154]

When 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 procedures. Refer to Chapter II, Section G, Foster Care for Adults, in regard to the relationship of approval revocation procedures or Investigative Hearings for adult foster home providers.

4. An adult protective services investigative hearing is an internal investigative hearing that is fact finding in nature and designed to elicit the facts in an atmosphere that allows the person allegedly responsible to contest the evidence presented against him or her. Except as indicated, the hearing procedures outlined in Chapter V, "Hearings" of the Adult Services Manual shall apply to adult protective services investigative hearings. All information pertaining to the adult protective services investigative hearing shall be documented and filed in the case record.

The adult protective services investigative hearing procedures do not apply to cases in which the Department is performing an investigation for and submitting a report to a court. Therefore, when DHR conducts a home study or makes a report as

[154]APS Letter 2023-03
February 2023

requested by the court, no hearing needs to be offered or given before sharing the information with the court. The court setting provides an adequate opportunity for the Department's findings to be contested if warranted.

5. Prior to the hearing, if the County Department determines that an elderly or disabled or other vulnerable person is in imminent danger of abuse, neglect, or exploitation, any person in a position to discover or prevent abuse, neglect or exploitation or protect the individuals may be informed of information in the investigation. County Departments must discuss these situations with SDHR APS and SDHR Legal for concurrence. SDHR APS will notify the state agency that has licensing or certification or operating responsibility.

6. Notification of the departmental adult protective services investigative hearing must be in writing at the completion of the protective service investigation. The person allegedly responsible 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 opportunity for a hearing for the person allegedly responsible will be considered waived, and the employer, prospective employer, facility administrator, or licensing or certifying agencies or groups will be notified of the findings of the investigation. The victim, a family member or sponsor, or anyone who generally acts responsibly for the victim, may also be advised of the findings of the investigation, once the ten (10) day waiting period is over.

   The notice, which is generated by FACTS[155] (see roadmap-create hearing letter for PAR), must be sent in the form of a certified letter, with restricted delivery, return receipt requested or hand delivered. The FACTS generated letter must be modified to provide the circumstances, time period, and location as described above. See Roadmaps. Example: “On or about July 5-7, 2016, you left Mr. Arthur Example alone in his home.” The outside of the envelope should be marked "Personal and Confidential.” If the mail delivery method is unsuccessful, the worker must attempt to hand deliver. If hand delivered, date of delivery must be documented in the case record. If the above methods fail, contact your Adult Services Consultant for further assistance.

7. Prior approval from SDHR, Program Manager or Program Supervisor, must be given for an Administrative Hearing to be offered to a Person Allegedly Responsible.

   Intra-Agency Review of Referrals for Administrative Hearings: As a part of the Department’s due process for an Administrative Hearing, designated SDHR Administrative Record Review staff will conduct a preliminary review of the

[155]APS Letter 2023-03
February 2023

AANE record. The purpose of the preliminary review of the record is to determine whether there is sufficient documentation in the record to support the need of the hearing process and whether the person allegedly responsible (PAR) for abuse, neglect, or exploitation is entitled to a hearing in accordance with the Code of Alabama. An administrative assignment (not a primary assignment) must be manually created in FACTS to the SDHR APS Program Manager and the SDHR APS Program Supervisor. An email will be sent to inform the Program Manager and Program Supervisor that an Administrative Hearing approval is being requested.

Once the request has been reviewed, and SDHR agrees that the request is valid, the county will receive an approval date that must be entered into FACTS on the Due Process Screen and can proceed with the hearing. If the request for a hearing is denied, the county will receive an email to proceed with a Record Review. Reference the FACTS Roadmap for (Intra Agency AANE Hearing Review).

If approval is given to proceed with a Hearing, the county will proceed as usual with the Hearing process as per policy. If the request is denied the county will proceed as usual with a Record Review and from this point, policies pertinent to the Administrative Record Review apply.

8. The hearing officer will schedule and notify the person allegedly responsible of the date of the departmental adult protective services investigative hearing. A copy of this notification letter will be sent to the County Department. The hearing officer will inform the person allegedly responsible of the following rights:

    a. The right to personally present his or her case or be represented by legal counsel or any other person;
    b. The right to present written evidence, oral testimony, and witnesses;
    c. The right to be provided by the County Department with 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 of the hearing. This written statement shall not identify any witness as a reporter. The County Department may request assistance from the DHR staff or approved attorney in preparing the statement.[156]
    d. The right to review and copy at cost, any written or recorded statement made by the person allegedly responsible to Department personnel in the course of the adult protective services investigation. The request must be made prior to the date for the hearing.
    e. The right 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. The

[156]APS Letter 2023-03
February 2023

material is confined to specific pages, documents, etc., which directly relate to the issue.

f. The right to request an in camera (private) inspection by the hearing officer (not the person allegedly responsible) or an order issued to the Department by the hearing officer to review relevant Department adult abuse, neglect, and exploitation 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 person allegedly responsible through other sources which must be released as necessary to the constitutional fairness of the hearing. The request must be made at least five (5) working days prior to the date set for the hearing.

g. The right to review and copy, at cost, all non-confidential Departmental policy material (e.g., adult services manual materials, APS Letters). The County Department is not restricted in releasing policy materials.

h. If a request is made for any information not available for release under Departmental policy, the hearing officer shall review the request and release only that information necessary for the defense of the person allegedly responsible and the fundamental fairness of the hearing.

i. The right to cross-examine witnesses testifying against him or her at the hearing.

j. The right to request issuance of subpoenas to witnesses. This request must be received no later than ten (10) days prior to the hearing, unless the hearing officer agrees upon a shorter time.

k. The right to review and copy at cost, all documents in the official hearing file maintained by the hearing officer.[157]

9. The hearing officer shall conduct the hearing to determine by a preponderance of the credible evidence whether the person has abused, neglected or exploited an adult. Substantial evidence is defined as those facts which, viewed in light of the surrounding circumstances, would cause a reasonable person to believe that the adult has been abused, neglected or exploited. The County Department will bear the burden of persuasion at the hearing and present witnesses and evidence in support of their departmental determination in order to convince the hearing officer that the allegations of abuse, neglect or exploitation should be determined "indicated" according to the investigative guidelines and procedures found in Chapter II, Section F, Protective Services for Adults, of the Adult Services Manual and the Department of Human Resource's Administrative Code. Relevant and material evidence, including hearsay evidence, visual drawings, and testimony about the use of anatomically correct dolls are admissible in the hearing. The victim or witness may testify at the hearing without prior qualification. The hearing officer shall determine the weight and

[157] APS Letter 2023-03
February 2023

credibility to be given to the testimony. Leading questions may be allowed of a victim or a witness. Videotaped testimony of a victim or a witness may also be allowed. The hearing officer will then make a determination, based on the evidence presented, to either affirm or reverse the County Department's disposition.

10. In pending or concluded adult protective services investigations where the disposition is "undetermined" or "not indicated" (refer to 1.c.3.) of these procedures), the role of the hearing officer is to a determine if the facts in these cases are reasonably related to whether the person allegedly responsible should be allowed to have regular and substantial contact with elderly or disabled or other vulnerable persons, and thus should be shared with the employer or potential employer, victim, or the victim's family, or anyone who acts on the victim's behalf.

11. The hearing shall not be open to the public. An employer or licensing or certification representative may attend the hearing as a non-participant only with the permission of the person allegedly responsible and the Department.

12. 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.

13. The hearing officer will notify the person allegedly responsible in writing of the hearing officer's decision. A copy of this letter will be sent to the County Department. [158]

14. If the County Department's findings are upheld by the hearing officer, SDHR APS shall send a copy of the hearing officer’s final decision letter to the appropriate employer or licensing or certifying agency or group. The County Department shall inform the victim or someone acting responsibly for the victim of the disposition (a family member or other individual). The notification shall be provided in writing. The DHR worker shall document the method of notification in writing within the case narrative. This is because it is in the best interest of the public and the victim. The letter must be marked 'Confidential," "To be used only for the purpose of discovering or preventing adult abuse, neglect or exploitation." The envelope must be marked "Confidential." In addition to the final disposition, the department may also provide the appropriate employer or licensing or certifying agency or group with a brief, factual statement) for the basis of the disposition. When a hearing officer does not uphold the County Department’s findings in an investigative

[158]APS Letter 2023-03
February 2023

hearing, the employer or licensing or certifying agency or group can be informed that a hearing has been held and the allegations are not indicated. See "Application for Rehearing" Chapter V, Hearings, of the Adult Services Manual if a rehearing is being considered by the County Department, person allegedly responsible or representative.

15. If the departmental adult protective services investigative hearing was waived and no hearing was held (for example, the person allegedly responsible did not request a hearing or requested a hearing and later dropped the request) and ten working days have elapsed since sending the notification letter, the County Department may share the disposition of the investigation with the appropriate employer or prospective employer, or licensing or certifying agency or group of the person allegedly responsible or, if requested, to the victim, to a family member or anyone who generally acts on behalf of the victim. This may be done verbally or in writing. In addition to the disposition, the department may also provide the appropriate employer or licensing or certifying agency or group with a brief, factual statement for the basis of the disposition. County Department must coordinate the release of any information with the Adult Protective Services Consultant prior to sharing the information.

16. The final disposition of the allegations of adult abuse, neglect or exploitation as determined by the hearing officer is to be documented on FACTS and the opinion filed in the case record (see roadmap-document due process). A copy of the hearing officer's final decision letter should be filed as a permanent part of the case record. (If a hearing was not held, the worker will file his or her determined disposition in the case record).[159]

17. The adult protective services investigative hearings do not apply to adult protective service investigations involving military installations. Abuse, neglect or exploitation investigative procedures and disclosure of information involving military installations are governed by military regulations and working agreements with military authorities. County staff must contact their Adult Services Consultant for guidance in these cases.

G. Procedures for Agency's Out-of-Home Protocol

1. Notification of Reports:

[159] APS Letter 2023-03
February 2023

a. The County DHR staff receiving the AANE report shall notify SDHR APS Intake within 24 hours or receipt or the next business day.
b. The SDHR APS will notify the state agency that has licensing or certification or operating responsibility that an AANE report has been received.

2. Notification of Disposition:
    a. All PARS will be notified of the disposition by mail or hand delivered as it relates only to their involvement in the AANE. If mailed, send the notice in the form of a certified letter, restricted delivery, return receipt requested and by first-class mail with "Personal and Confidential" marked on the outside of the envelope. The letter must be mailed the same day as the date on the letter. If hand-delivered, adult protective service staff shall document the delivery date in FACTS. Retain a copy of the notification letter in the APS record.
    b. The County DHR staff will notify the SDHR APS Intake of the disposition of the AANE.
    c. Not Indicated Disposition – SHDR APS Intake of the disposition of the AANE.
    d. Indicated Disposition or due process is waived SDHR APS will notify the state agency that has licensing or certification or operating responsibility.
    e. Indicated with a request for an Administrative Hearing – SDHR APS will delay notifying the state agency that has licensing or certification responsibility until after due process has been completed. [160]

*NOTE: Notification prior to a hearing cannot be disclosed unless due process is waived or if the safety of a vulnerable adult would be jeopardized by withholding the information. The use of this emergency provision shall only be used after the county supervisor has consulted with SDHR APS and SDHR Legal for concurrence.

H. Administrative Record Reviews

APS policy contained in this session is in accordance with the rules provided in the Alabama Administrative Procedure Act (Act No. 81-855). Under the Administrative Procedure Act (APA), the Department of Human Resources is required to provide notice and opportunity for a record review to any aggrieved person entitled by law to be given an opportunity for a record review.

[160] APS Letter 2021-04
March 2021

Administrative record reviews are provided to persons allegedly responsible for abuse, neglect or exploitation who have "indicated" dispositions and are **not** entitled to an administrative hearing. The record review is completed to determine if the AANE assessment contains sufficient documentation based on a preponderance of credible evidence to support the "indicated" disposition of adult abuse, neglect, or exploitation. References in the AANE record to previous incidents of abuse, neglect or exploitation, information from the service case record, and additional information provided by the person allegedly responsible for abuse, neglect or exploitation are considered when reviewing the AANE record and reaching the final disposition.

a. Administrative Record Reviews in Cases That Involve Possible Criminal Prosecution

In adult abuse, neglect or exploitation investigations with an indicated disposition and which possible criminal prosecution by local District Attorney's offices (DA) is under consideration, certain procedures concerning administrative record reviews are to be followed. This includes any cases that DHR may have referred to the DA, as well as any case the DA has been working with law enforcement. Administrative record review procedures, in cases that are being considered for criminal prosecution, will be delayed until the criminal prosecution is either underway or in process, finalized, or a determination is made by the local DA **not** to go forward with criminal prosecution. AANEs in LEA or suspension status in FACTS must be reviewed at least quarterly. FACTS narrative must be updated after each review to reflect the status of the case.[161]

In working with DA offices, county departments may share copies of the letters offering administrative record reviews to PARs or any other material in the AANE record. If the county department has already initiated the administrative record review process and then learns of DA involvement and possible prosecution, the administrative record review process should cease until the DA office makes a determination on criminal prosecution.

Note: There may be cases in which due process and administrative record review process has been completed at the time the department learns of DA involvement. Should this occur, the county may share the PARs letters with the DA and any other material in the AANE record.

County departments will need to develop the local protocol with their DA and law enforcement that will include structured procedures to address delays in administrative record reviews when criminal prosecution is

[161] APS Letter 2021-04
March 2021

under consideration. The protocol should include the following considerations:

County Department is responsible for information the DA and law enforcement ask the Department's administrative record review process, its purpose and its end result.

County Department provides written notification to DA that the administrative record review process of the adult, neglect or exploitation investigation is pending.

The county department should schedule a conference with the DA to discuss the status of any criminal prosecution in the case.

After the meeting with the DA, if the DA indicates that prosecution does not appear probable, the county department is to provide a written statement to the DA that unless other information (e.g. addition charges have been filed by LEA) is received within 10 days from the date of the letter, the department's administrative record review will go forward.

In situations that the DA indicates prosecution is probable, but the prosecution had not gone forward; or there is no definite decision about prosecution; or if the case is not yet set for trial, county departments are to contact the SDHR APS for further guidance prior to going forward with the administrative record review.[162]

During the delay awaiting the outcome or status of the criminal prosecution, the case needs to be maintained on the agenda of the local multi-disciplinary team which includes representation from the District Attorney's office. If the county does not have a local APS multi-disciplinary team, they should review cases through the Child Welfare multi-disciplinary team. The county DHR representative on this team should alert the team that an administrative record review will be performed. During this process, the worker is required to maintain monthly contacts with the client.

b. Notification Procedures for Administrative Record Reviews

The following procedures are used in notifying each person identified as responsible for abuse, neglect or exploitation who qualifies for an administrative record review.

[162] APS Letter 2021-04
March 2021

Upon completion of the AANE assessment, adult protective services staff shall provide all persons identified as being responsible for abuse, neglect or exploitation with written notification of their right to an administrative record review. Each person identified as responsible for abuse, neglect or exploitation must be sent a separate letter. If the person is a minor (i.e., under age 19), the notification must be sent in care of the minor's parents or legal custodian who may request the review on behalf of the child.

Notification letters may be provided to the person allegedly responsible for abuse/neglect by mail or hand-delivery. If mailed, send the notice in the form of a certified letter, restricted delivery, return receipt requested **and** by first-class mail with "Personal and Confidential" marked on the outside of the envelope. The letter must be mailed the same day as the date on the letter. If hand-delivered, adult service staff shall document the delivery date in FACTS. Retain a copy of the notification letter in the AANE record.

Notification letters shall contain, at a minimum, the following statements.

> "The Department has concluded its assessment of the abuse, neglect or exploitation allegations where you were identified as being responsible for the abuse, neglect or exploitation. The assessment revealed that on or about *{enter the date}* at *{enter the location when known}* you *{provide a brief, **specific** description of the incident – it is not appropriate to list **only** the allegation}*. We have reached a disposition of "indicated," and the basis for this disposition is *describe the basis for the finding*. In making a final determination on the abuse, neglect or exploitation allegations, we are offering you the opportunity to request an administrative record review. This means the case record will be reviewed by an independent panel of DHR representatives.[163]
>
> If you want to request an administrative record review to contest our findings, you must notify us within ten (10) working days from the date of receipt of this letter. You must submit your request in writing to the County Department at the address shown at the top of this letter. You may include any written information that, in your opinion, proves the findings are not true. The County Department must receive your written request no later than the 10th day from the date or receipt of this letter. If we do not hear from you within this time, your opportunity for an administrative record review will be considered waived."

[163] APS Letter 2021-04
March 2021

The person allegedly responsible for abuse, neglect or exploitation has ten (10) working days from the date of receipt of the letter to submit a written request for an administrative record review. If the person fails to provide the written request to the County DHR office within the designated timeframe, the opportunity for an administrative record review is considered to be waived. Adult Protective Services staff shall then enter the "indicated" disposition into FACTS. Refer to FACTS, Roadmaps, Intake and Investigations, Administrative Record Review Due Process Flow, for directions on entering "indicated" dispositions in FACTS.

When the person allegedly responsible for abuse, neglect or exploitation submits the written request for an administrative record review within the designated timeframe, Adult Protective Services staff must enter the date the request was received into FACTS. Refer to FACTS, Roadmaps, Intake and Investigations, Administrative Record Review Due Process Flow, for directions on entering request for administrative record review on FACTS.

The County Director will send an email to the APS Program Manager requesting an Administrative Record Review, providing the PAR's name, referral number, indicated letter addressed to PAR and a written document from the PAR – requesting the record review.

The State administrative record reviewer shall review all AANE assessment material that is relevant to the case. The reviewer may also request that the County Department obtain additional information related to the AANE assessment either prior to or after reaching a determination. The State administrative record reviewer will contact the County Director (or designee) to coordinate and complete the review process.

When the review has been completed, the State administrative record reviewer will provide the person allegedly responsible for abuse, neglect or exploitation with written notification of the review decision. A copy of the decision, which is considered final, will be sent to the county for filing in the AANE record.[164]

I. Disclosure and Release of Confidential Information

According to Section 38-9-6(e), Code of Alabama, any record of the Department or other agency pertaining to an adult in need of protective services shall not be open for public inspection. Information shall not be disclosed publicly in such a manner as to identify individuals, but may be made available on application for cause to persons approved by the Commissioner of the Department or by the Court.

Pursuant to Child Welfare statutes, no information will be released on a report of

[164] APS Letter 2021-04
March 2021

suspected abuse, neglect, or exploitation in which the person allegedly responsible is under age 14.

Adult Protective Services, SDHR has the authority to release or approve release of Departmental records in accordance with guidelines consistent with state and federal law. Rules of the Department governing confidentiality are found in The Administrative Code, Chapter 660-1-6. Adult protective service records can be shared with other DHR staff with a need to know because of their professional involvement in the protective service case.

Generally, the Department will oppose a subpoena or subpoena duces tecum (a subpoena to produce records) due to confidentiality unless it is a subpoena from the Attorney General or District Attorney in a case which has been referred by the Department. If a court issues a subpoena for a case record or for any worker to testify concerning a client at a hearing, deposition, or elsewhere, the Department, through the worker or local attorney, must inform the court of the statutory provisions, policies, and regulations restricting disclosure of information. The court is required to issue an order mandating the release of the information. The local attorney should contact the Legal office if assistance is needed.

The name of the reporter of suspected abuse, neglect, and exploitation is kept confidential unless its release is court ordered or the reporter's permission is secured. Even if the record is subpoenaed, the worker or the Department's attorney must request that the reporter's identity remain confidential. The reporter's name is to be released only upon the court's order mandating its release.[165]

The worker must document in the case record all requests for and releases of information.

There are certain circumstances where the Department can authorize the release of information from adult protective service records without a subpoena or court order.

Specifically, the County Department can release information to the following:

1. Any person in a position to discover, prevent, or protect an adult from abuse, neglect or exploitation as a result of the information released. Some examples might be:

    a. releasing information to a bank about alleged financial exploitation.

    b. releasing information to a home health agency regularly visiting a client who is said to be abused or neglected.

[165] AS Letter 2025-07
May 2025

c. contacting a relative to request assistance in planning for the client's well-being and safety.

d. sharing information with a community ombudsman. (Refer to "Reports from the Ombudsman Program," in this section).

2. Local law enforcement agencies conducting an adult abuse, neglect, or exploitation investigation.
3. A grand jury finding that the information is necessary to conduct its official business. Adult Protective Services, SDHR should be notified.

4. A court of law finding the information necessary for determination of an issue before the court after being apprised of the department's statutory provisions, policies and regulations restricting disclosure of information. Adult Protective Services, SDHR, should be notified.

5. A physician who has before him an adult he reasonably suspects may be abused, neglected, or exploited.

6. An employer or prospective employer when the person allegedly responsible has or will have contact with elderly and disabled persons as part of that employment. See "Procedures for Protective Services Investigative Hearings" in this section.

7. Releasing information to a mandated reporter after due process has been completed.

8. The Attorney General's Office for the purpose of preventing, discovering, or prosecuting abuse, neglect, or exploitation; and

9. Regulatory groups such as licensing or certifying agencies or groups.[166]

10. Fatality review panel or team

Adult Protective Services, SDHR, will authorize the release of information from the protective services records without a subpoena or court order to a person involved in bona fide research approved by the DHR Commissioner and state and local law enforcement such as the Attorney General's Medicaid Fraud Unit.

[166] AS Letter 2025-07
May 2025

In a court proceeding relating to abuse, neglect, or exploitation, information from a client's protective service record, including reports to the court, can be released to a client's guardian, conservator, or to a guardian ad litem representing the client. An attorney serving in a capacity other than a guardian, conservator, or guardian ad litem will need to wait until the court report has been filed with the court, and request a copy from the court.

The Adult Services Consultant should be notified whenever there is a question regarding appropriate release of information. The Adult Services Consultant may elect to discuss the request with the Legal office. If a guardian ad litem requests information from an adult protective service record which does not relate to abuse, neglect, or exploitation, the Adult Services Consultant should be notified prior to the release of this information. The service worker may, if requested by an attorney or guardian ad litem and recommended by the Legal office, assist that attorney or guardian ad litem in interviewing the protective service client.

Adult protective services records and other confidential information cannot be released to law enforcement agencies without an order of a court of competent jurisdiction when the focus of their investigation is anything other than adult abuse, neglect, or exploitation. Subpoenas are, however, sufficient authority to release information from adult protective service records and other confidential information in fraud cases involving programs administered by the Department being investigated by the Attorney General, a District Attorney, a grand jury, or other law enforcement officials.

V. PROVISION OF ADULT PROTECTIVE SERVICES

A. Provision of Preventive Protective Services[167]

The agency may become aware that the services of the Department may be needed to prevent the abuse, neglect, exploitation or the inappropriate institutionalization of the client through an investigation with a disposition of “not indicated” or “undetermined” or an initial visit in response to an intake call or some other means. The legal authority for providing preventive protective services is Title XX of the Social Security Act. If the worker determines that preventive services are needed, the client should be offered the opportunity to apply for preventive protective services. With supervisory approval, a case may be opened or remain open for preventive protective services. This option is not intended to be used to screen out protective service reports. Its purpose is to provide an intervention option for those at-risk individuals who are not specifically suspected to be abused, neglected, or exploited but who are assessed as being at significant risk of abuse, neglect, exploitation, or inappropriate institutionalization. Adult Protective Services referrals including abuse, neglect reports, and requests for prevention assessments may not be withdrawn.

[167] Revised AS Letter 2007-24
October 2007

Requests for prevention assessments are referrals that do not have a specific abuse, neglect, or exploitation allegation, but are situations in which if no action or intervention occurs, abuse, neglect, or exploitation may develop. Adult Protective Services referrals and requests for prevention assessments must be investigated or assessed. Provision of preventive protective services requires a complete evaluation of the client's problems and needs, the development of a case plan, the completion of the narrative, and approval by the supervisor within 60 days of the initial intake. Client face to face contact should be made as warranted by the situation. However, there is no requirement for first victim contact within 7 days for prevention as there is for abuse, neglect, or exploitation reports. DHR-APSP 1897, "Adult Protective Services Case Plan / Initial or Reviews," must be used for documentation.

If the individual is unwilling to sign an "Application for Adult Protective services", DHR-FSP 1966 (revised 6/20), the worker must be cognizant of the fact that only preventive protective case management services can be provided. While many may be reluctant to sign government forms, often a skillful social worker can provide assistance by identifying mutually agreed upon needs which can be addressed. Case management would include such services as referrals to community resources, arrangements for and perhaps transportation to medical appointments, assistance with resolving unpaid bills, follow-up visits, etc. Periodically, the client should be offered the opportunity to sign the application so that additional service options could be made available. All adults are free to refuse assistance unless or until there is evidence to constitute a report of abuse, neglect, or exploitation. If the individual is firm in his or her refusal of agency involvement, the worker must accept the decision regarding preventive protective service. The worker should provide his or her name and the number of the agency in case the person wishes assistance at a later time.

The goal of preventive protective services is to eliminate the probability of abuse, neglect, or exploitation or inappropriate institutionalization. This probability is significant if there is evidence of an inadequate or overwhelmed caregiver; exhaustion of family resources to care for a vulnerable adult; refusal of the client to accept family assistance or community services; conflict between caregivers regarding level of care; or history of domestic violence or substance abuse. The sale, use or manufacture of illegal drugs in the residence of a client places the client at serious risk. Workers should obtain the assistance of law enforcement in such cases.

If the client's physical or mental health is deteriorating, physician's orders are not being followed, the client lives in isolation, etc., the worker should be alert to the need for intervention before an actual report of abuse, neglect, or exploitation is received. Allegations of verbal abuse (threats, harassment, humiliation, etc.) and neglect should be seen as early warning sign of the potential for physical abuse. Failure of family members to visit or to recognize the client's deteriorating

intellectual or physical functioning should also be seen as early warning signs of the potential for neglect.

Preventive protective services cover a wide spectrum of possible interventions. The client who appears to be competent should be counseled to make decisions about the future before becoming incapacitated. This may include identifying a relative or friend who may be trusted to accept the responsibility of Power of Attorney or Durable Power of Attorney, or appointment as a guardian or conservator. An isolated individual should be encouraged to reestablish contact with estranged family members or old friends or become involved in appropriate community activities. Troubled caregivers can be referred for counseling, encouraged to seek respite care, or assisted in making the decision to consider alternative living arrangements, etc.

Preventive protective services may be provided as long as there appears to be an adult who is at risk of being abused, neglected, or exploited or is at risk of inappropriate institutionalization and with whom actual case work is being performed. A case cannot be kept open unless services are being provided.

B. Provision of Protective Services

Protective services are provided as a result of a founded abuse, neglect, or exploitation investigation or as a preventive measure.

The decision to provide casework intervention in a protective service case should reflect the least restrictive alternative for adequate protection of the client and be carefully documented. According to Section 38-9-4, Code of Alabama, a court may order protective services if a person is unable or unwilling to accept such services. In addition, according to Section 38-9-6, the court may order protective placement.[168]

Alternatives for adequate protection may include informal support from friends, neighbors, and relatives; as well as services available through DHR and other agencies. A successful plan that insures the client's safety and well being may require the coordination of all these informal and formal support systems.

1. The Case Plan

Unless court action is required, the case plan must be developed with the client and the client must consent to whatever action is planned or taken. The following areas are to be addressed and recorded in the contact narrative screen in FACTS using the specific headings:

[168] Revised AS Letter 2007-12
May 2007

a. Documentation of Need for Services - Does the client want, need, and understand services are available to him or her? Does he or she meet the definition of "adult in need of protective services?" What level of care is required under the circumstances? Has a search of the Alabama Sex Abuse Registry been completed and will the information obtained need to be considered as part of the case plan to meet the client's needs?

b. Client's Assessment-What does the client see as his or her problem(s)? What does he or she want to do to resolve the problem(s)?

c. Worker's Assessment - What does the worker see as the problems? What problem needs priority?

d. Case Plan – On what problem(s) do the client and caseworker agree to work? What is the objective to work toward? What actions will be taken by whom and when? If the client does not agree to services, what services or actions can be provided without his or her consent or that of his or her responsible caregiver? For example, the overall case goal is to prevent or remedy abuse, neglect, or exploitation. However, the specific objective may be to locate someone to manage the client's money to insure that rent, utilities, and food are available. This may be accomplished by locating someone to be the client's legal representative or by petitioning the probate or circuit court for appointment of a conservator, whichever is more appropriate.

Incorporate into the case plan all relevant services that may be available and appropriate for the client. Include other agencies that may provide services to the client.

The case plan must be documented on FACTS. DHR-APSP-1897, APS Case Plan/Initial and Reviews, may be used as a field assessment tool. Because this instrument is utilized as a general risk assessment tool for the worker, it is not appropriate to share it with clients. However, it is very appropriate to share page 3 of the document which lists specifically what the plans are and who will be responsible for each step in seeking solutions. This could be very effective in dealing with higher functioning clients who may be feeling helpless while in crisis. [169]

When the case plan involves a protective placement in a facility, case plan documentation must verify that the license or certification of Mental Health group homes, Veteran's Affairs group home, nursing homes, boarding home, or assisted living facility is current as part of a Protective Service case

[169] Revised APS Letter 2019-17
December 2019

plan. License or certification should be captured on Section 12 of the DHR-APSP-1897, if this form is utilized as a field assessment tool. However, the license or certification must be documented on FACTS. APS Case Plan/Initial and Reviews or otherwise documented on FACTS. In FACTS, this is found under the Summary tab in the APS Case Plan. Record this information in the box entitled "Results of Provider Contacts".

2. Casework Services

The adult protective service client should be visited as often as necessary to ensure their protection and the completion of the case plan. The client must be seen at least monthly as long as the case is open for services. The narrative is documented on the contact or narrative screen in FACTS. Some clients may require frequent visits for a period of time whereas others may be visited far less frequently. It is important for the worker to establish a cooperative effort with the client as well as the primary family member or caregiver if there is one.

The caseworker's focus is on alleviating or modifying those factors that have precipitated or may precipitate abuse, neglect, or exploitation. Support of the case plan by the client and his or her significant family members is imperative if the goals set forth are to be reached. [170]

3. Case Plan Reevaluation

Reevaluation of the case plan should include an assessment of progress or lack of progress toward the objective as well as a reassessment of the problems from the client's and worker's point of view. There may be a need to add or delete specific services or alternative placement may need to be considered to ensure the client's protection.

A protective service case should be kept open:

a. as long as there continues to be a need for protective services and there is no person willing and able to assume the kind and degree of protection necessary; and

b. when assistance is needed in maintaining the person in the least restrictive setting.

Reevaluation of the case plan must be completed every six months. Reevaluation of the case plan should include a monthly contact and an assessment of the level of care required and whether that level is being provided. In FACTS, this is recorded in the APS Case Plan under the Summary tab. Record this

[170] APS Letter 2021-11
August 2021

information in the box entitled "Current Description of Problems". When the client is in an out of home placement, verification of license, approval, or certification must be documented. In FACTS, this is recorded under the Summary tab in the APS Case Plan. Record this information in the box entitled "Results of Provider Contacts". In accordance with Targeted Case Management policy, providers of service for the client should be contacted during the case plan reevaluation to assist in assessing the client's progress toward meeting established goals. Refer to Chapter II, Section, E, Targeted Case Management for additional information.

4. Termination of Services

A protective service case should be terminated when:

a. The client dies, cannot be located, or moves out of state. (See "Client Moves During an Investigation or While Receiving Protective Services" in this section.).

b. Services have been provided, the objectives met, and there is no longer a need for protective intervention. An assessment should be made regarding the need for other services. If there is no specific reason to provide the service, the case should be closed. [171]

c. Necessary services are being provided from other sources and DHR protective services are no longer necessary.

d. The client refuses services, and it has been professionally determined that he is capable of preventing his own abuse, neglect, or exploitation.

e. A caregiver becomes available who can protect the client.

f. The client is placed voluntarily with relatives or in an appropriate out-of-home facility and no changes or problems are anticipated and there is no court order requiring protective services. Court ordered protective placements shall remain open to service and six-month reports and other reports as requested shall be made to the court See "Termination of Court-Ordered Protective Placement" in this section. Cases in which the Department has an agreement with a nursing home to make quarterly limited payments on behalf of the client will remain open but may be closed under certain circumstances. See DHR Limited Payment to Nursing Homes, Extension/Termination of Payment in this section.

   Additional reasons for case closure may be found in Service Chapters II D (Day Care), and IIG (Foster Care).

[171] Revised AS Letter 2009-09
September 2009

C. Multi-Disciplinary Teams for Adult Services

Multi-disciplinary teams can be a valuable resource for workers handling difficult cases. Multi-disciplinary teams are created with the goal of bringing together experts in order to take advantage of their collective knowledge and experience and to develop comprehensive plans for clients with a variety of needs. Multi-disciplinary teams are composed of local professionals who work with elderly or disabled persons. A team usually serves a single county, but regional teams made up of professionals working in two or three counties may be more appropriate for rural areas having fewer resources. Some smaller counties have created a single team, which serves clients in both Family and Children's Services and Adult Protective Services.

Team composition and size may vary depending upon the area served by the team. Many teams have between 8 and 12 members, and include representatives from the fields of health care, mental health, and law enforcement. Team members usually serve one to two year terms, and member agencies can be rotated if there are several similar agencies in the area served by the team. Each team has a team coordinator who is responsible for selecting cases for presentation to the team, providing an orientation to new team members about the functions and responsibilities of team participants, and notifying members of the time and place of each team meeting. [172]

Multidisciplinary teams usually meet once a month for about two hours. The presentation and discussion of a case requires about an hour. Cases are normally presented by the worker who is directly involved in the case. Prior to the meeting, the worker prepares a written summary of the case to be presented, which is distributed to team members before the case is discussed. All team members must sign a confidentiality agreement before they begin to hear cases. In addition, the HIPAA Business Associate Agreements must be secured with team members who are not a covered entity, or are not employed by a covered entity. Members who are law enforcement officials are exempt from this requirement.

Although workers are not required to accept the team's recommendations, it is advisable to provide the team with an update on cases that have been presented in the past. A brief period should be set aside in each meeting for this purpose.

Multidisciplinary teams may arrange for guest speakers to address the team on matters of particular importance to the elderly and disabled. A team may also want to work toward the development of new resources for the elderly

[172] AS Letter 2018-07
September 2018

and disabled if a need for a particular service is identified.

Counties interested in developing a team should contact their consultants for information and details on the purpose, composition, and expectations of multi-disciplinary teams.

D. Community Resources

It is important that the worker become familiar with resources available to assist the elderly and disabled. Awareness of federal and state programs as well as local and private entities is necessary to provide maximum efforts toward meeting the needs of adult clients. Each Department listed below maintains a website which may be accessed for latest developments.

1. **Social Security Administration (SSA)** – Administers retirement, survivors and disability benefits, Medicare, and Supplemental Security Income (SSI). Through a toll-free number, 1-800-772-1213, information can be secured about all of these programs. The website is www.ssa.gov/ . There are offices located throughout the state. Workers should know how to contact their local offices. [173]

   The Social Security Administration has an obligation to provide benefits quickly to applicants whose medical conditions are so serious that their conditions obviously meet disability standards. Compassionate allowances are a way of quick identification of predictive diseases and other clearly disabling medical conditions that invariably qualify, and it allows Social Security to quickly target the most obviously disabled individuals for expedited allowances based on objective medical information that can be obtained quickly. Applications can be made on line or by phone, and supporting medical documentation by health care providers can be electronically sent to the Disability Claims Unit. The Social Security website and the two Social Security Disability Determination Claims Units in Alabama – Birmingham, AL, 1-800-292-8106; and Mobile, AL 1-800-292-6743, can be contacted for additional information and assistance. Although other diseases and disabilities meet the Compassionate Allowances criteria, the website, www.ssa.gov/ lists 50 diseases that meet the Compassionate Allowances criteria. The approval average for compassionate allowances is 10 days, and in an emergency, such as immediate need for nursing home care, approval for a terminally ill client can be secured in 1-2 days. The local Social Security office should be contacted to complete an application with the client by phone or in person, if possible. If the client is in the hospital and the client cannot participate in the application process in the usual manner, a Social Security

[173] APS Letter 2016-09
May 2016

representative can go to the client's home or to the hospital to assist with the application process.

2. **U.S. Department of Veterans Affairs** – A veteran, his spouse, and dependent children may be eligible for medical, prescription, housing, guardianship, burial, and death benefits. The Regional office for Alabama is located at 345 Perry Hill Road, Montgomery, AL 36109. The toll-free number is 1-800-827-1000. The website is www.va.gov/ .

3. **Eldercare Locator Hotline** – This service is for the person inquiring about resources or assistance for an elderly or disabled adult who lives in another state. The Eldercare Locator will provide the inquirer with the telephone number(s) of the appropriate state or local agency. The U.S. Administration on Aging, The National Association of Area Agencies on Aging, and the National Association of State Units in Aging are sponsors of the Eldercare Locator Hotline. The toll-free number to be given to the inquirer is 1-800-677-1116. The website is www.eldercare.gov/.

   NOTE: If allegations of abuse, neglect, or exploitation are made, policy in "Report of Victim Residing in Another State" should be followed.

4. **The Alabama Department of Veterans Affairs** - Provides assistance to veterans and their dependents as needed in obtaining benefits. It also administers the Alabama G. I. Bill, which provides education opportunities for dependents of disabled veterans. The address is 770 Washington Avenue, Montgomery, AL 36104. The telephone number is (334) 242-5077. The website is www.va.state.al.us/ .

5. **Alabama Medicaid Agency (AMA)** – Administers the Medicaid program, which is health insurance for eligible persons including State Supplementation, SSI, and TANF recipients. Also, AMA certifies those Medicare beneficiaries who meet technical and financial requirements for the Qualified Medicare Beneficiary (QMB) Program and the Specified Low-Income Medicare Beneficiary (SLMB) Program and nursing home payments. The coverage for these programs is limited to payment of Medicare premiums, deductibles, and coinsurance. The Alabama Medicaid Agency has district offices located throughout the state for eligibility. The main office, located in Montgomery, should be contacted for other services. The telephone number is (334) 242-5000. Medicaid's Administrative Rules may be accessed through their website www.medicaid,al.gov/ .[174]

6. **Alabama Department of Senior Services (DSS)** – Provides coordinated services statewide through regional offices. Services include meals,

[174]APS Letter 2016-09
May 2016

transportation, legal assistance, Elderly and Disabled Medicaid Waiver Services, prescription drug assistance, disaster assistance and home health services. The Department of Senior Services administers the Ombudsman Program. The community ombudsman receives, investigates, responds to, and informally attempts to resolve complaints made by or on behalf of persons residing in a nursing home, assisted living facility, or boarding home licensed by the Department of Public Health. Information can be secured from the local Area Agency on Aging. Ombudsmen are required by statute to report suspected cases of abuse, neglect, or exploitation to DHR or law enforcement. The website is www.adss.state.al.us/.

7. **Department of Mental Health (DMH)** Promotes the health and well-being of Alabamians with mental illnesses, developmental disabilities and substance use disorders. There are residential facilities and community mental health facilities throughout the state. To access services, for any of the conditions, please contact the ADMH at (800) 367-0955 to be directed to the appropriate division. For additional information regarding services in which ADMH provides please visit their website; www.mh.alabama.gov.

8. **Department of Public Health (DPH)** – Services include home health nurse's aides and nursing visits, Elderly and Disabled Medicaid Waiver Services and consultation regarding client's medical needs. The Department of Public Health administers the Ryan White Funds for AIDS patients. These funds pay for home health services (homemaker, nurse, nurse's aides), some medication with priority given to IV medications, and some supplies. To access this resource when other resources are unavailable or have been exhausted, contact the social worker, home health coordinator, or alternative service coordinator in the local County Health Department. The website is www.adph.org/ .

9. **Department of Rehabilitation** - Provides specialized employment-related services and training to assist Alabamians with disabilities in becoming employed. To be eligible for services, individuals must have a physical or mental impairment that is a substantial impediment to employment, and must be able to benefit from rehabilitation services in terms of becoming employed. VRS services include vocational evaluation and counseling, job training, orientation and mobility training, medical and psychiatric treatment, assistive technology and equipment, job placement, post-employment assistance. Specialty programs include Traumatic Brain Injury, Sensory Impaired Services, Business Enterprise program, Sail (State of Alabama Independent Living Program), Hemophilia Service, Supported Employment, and OASIS (Older Alabamians System of Information.). The website is www.rehab.state.al.us/ .

10. **Alabama Cooperative Extension Service, Auburn University** – Advice, consultation, and guidance is offered in the areas of agriculture, home

economics, youth, and community development. Offices are located in each county and practical how-to information is provided based on the needs of those in the area. The website is www.rehab.alabama.gov .

11. **Alabama Institute for the Deaf and Blind (AIDB)** – Provides educational and vocational training for the sight and hearing impaired and a resource for interpreters who may be needed in order to provide services to clients. For information on how to pay for interpreter services if none are available at no cost to the agency, please see section "II. Theory and Practice of Adult Protective Service" earlier in this chapter. There are nine AIDB Regional Centers within the State: The website is www.aidb.org/ .[175]

a.	Huntsville	(256) 539-7882
b.	Talladega	(256) 761-3370
c.	Birmingham	(205) 328-3989
d.	Montgomery	(334) 273-9200
e.	Mobile	(251) 432-7777
f.	Tuscaloosa	(205) 345-2883
g.	Tuscumbia	(256) 383-3503
h.	Dothan	(334) 677-6270

12. **Alabama Disabilities Advocacy Program (ADAP)** – A statewide program to protect the rights of persons who are developmentally disabled or mentally ill. This program provides individual case and legal advocacy, information and referral, as well as training and education. The office is located in Tuscaloosa and operates as part of the University of Alabama's Law School Clinical programs.

    ADAP
    The University of Alabama
    Box 870395
    Tuscaloosa, AL 35487-0395
    1-800-826-1645
    www.adap.net/ .

13. **Legal Services Corporation of Alabama** – Provides free legal counseling for eligible persons. This program handles cases such as housing problems, Social Security denials, and consumer problems. The toll-free number for most of Alabama is 1-800-844-5342. The website address is www.lsc.gov/ .

    For Madison, Morgan, Cullman, and Limestone Counties, Legal Services Corporation of North Central Alabama (256) 536-9645 provide services.
    For Jefferson and Shelby Counties, Legal Services of Metro-Birmingham can be contacted at (205) 328-3540.

14. **Legal Services Alabama (LSA)** – serves low income people by providing

[175]APS Letter 2016-09
May 2016

free civil legal aid and assistance and by promoting collaboration to find solutions to problems of poverty from seven office located in: Birmingham, Dothan, Huntsville, Mobile, Montgomery, Selma and Tuscaloosa. To apply for free legal aid in Alabama, please call 1-866-456-4995 or apply online at www.legalservicesalabama.org/ . [176]

15. **Substance Abuse Hotline** – Serves clients and families seeking help with substance abuse problems. Information is given on treatment centers, bed availability, and support groups. The hotline is sponsored by the Council on Substance Abuse - National Council on Alcoholism and Drug Dependence, Inc.

    The nationwide number is 1-866-210-1303. The website is www.drug-rehab-center-hotline.com/ .

16. **Other DHR Programs** – Resources available within the Department include Food Stamps, TANF, and Child Support. Referrals should be made to other DHR program units as appropriate.

17. **Community Action Agencies** – Administers Food Commodities Program, Low Income Home Energy Assistance Program (LIHEAP). Offices are located throughout the State. The website is www.caaalabama.com/ .

18. **Project SHARE** – Administered by the Red Cross. This service provides energy payments once in winter and one time in summer for eligible persons. Local Red Cross offices should be contacted for additional information. The website is www.redcross.org/ .

19. **Alabama Gas Corporation** – Will waive customer charge for SSI and TANF recipients. Administers Operation Assist, a summer program offering free weatherization measures for low-income customers.

20. **Alabama Power Company** – Will waive the customer service charge for SSI and TANF recipients who qualify. Operates the Life Support Program for customers dependent on electrical life-sustaining medical equipment such as respirators and kidney dialysis machines. These customers are notified of prearranged interruptions in service including planned disconnection for non-payment of the bill.

Enable Savings Plan Alabama ("Enable Alabama" or the "Plan")
Achieving a Better Life Experience (ABLE) Act

In December 2014, the Achieving a Better Life Experience (ABLE) Act, Section

529A of the U.S. Internal Revenue Code, stated an Eligible Individual of age – children, transition aged youth, and adults can open an ABLE account at any time if the disability exists at the time an account is opened, and the onset of the disability was prior to the individual's 26th birthday. The Act permits individuals with disabilities to save more than a total of $2,000 in assets (cash, savings, etc.) in their name in a qualified ABLE account to pay for expenses that enhance their quality of life. (Reference to EnableAL.com) [177]

An Eligible Individual is one who:

a. Is blind or disabled prior to the age of 26 and is entitled to SSI or SSDI benefits; or

b. Has a certification from a physician indicating that he or she has a marked or severe functional limitation that was diagnosed before the age of 26, which is expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind.

Other agencies may provide a wide array of services that benefit the elderly and disabled. Common local agencies include:

The Arc – People with Intellectual and Developmental Disabilities- Works to provide services, employment, training, education, independent living skills, home and community activities for people with intellectual and developmental disabilities.

Hospice – Supportive services for terminally ill patients and their families.

Informational Hotlines/Crisis Help Lines/Support Groups

Adult Day Care/Health Centers

Adult Basic Education Programs

Emergency Assistance – Clothing, food, shelter through Goodwill, Salvation Army, American Red Cross, Food Banks and Cooperatives

Churches, Community Service/Professional Organizations – may provide an array of support and also meet special needs of clients upon request.

Alabama Lifespan Resources Network- Respite Care is temporary short-term relief for caregivers of individuals with special needs such as: developmental and physical disabilities or other chronic illnesses that are related to health concerns,

[177] APS Letter 2017-08
October 2017

medical fragility, or for those at risk of abuse and neglect.

Alabama Agencies on Aging Area Agencies on (AAAs) are local aging programs that provide information and services on a range of assistance for older adults and those who care for them. By contacting your local agency you get access to critical information including:

- Available services in your area
- Mobility assistance programs, meal plans & housing
- Assistance in gaining access to services
- Individual counseling, support groups and caregiver training
- Respite care
- Supplemental services, on a limited basis

Alabama Better Business Bureau
www.bbb.org

Alabama Securities Commission
www.asc.state.al.us

Employment Services
www.joblink.alabama.gov/

Housing and Urban Developmental (HUD)
www.hud.gov/

Jefferson County Department Health Department
www.jcdh.org/

State of Alabama Law Enforcement Agency
www.alea.gov/

Regional Planning Commission
www.ccrpc.org/

Respite Care
www.alabamarespite.org

United Way 2-1-1/Information and Referral Services
www.211.org/

Each city, county and community has unique service resources. The APS worker will need to become familiar with these resources and advocate creating resources for unmet needs.

F. Reimbursement for Meals Purchased for Clients

Instances occur when it is necessary for the worker to purchase food or meals for an indigent protective services or foster care client. This is usually when the worker provides transportation to a nursing home or foster home or when court proceedings, doctor visits, etc. extend through mealtime.
When this situation arises, the worker may file for reimbursement on DHR-FD-1149, In-State Travel Expense Voucher. The meal or food receipt with the client's case number written on it must be attached to this form. See sample form in this section.

G. Purchased Protective Services for Adults

As part of the protective service case plan for adults in need of protection, DHR can provide purchased services on a limited basis. Some services have waiting lists or are restricted to locations where the resource is available. Purchased services that may be provided as part of the case plan include:

1. Adult Day Care
See Chapter II Section D of this Manual

2. Adult Foster Care
See Chapter II Section F of this Manual

3. Interpreter Services
a. Communication Impaired
. Foreign Language

4. Mental Health Group Home Placement
Payment for this service requires the approval of the APS Director. It is only available when no other resources can be located. It is used to supplement other payment sources in order to secure or preserve a placement. The provider invoices the County Department monthly. Contact your APS consultant for additional assistance.[178]

5. Diagnosis and Evaluation
Often, an evaluation of the elderly or disabled client's physical and mental condition and ability is necessary to determine the appropriateness of placement and to establish or reestablish a plan for the person in need of protective services. The Department of Human Resources can pay for diagnosis and evaluation for those protective service clients who need the service but who are not eligible for Medicaid and have no other means of securing the service.

[178]APS Letter 2016-09
May 2016

Diagnosis and Evaluation (D&E) for mental health purposes is defined as the assessment of cognitive processes, emotions, communication skills, and problems of adjustment and behavior through administration or interpretation of tests of mental abilities, aptitudes, interests, attitudes, emotions, motivation, and personality characteristics. Individuals providing this service will at a minimum be licensed psychometrics or psychologists.

For mental health D&E, payment will be made by the Department at the current Medicaid rate. Reimbursement for D&E is limited to the amount appropriate for the necessary level of the test or assessment and the skill level of the person providing that service. See payment procedures under "2. Mental Health Counseling." In rare circumstances, and when there is no other source of payment, D&E may also be approved for evaluating a client's physical health problems. Contact your assigned consultant for case consultation when using D&E to assess physical health.

6. Mental Health Counseling

The Department can pay for mental health counseling for those protective service clients who need the service but are not eligible for Medicaid and have no other means of securing the service. Mental Health Counseling is treatment by individual interview, group counseling, family counseling or collateral counseling. Treatment includes but is not limited to: supportive counseling, behavioral modification techniques, evaluation and assistance regarding social and vocational adjustment, treatment by the use of group dynamics or group interaction, counseling applied to a family as a unit, services to the client through contacts with collateral persons. Individuals providing counseling services under contract with the Department must have the minimum of a MS or MA degree in psychology, social work, guidance, counseling, child development, or rehabilitation counseling from an accredited college or university.

The current rates and fiscal year caps are available under Online Documents. The path is Family Services/Medicaid Rehabilitative Services/Policy/Quick Reference Guide for Medicaid Rehab Mental Illness Services.[179]

The procedure for authorization and payment of diagnosis and evaluation and mental health counseling is as follows:

a. County DHR identifies a provider(s) who can provide service and who meet above-stated criteria. Providers may include the area mental health center, a licensed psychologist or psychiatrist in private practice, or an individual who otherwise meets the criteria.
b. County DHR completes and sends PSD-DSP-1450, Authorization

[179] Revised AS Letter 2007-12
May 2007

for D&E or MHC Services, to provider.

c. Provider serves client.
d. Provider bills per unit (one-half hour) up to maximum amount authorized. Bills must be accompanied by required report from provider.
e. Billing forms submitted to County DHR for approval. County DHR reviews and approves amount for each client.
f. The approved bill from the provider is attached to PSD-BFM-676, Requisition for Medical Examinations, and transmitted to the Finance Division. The PSD-BFM-676 must be clearly marked as D&E or MHC Services for Adults.
g. Finance reimburses provider.
h. Adult Protective Services SDHR monitors the Adult Protective Services budget allocation and advises the County Departments if budgeted funds are being depleted.

NOTE: The provider of service will vary across the state but may include individuals in private practice as well as mental health center professionals. Contact the Adult Protective Services Consultant for those clients who are Medicaid eligible but unable to locate a provider.

7. Other Emergency Services Using Local Funds

Emergency situations will arise in which services cannot be arranged through other agencies, nor can the needs be met through the purchased services referenced in this section. With the County Director's approval, Local Funds may be used to meet these emergency needs in order to prevent or remedy abuse, neglect, or exploitation. Generally, the emergency service needs are for a short period of time; however, some services, such as household maintenance, may be needed on a continuing basic.[180]

Medical needs equipment over $499.00 should be addressed to the appropriate Division's Deputy Commissioner and the DHR Finance Director for authorization of an exception via the State Exception Process. As referenced in Local Funds policy, APS Consultant approval is required for other disbursements for purchases in excess of $499.00. See form entitled "Request for APS Emergency Funds over $499.00 on iDHR.

A recommended maximum payment rate guide for sitter service is based on credentials as follows: RN-$35.00 per hour, LPN-$25.00 per hour, Certified

[180] Revised APS Letter 2015-11
August 2015

Nursing Assistant (CNA)-$18 per hour, and Sitter or Personal Care Assistant-$14 per hour. County offices may negotiate rates that are less than the rates listed. For further information on use of Local Fund, reference the Office of Audit Policy on iDHR, Local Funds in Chapter 20.

Services Definition: Local Funds may be used for the following services:

Respite care or sitter service	Service may be provided in order to provide short intervals of rest or relief in order to prevent or remedy abuse, neglect, or exploitation. Respite may be approved for a short period of time to address a specific need. [181]
Household maintenance	Tasks necessary to maintain safety in the home such as routine cleaning and meal planning, marketing, and preparation.
Transportation	Includes bus fare, gasoline, taxicabs, and payments to others; receipts must be provided.
Shelter	Includes emergency shelter and assistance with utilities, rent, or pest control.
Special needs	Such as emergency clothing, household furniture, personal care needs or equipment.
Other	Boarding Homes and other needs

Vendor Agreement and Vendor Authorizations

Any direct services which will be paid by DHR funds require the completion of a Vendor Authorization Form and a Vendor Provider Agreement Form. Such direct services include: Sitter Care, Respite Care, Household Maintenance, Diagnosis and Evaluation, Emergency Shelter in a licensed facility others than foster care, Mental Health Counseling and Mental Health Group Home and other services that are direct services paid by DHR. Services provided such as Transportation, Shelter

[181] Revised APS Letter 2015-11
August 2015

services as defined above and Special Needs **do not** require completion of the Vendor Authorization Form and Vendor Provider Agreement Form. Vendor services are authorized for approved Adult Protective Services clients in accordance with the case plan to be flexible and individually tailored to the client. The rate structure of these Vendor Service payments is based on the type of care the adult needs. Any vendors providing direct services to clients must be specifically authorized, the Department must receive an invoice following service provision, and invoices must be paid on a timely basis. Continuation of Vendor Services and support provided by any agency or individuals is contingent upon the client agreeing that planned services and supports have been provided and reasonable progress toward objectives has been made. A Vendor Provider Agreement Form and Vendor Provider Agreement Form are located on iDHR under Online Documents-Adult Protective Services-Appendices, Forms and Templates.

Criminal Background checks are required for persons who have unsupervised access to an APS client and a FACTS search should be conducted on the person who is to provide the direct service. Criminal background checks for APS purchased emergency services are paid by the Department. In emergency situations, a Vendor Authorization may be completed based on an acceptable FACTS search and initiation of the criminal background check process. For additional information see iDHR Office of Criminal History Check Documents.[182]

Any vendors providing direct services to clients must provide an invoice to the Department and be paid on a timely basis. The Provider Invoice must be postmarked (by the U.S. Postal Service) no later than the end of the following month from the date on which the service(s) was provided. Invoices postmarked after the deadline will not be paid. Payment for provision of service cannot be made unless such signature is on file and acceptance of payment will signify that the Provider maintains such records.

A FACTS Service Log should be completed on FACTS. The Vendor Authorization Form should also be completed and upon receiving the required signatures and approval, a copy of the Vendor Authorization Form should be given to the provider. When a bill (invoice) is received from the provider, then create a disbursement form on FACTS for payment. See the Road Map under Finance "List of APS Services and where to document in FACTS."

8. Emergency Shelter Care

[182] Revised APS Letter 2015-11
August 2015

Emergency Shelter Care is a component of Protective Services and is limited to 28 days per fiscal year. It provides room, board, and supervision to adults in crisis situations who are in danger of or experiencing abuse, neglect, or exploitation and are in need of emergency shelter as a protective measure. Persons who are experiencing chronic problems concerning living conditions, mental health, or social functioning are not eligible for emergency shelter unless there is a sudden, unexpected occurrence of abuse, neglect, or exploitation which demands an immediate change in living arrangements. An adult in need of nursing care is not appropriate for emergency shelter care. Emergency shelter care is a special resource for clients who need a temporary supervised residential setting when no other resources are available until an assessment can be completed and permanent plans arranged. DHR does not make payment to boarding homes for emergency shelter care, except in Jefferson County where boarding homes are approved by the County Department of Public Health. [183]

a. Recruiting Emergency Shelter Facilities

Emergency shelter care is primarily provided in adult foster homes. Each emergency shelter home must be approved by the County Department as a foster home (Refer to Chapter II, Section G). The provider must sign DHR-ASD-1337, Emergency Shelter Care Agreement, for each client placed in the home.

It is necessary for the County Department to recruit emergency shelter homes. Recruitment efforts should be made in accordance with "Recruiting Foster Homes', in Chapter II, Section G. In addition, approved foster care providers who are not currently caring for their approved maximum number of clients may be interested in providing emergency shelter care in addition to foster care. Families who inquire about foster homes but who do not want to make a long-term commitment may also want to consider this short term care.

An agreement may be made with licensed assisted living facilities to provide emergency shelter care. The licensed capacity of a facility should be checked in the Directory of Health Care Facilities or by contacting Health Provider Standards of the Department of Public Health. The directory may also be found online at www.adph.org. Click on A-Z Contents in that dropdown box and scroll to “Health Care Facilities Directory.”

[183] Revised AS Letter 2007-12
May 2007

In addition to meeting the minimum standards of adult foster care or the Department of Public Health's licensing standards, the foster care provider or facility administrator must agree:

1.) To provide care for adults, 18 years of age or older, 24 hours per day in a protective setting. This includes the provision of shelter, supervision, and nutritious meals and snacks for adults participating in the program.
2.) To operate the home for provision of emergency shelter care seven days a week, including holidays.

3.) To maintain records and submit reports as required by the Department of Human Resources and to make all records available to the Department of Human Resources.
4.) To comply with the requirements of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

5.) To comply with the requirements for safeguarding client information in accordance with Department of Human Resources directives.

6.) To notify the County Department ten days in advance of an expected temporary closing, e.g., vacation, and notify the County Department immediately of an unexpected temporary closing, e.g., illness.

It is necessary to complete an Emergency Shelter Care Agreement, DHR-ASD-1337, each time an adult is placed in an assisted living facility for emergency shelter purposes as the agreement applies to a specific individual placed on a specific date.

b. Pre-placement Procedures

An adult in need of emergency shelter care is in a crisis situation needing security and supervision in a protective setting. He may be frightened and uncertain about the decision to stay in a strange home. There will be little time to prepare him for the placement, visit the shelter home, or to meet the provider. The client will need reassurance from the worker.

The worker will assess the client's physical and mental condition to determine what kind of emergency care is most appropriate for the client. It is best if the client is willing to be placed. If the client is not willing or not able to express his willingness, a court order must be obtained prior to placement. It should be documented in the case record that the client’s health and safety is in immediate danger, that he is in need of protective placement, and that no permanent

resource is available at the time. A Report of Adult Suspected to be Abused, Neglected, or Exploited must be completed on FACTS[184] for each adult in emergency shelter care.
A medical examination is not required prior to emergency shelter placement. An adult who appears to need immediate medical treatment shall be referred to a licensed practicing physician or hospital emergency room for examination and appropriate treatment shall be secured prior to emergency shelter placement. An adult in need of nursing care is not appropriate for emergency shelter care. Refer to "Recruiting Emergency Shelter Facilities" in this section. Payment to a physician for the examination may be authorized, when not available without cost to DHR. Medicaid, Medicare, or private insurance should be billed when the client has these resources. For information about the amount of the payment and procedures to be followed regarding such authorization, see "Procedures Regarding Payment for Service Medical Examination," in Chapter I, Section A.

When an adult is placed in emergency shelter care in a licensed assisted living facility, licensed boarding home (Jefferson County), or nursing home, the adult must meet the criteria for this level of care. Refer to "Placement Resources" in this section.

c. Emergency Shelter Care Payment

Emergency shelter payment by the Department may be made up to 28 days per fiscal year. However, a client who wishes to pay for his own shelter and who is financially able to do so may pay the provider directly. The rate of payment is $18.00 per day and is to be paid for the actual number of days the client is in care including the date he enters and the date he leaves care.

Request SDHR payment by completing and submitting PSD-BFM-676, Requisition for Medical Examination. Follow procedures outlined in Instructions for Preparation of PSD-BFM-676 (Section VI). Cut-off dates for submission of PSD-BFM-676 to the Finance Division for emergency shelter payment are the 9th and 20th of each month.

d. Supervision and Termination of Emergency Shelter Care

When placement is made, DHR-ASD-500, Emergency Information Adult Day Care/Foster Care, must be completed and a copy given to the provider. Throughout the placement, reassurance and support

[184] APS Letter 2022-07
October 2022

should be given to the emergency shelter care provider and to the client. Plans for termination begin the date the client is placed in emergency shelter care.[185]

10. DHR Limited Payment to Nursing Homes

Under certain circumstances, the Department can enter into a financial agreement with a nursing home for a limited DHR payment of up to $150 quarterly to pay for drugs not covered by Medicaid and some personal items or services in order to secure or maintain a NH placement.

a. Criteria for the Limited Payment

The following criteria must be met for the limited payment:

1.) Payment can only be made as a result of an Indicated protective service report when nursing home placement is necessary and the case will remain open for Adult Protective Services. Once opened for service, the case must be reviewed every six months as policy dictates. An adult service case shall not be opened for the sole purpose of making an individual eligible for the limited payment.

2.) Payment is appropriate only when the client has no individual or family resources and no financial sponsor can be located. Financial deprivation should be documented in the client's case record.

3.) Payment can be made to any licensed nursing care facility in Alabama. It is expected that there may be instances when placement in a neighboring state is necessary due to proximity to a client's home or when an in-state resource cannot be secured.

The County Department should carefully document in the narrative the extent of out-of-state Medicaid coverage when considering limited payment out-of-state.

4.) The following are examples of items, which can be included in the total maximum payment of $150 quarterly:

a.) drugs or medical treatment not covered by the Alabama Medicaid Agency or Medicare Part D. It is the responsibility of the nursing home to make every effort to assure that all medications are covered, if at

[185] Revised AS Letter 2016-20
November 2016

all possible. This includes obtaining prior approval for drugs not normally covered under Medicaid and assisting the client in making Medicare Part D selections; or

b.) personal items or services not otherwise covered by the Medicaid basic nursing home charge. Clothing, beauty and barber services charged to the patient, premiums for insurance policies for the purpose of meeting burial expenses, and sitter services are examples of non-Medicaid covered personal items or services for which limited DHR payment can be made.

5) Payment for limited nursing home services may only be made to the extent funds are available for these said costs.

6.) The following are examples of items that **can not** be included in the total payment of $150 quarterly:

a.) luxury items or services such as television or cable; or
b.) tobacco or alcohol products of any kind.

b. Medicaid Covered Nursing Home Charges

According to the Alabama Medicaid Agency, services covered in the basic nursing home charges are:

1.) All nursing services to meet the total needs of the patient including treatment and administration of medications ordered by the physician.

2.) Personal services and supplies for the comfort and cleanliness of the patient. These include assistance with eating, dressing, toilet functions, baths, brushing teeth, combing hair, shaving and other services and supplies necessary to permit the patient to maintain a clean, well-kept personal appearance. [186]

3.) Room (semiprivate or ward accommodations) and board, including special diets and tube feeding necessary to provide proper nutrition. This includes feeding patients unable to feed themselves.

[186] Revised AS Letter 2007-12
May 2007

4.) All services and supplies for incontinent patients.
5.) Bed and bath linen, including linen savers such as pads and diapers.

6.) Nursing and treatment supplies as ordered by the patient's physician or as required for quality nursing care. These include, but are not limited to: needles, syringes, catheters, catheter trays, drainage pads, indwelling catheters, enema bags, normal dressings, special dressings (such as ABD pads and pressure dressings) intravenous administration sets, and normal intravenous fluids (such as glucose, D5W, D1OW).

7.) Safety and treatment equipment such as bed rails, standard walkers, standard wheelchairs, intravenous administration stands, suction apparatus, and other items generally provided by nursing homes for the general use of all patients.

8.) Materials for prevention and treatment of bed sores.

9.) Medically necessary over-the-counter drug products ordered by a physician, with the exception of over-the-counter insulin covered under the pharmacy program. Generic brands are required unless brand name is specified in writing by the attending physician.

10.) Laundry services of personal apparel.

c. Procedure for Establishing Eligibility

The following steps shall be taken in order to establish eligibility for the limited payment:

1.) A financial application for Medicaid must be completed by the appropriate person (family member, DHR social worker, or guardian or conservator, etc.) and filed at the District Medicaid office upon admission of the client into a nursing home when the client is not already Medicaid eligible. On occasion, there may be a client who is ineligible for Medicaid due to income. In such an instance, the DHR limited payment may be approved, if needed, provided the client has resources to pay basic nursing home charges. [187]

[187] Revised AS Letter 2007-12
May 2007

2.) Pre-admission screening as appropriate by the Department of Mental Health must be completed.

3.) DHR-ASD-1778, Nursing Home Agreement, must be signed by the County Director, or his designee, and by a nursing facility representative.

d. Payment Procedures

The nursing facility must submit an itemized bill to the County DHR on a quarterly basis for drugs, medical treatment, and personal items or services (including insurance premiums, clothing, and sitter service) which are not covered by Medicaid. The nursing facility shall certify that the items or services billed for are not otherwise covered by Medicaid.

Requests for payment must be well documented by receipts or statements requiring payment.
If the drug bill is separate from the nursing home charges, e.g., a pharmacy fills prescriptions and sends the bill to the patient or sponsor, the drug bill must itemized and certified by the pharmacy that the items are not covered by Medicaid.

However, SDHR will only pay $150 per quarter, inclusive of the nursing home bill and the pharmacy bill.

Sample nursing home and pharmacy billing forms are provided in this section.

The County Department must approve the bill, and send them to SDHR for payment up to $150 quarterly. The payment request should be entered in FACTS using the instructions found in the Adult Protective Services roadmap. The original itemized paper bill should be sent to SDHR to the person identified in the FACTS roadmap. Each request for reimbursement sent to the SDHR Finance Division shall include:

1.) a cover letter

2.) the original itemized bill from the nursing home, pharmacy, or other provider of appropriate purchases or fees.

e. Extension or Termination of Payment

Once approved, limited payment for a client continues as long as funding is available and the nursing home remains licensed by the State of Alabama Department of Public Health, Bureau of Health

Provider Standards. The revised Limited Nursing Home Agreement, DHR-APS-1778, will notify the nursing home that the contract will continue for each client until further notice. Adult Protective Services, SDHR, will notify the County Departments immediately should funding for this service be reduced or eliminated.[188]

If there is no request for payment from the nursing home within one year (and there is no court order for placement), the case may be closed with a written notice to the nursing home. This notice should include information stating that the case can be re-opened for Adult Protective Services without an investigation if there is a need for payment in the future. Payments will not be paid for expenses while the case is closed; therefore, requests to re-open the case must be made prior to expenditure being made.

[188] Revised AS Letter 2012-01
January 2012

H. Sex Offender Registry Study

In order to ensure that an appropriate case plan is developed to meet the client's need, who is a convicted sex offender, the worker is to complete a search of the Alabama Sex Offender website, www.alea.gov/home/, and document the search results in FACTS. An adult sex offender has restrictions on residency or employment within 2,000 feet of a school or a child care facility. A child care facility includes both DHR licensed and approved facilities, including foster parents as well as statutory exempt facilities like church day care programs. In addition, a convicted sex offender is prohibited from employment, vocation, or volunteer within 500 feet of a playground park or athletic field or facility, school bus stop, college or university, or their business facility whose primary purpose is to care, educate, or entertain minors.[189]

I. Placement Resources

The Department can refer clients or participate in planning for their placement *only in facilities approved, licensed, or certified to provide the appropriate level of care required by the client. No referral or planning for placement may be made to a facility that is subject to the licensing or approving authority of a local or State agency and is unlicensed or not-approved.* No referral or planning for placement may be made to a facility, though licensed or approved, if not licensed or approved to provide the level of care the client requires. For example, a client requiring nursing care is not appropriately referred to an assisted living facility. The approval, license, or certification of the facility providing placement services should be verified and documented at each case plan reevaluation. In FACTS, this is found under the Summary tab in the APS Case Plan. Record this information in the box entitled "Results of Provider Contacts."

Some facilities are not covered by a licensing or approving authority of a State or local agency, such as the Salvation Army Shelter and boarding homes outside of Jefferson County. In these instances, the Fire Marshal and County Health Department's approvals after fire and safety inspections are sufficient. However, clients referred to these facilities should not require any assistance or supervision, e.g. transients.

Contact Adult Protective Services, SDHR when there is any question regarding a facility license or certification or duty to be licensed or certified. For those facilities subject to licensing by the Department of Public Health (i.e. nursing homes, assisted living facilities, etc.), the worker should first check the Directory of Health Care Facilities This directory may be viewed online at www.adph.org by clicking on A-Z Contents in that drop-down box and scrolling to Health Care Facilities Directory. For out-of-county placements refer to Chapter I, Section C, "Case Records During Out-of County Placements."

[189] Revised AS Letter 2012-01
January 2012

There are several placement resources that can be considered in providing protective services outside the client's own home.

The type of placement sought depends on the client's particular needs and preferences, physician's recommendations, and resources available. Some placement possibilities include: relatives; other community resources; boarding or rooming homes; foster care; assisted living facilities; nursing homes; group homes, adjustment centers or institutions for the mentally disabled; and transitional homes, hospitals, or institutions for the mentally ill. (Note that no one can be committed under the Adult Protective Services Act. However, mentally ill or mentally disabled persons may come to our attention through protective service reports. These clients may be in need of commitment to mental health facilities using other statutes.)

1. Relatives

When a determination is made that the protective service client can no longer live alone and that he or she cannot arrange for his or her own care, relatives of the client should be contacted to assist him or her in arranging for care.

2. Other Community Resources

Depending upon the needs and abilities of the client, an alternative community placement may be appropriate.

Living with friends, public housing, congregate living for the elderly or disabled, or house sharing may be the least restrictive residential environment necessary to protect the client.

3. Boarding or Rooming Homes

Placements or referrals to boarding or rooming homes may be made for those individuals who need a facility to provide only rooms and meals. Individuals whose physical or mental disabilities require any care or supervision from another individual shall not be placed in or indirectly referred to boarding home. No referrals or placements may be made to any unlicensed facility.[190]

The Jefferson County Health Department is the licensing authority for boarding or rooming homes in that county and is currently the only County Health Department that has, by State law, established minimum standards for boarding or rooming homes. Prior to contacting a boarding home in Birmingham, the worker should verify the license status and recent

[190] Revised AS Letter 2007-12
May 2007

inspection score which is online at www.jcdh.org or by calling Jefferson County Department of Public Health at (205) 933-9110. The following requirements apply to admission to Jefferson County boarding or rooming homes: [191]

a. Residents must be able to perform their personal care, such as bathing, dressing, feeding, and taking their own medicines.

b. All residents must be able to ambulate independently without bodily assistance. Residents using assisting devices such as canes, walkers, wheelchairs or other devise must be able to transfer from bed to chair independently.

In addition to the restrictions listed above, the following conditions are cause for denial of admission to a Jefferson County boarding or rooming home:

a. Persons with active communicable tuberculosis or any other contagious infectious disease specified by the Director of the Bureau of Disease Control, or Jefferson County Health Department,

b. Persons with a chronic health condition requiring nursing care or daily medical supervision.

c. Persons incapable of leaving the building without assistance in an emergency.

d. Persons requiring any type of restraint or confinement for their own protection, or the protection of others.

e. Persons who require treatment for addiction to alcohol or drugs.

f. Persons with severe symptoms of dementia.

4. Foster Care

Refer to Chapter II, Section G of the Adult Services Manual.

5. Assisted Living Facility and Specialty Care Assisted Living Facilities

An assisted living facility is licensed by the Alabama Department of Public Health, Bureau of Health Provider Standards. An assisted living facility is defined by the Health Department as "a permanent building, portion of a building, or group of

[191] AS Letter 2016-01
March 2016

buildings (not to include mobile homes and trailers) in which room, board, meals, laundry, and assistance with personal care, and other services are provided for not less than twenty-four hours in any week to a minimum of two individuals not related by blood or marriage to the owner or administrator."

There are three classifications of assisted living facilities:

a. Family assisted living facility is for 2-3 adults;
   Note: Existing license may be renewed annually.
   However, no new family Assisted Living Facility license may be granted after 10/1/15.
b. Group assisted living facility is for 3 to 16 adults; and
c. Congregate assisted living facility is for 17 or more adults.

The kind of care provided in an assisted living facility implies sheltered protection and a supervised environment for persons, who because of age or disabilities, are incapable of living independently in their own homes or a commercial board and room situation, yet who do not require hospital or nursing home care. Individuals must be alert and have the cognitive ability to direct his or her own care and needs or to direct others to provide the physical assistance needed.

A Specialty Care Assisted Living Facility is licensed to accept residents with special needs and more limitations in their ability to perform activities of daily living. Individuals with mild to moderate dementia may be appropriate for admission to a SCALF. Special screening instruments are used and the overall assessment of health, behavior, and functioning level of activities of daily living will determine the suitability of this type of facility for each individual. Health assessments will be done monthly or as significant changes in health or behavior occurs. The other assessments will be conducted annually. Individuals who are combative, violent, suicidal, or homicidal will not be admitted or retained in a specialty care assisted living facility.[192]

Foster homes approved by DHR are not included since the rules governing assisted living facilities exempt facilities that are approved by a state agency that has responsibility for the care and protection of the residents.

Each client is required to have a medical examination completed by a licensed physician no more than 30 days prior to admission. The following must be included: diagnosis or statement of condition; statement that person is free of a contagious disease; medication presently prescribed; and statement by the physician indicating assistance is needed with medication or administration of medication. A written plan for care is developed with the physician, resident, and sponsor.

Persons with the following conditions should not be admitted to assisted living facilities under current regulations:

[192] Revised AS Letter 2016-01
March 2016

a. Persons with active, reportable communicable, contagious, or infectious disease, unless prior approval given by the Health Department. [193]

b. Persons with a chronic health condition requiring nursing care or daily medical supervision, persons requiring daily professional observation or persons requiring the exercise of professional judgment from the facility staff.

c. Persons who require the assistance of more than one staff member in leaving the building in an emergency.

d. Persons requiring any kind of restraint or confinement for their own protection, or that of other residents.

e. Persons who require treatment for addiction to alcohol or drugs or persons who require treatment or special care for mental illness or deficiency sufficient to endanger themselves or others.

f. Persons with severe symptoms of dementia.

An Assisted Living Facility can provide the following basic personal care and services when needed:

a. Assistance with personal hygiene.

b. Food service in resident's room during temporary illness.

c. Assistance in dressing or changing clothes.

d. Assistance in activities of daily living and personal safety.

e. Assistance with medication normally prescribed for self-administration and administration of medicine.

6. Nursing Home Care

If the physician recommends nursing home care, and the client consents or the court orders placement, the social worker will assist in locating a suitable placement and securing payment. Nursing homes should be contacted to determine where vacancies exist and a request for admission should be made. Any involvement by a concerned family member should be encouraged. See "Services Related to Nursing Home Care, Chapter I,

[193] AS Letter 2016-01
March 2016

Section A. Nursing homes are licensed by the Alabama Department of Public Health, Bureau of Health Provider Standards.

Preparation for nursing home placement includes a determination as to whether the client has private resources or a sponsor to pay for nursing home care or whether the client meets the current medical and financial criteria for Medicaid coverage. (Medicare may pay for short-term skilled care but does not pay for long term nursing home care). For some protective service clients, there is a possibility of limited payment of $150 quarterly to the nursing home for certain charges. (See "Purchased Protective Services for Adults" in this section).

a. Sponsors

Most nursing homes require a sponsor even when a client has adequate private resources to pay for nursing home care. According to Code of Federal Regulations, Title 42, Part 483, Subpart B, Section 483.12 (d) (2), "The facility must not require third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident' income or resources." Therefore, the sponsor is responsible for ensuring the client's income is used to pay for facility care. The sponsor cannot be held liable for payment of care from the sponsor's personal resources. Relatives, friends, or churches may be sponsor placement may be difficult to make. There may not be a placement available in the client's community and the social worker will need to seek a nursing home elsewhere. *Workers shall not sign forms accepting financial obligations, authorizing release of information, authorizing medical treatment, agreeing to binding arbitration, or accepting HIPAA notification. Also, DHR workers must never sign as sponsor for a client.*[194]

b. Medicaid Eligibility

There are three ways an adult may be financially eligible for Medicaid in the nursing home:

1.) as a recipient of SSI;
2.) as a recipient of DHR payment-SUP or TANF; or

[194] Revised APS Letter 2016-14
August 2016

3.) by application through Alabama Medicaid Agency (AMA) District Office

In seeking payment of nursing home care by Medicaid, the client may be unable or unwilling to sign the application. A relative or other interested individual (s) that has authority to advocate on the client's behalf on the matter may sign the Medicaid application for him or her. The Guardian Ad Litem does not have the authority to sign the Medicaid application but may advocate on his or her behalf. [195]

When the applicant is an adult protective service client familiar to the Department, a DHR employee acting as an agent of the Department shall sign the Medicaid application when there is no one else willing and available to do so. Monitoring an application should be done on a regular basis. When the client is not in a protective placement, cases should remain open until Medicaid is established.

Complete the Medicaid Claimant Statement Form when needed information is not available and the family will not cooperate, etc. This form may be obtained by: www.AlabamaMedicaid.gov, click Alabama Medicaid Agency, click- Apply for Medicaid, drop down to Eligibility Forms and Applications, click- 234 Instructions and form. If a Guardian or Conservator is appointed, the worker should complete the Claimant Statement Form in coordination with that Guardian or Conservator.

While there may be a family member who agrees to assist with the Medicaid process, they may fail to complete the application or provide necessary information to the Medicaid Agency. In situations such as these, the nursing home will contact DHR as failure to provide information to secure needed services which may constitute neglect on the part of the caregiver. Also, failure to provide any of the client's income (SS checks and any other income) to the nursing home as agreed by the caregiver may be

[195] Revised AS Letter 2007-12
May 2007

exploitation. Nursing homes must and are required to contact the local Ombudsman for resolution of these problems and the Ombudsman is required to report suspected neglect and exploitation to DHR if the issue is not resolved. [196]

All applicants must meet certain income, resource, residency, disposal of resource, and medical criteria in order to be eligible for Medicaid in the nursing home. A person must be in a Title XIX medical institution for 30 consecutive days before the application can be approved. It is important that the DHR worker attempt to locate and verify all resources available to the client whenever the worker has signed the Medicaid application as agent of the Department. All income should be verified as well as the client's ownership of CD's, IRA'S, savings bonds, stocks, bonds, and mutual funds. Copies of the client's bank statements or balances may be requested for different time periods.

- For the first 12 months of the look-back period at initial application, each month;
- For the 13th-24th months of the look-back period, quarterly;
- For the 25th-60th months of the look-back period, mid and year-end, e.g. June and December.

Deeds to property currently owned or to which the client has an interest (i.e. their property) should be photocopied. It may be necessary to go to the probate court to research ownership on their interest. See "Reimbursement to Local Funds for Photocopying Expenses" in this section. The worker should question the client about any property owned in another state and contact references. All insurance policies to include all prepaid or prearranged burial arrangements are to be made available to the Alabama Medicaid Agency. The above is not an all-inclusive list and additional verification may be requested by Medicaid.

Specific eligibility criteria may be obtained from the Alabama Medicaid Agency or in the Alabama Medicaid Agency Administrative Code. Each county DHR has received at least one copy of the Alabama Medicaid Agency

[196] Revised APS Letter 2015-05
March 2015

Administrative Code. The Code may be found online by going to www.medicaid.state.al.us/. Click on the "Find it Fast" dropdown box under Search. Proposed rule changes, emergency rules, and final rule changes are transmitted directly to the County Department. It is important to review and file these changes as they are received.

If the client is determined medically ineligible for Medicaid the client may want to file an appeal when there are social factors which prohibit the client being safely cared for outside a nursing home. The worker may also request a reconsideration or fair hearing.

If an application is denied due to excess resources or disposal of resources, a request for reconsideration or fair hearing may be appropriate, particularly when a hardship will exist without Medicaid coverage for nursing home care. No matter the situation, Medicaid will require documentation that efforts to obtain a return of the transferred asset have been exhausted, including voiding the transfer or diligently seeking criminal or civil actions against the perpetrator. If a claimant was deprived of assets due to fraud or deception, Medicaid requires that an official police report or civil or criminal legal actions be executed against the perpetrator. Medicaid Administrative Code's requirements for a hardship exemption list four criteria that Medicaid has determined a case must meet in order to be considered for a hardship exemption:
ACM 560-X.25-10 states that the factors to be considered include, but are not limited to:[197]

(1) Whether the individual has been determined to be a person in need of protection pursuant to the Adult Protective Services Act;

(2) Whether the individual or his representative has exhausted all reasonable efforts to obtain a return of, or compensation for, the transferred asset, including voiding the transfer…or diligently prosecuting other criminal or civil action available to recover the asset;

(3) Whether the individual was deprived of an asset by fraud or misrepresentation. Such claims must be documented

[197] Revised AS Letter 2012-12
September 2013

by official police reports or civil or criminal legal actions against the perpetrator;

(4) Whether the individual or his representative has exhausted all reasonable efforts to meet the individual's needs from other available resources.[198]

Smaller "gifts" and unexplained checks can be significant also. These items can be important when combined and a review of the previous six-months bank statements which Medicaid requires in the application process may be helpful to identify possible Medicaid approval questions. Many transfer of asset penalties do not involve criminal activity or intent (sale of property for less than tax appraised value, family hiring sitters without being aware of Medicaid's policy requiring "contract", etc.)

Under certain circumstances, the resources of an adult protective service client may be excluded by the Alabama Medicaid Agency in determining eligibility for Medicaid in a nursing home. Resources will not be counted during the period from the date a petition to protect the person pursuant to Section 38-9, Code of Alabama, 1975 is filed in the appropriate court (circuit, probate, or district) until the appointment of a guardian or conservator for the person, not to exceed 120 days for Medicaid eligibility. Copies of the petition and subsequent order must be filed with the Medicaid district office.

Some applicants for Medicaid have income that exceeds the eligibility limit for institutional care but may be appropriate for a Qualifying Income Trust (QIT), formerly known as the "Miller Trust." Medicaid staff can answer general information questions regarding the QIT but cannot give advice on legal or tax issues regarding the trust. Applicants may contact their own attorney or the Area Agency on Aging at 1-800-243-5463.

In addition some applicants with financial assets such as property, stocks, saving accounts, etc. may be appropriate for the Alabama Family Trust, a non-profit organization that assists families with mentally and physical disabled loved ones in making long term care plans without jeopardizing their governmental entitlements such as Medicaid or SSI. Information is available at 1-800-711-1303 Monday through Friday, between 8:00 a.m. and 5:00 p.m. CST

c. Department of Mental Health Pre-Admission Screening

[198] Revised AS Letter 2012-12
September 2013

All individuals seeking admission to a Title XIX nursing home must have pre-admission screening in order to prevent inappropriate nursing home admission of persons with mental illness, intellectual disability, or a related condition.

The preliminary screening, called Level I, is initiated by completing an LTC-14 form which can be found online at https://www.mh.alabama.gov/pasrr. This form may be completed online 24 hours a day , 7 days a week. Online submission requires a User ID and password. The User ID is level one and the password is obra1987. [199]

An immediate response and determination will be made for individuals with no mental illness and intellectual disabilities when all required information has been submitted.

The Level I screening may be most appropriately completed by the client's Mental Health Case Worker, RN, or a Physician who has access to the client's medical records including: medical history, physical examination, discharge summary, and psychiatric reports. The Level I screening may be completed by a DHR worker when no medical staff can or will complete the form. When DHR completes the Level I screening, ensure the following criteria are met:

1) There is an active DHR APS case. Submit documentation of the Department's involvement along with the Level I screening.
2) The client meets level of care for nursing home admission.
3) The client is not a danger to himself or herself or others.
4) The client is not currently in a protective setting or hospital.

An eligibility determination made under the above circumstances is valid for 7 days. It is critical that an additional Level I screening is submitted by medical personnel following admission to a nursing home.

When mental illness, intellectual disability, or a related condition is identified through the Level I screening, Level II screening will be conducted by the Department of Mental Health. Level II screening should be completed within 10 days of the referral. The Adult Protective Services Consultant must be contacted immediately if the screening is not completed in a timely manner.

[199] Revised AS Letter 2013-12
September 2013

When a client is denied admission to a nursing home on the basis of his mental illness, intellectual disability, or related condition and if it seems that an appeal is appropriate, a letter notifying the Department of Mental Health shall be sent within the required time frame as given in the denial letter. The Adult Protective Services Consultant should be contacted immediately for assistance in discussing placement alternatives and should be sent a copy of the appeal notice.

Copies of medical and psychological reports contained in Adult Protective Service records may be released to the Pre-admission Screening office of the Department of Mental Health when the information is needed to help or assist in the prevention of abuse or neglect of adults. [200]

d. Casework Services

The worker will want to maintain contact with the client and the nursing home at least until the placement stabilizes. This will vary according to the circumstances that precipitated placement, the client's physical condition, presence of mental problems, etc. See "Services Related to Nursing Home Care", in Chapter II, Section A, for more information.

If there is no relative or sponsor, the worker will want to anticipate what the client's future needs may be, including hearing, vision, and dental needs. One important area is that of burial arrangements and expenses. If the client does not have a burial policy or has not made pre-arrangements, the county making the placement should discuss options for burial. Sometimes funds in the resident's personal account may amount to enough for burial. (See "Pauper Burials" in this section.) If the client is eligible for the DHR Limited Nursing Home payment, it can be used to pay premiums for an insurance policy especially designated to cover burial expenses. See "Purchased Protective Services for Adults" in this section. If no other options are available, the process for seeking a pauper burial at the time of death should be provided.

A DHR client may die in a nursing home having no will and no family known to the facility. It is the responsibility of the county office to search the file and make every effort to locate any relative and provide him or her with contact information to the nursing home. DHR must not accept funds from a deceased client's personal

[200] Revised AS Letter 2013-12
September 2013

account. The nursing home should be referred to the State Treasurer's Unclaimed Fund section when no one claims the client's money.

A case must remain open if the Medicaid application is pending, DHR Limited Nursing Home payment is being made, or if placement is court-ordered. The case should be reopened if a report of abuse or neglect (by a non-employee) or exploitation is received on the client or if the nursing home requests the assistance of the Department working with the client. For a case open only for the DHR Limited Payment to Nursing Homes in which there has been no request for payment from the nursing home within one year, the case may be closed with a written notice to the nursing home. See specific details regarding the Extension or Termination of Payment in the DHR Limited Nursing Home Payment earlier in this manual. As with any adult who is in need of protective services, the Department shall respond if contacted by the nursing home to meet specifically identified needs of the client, regardless of the case's closed status.[201]

When a client is placed in a nursing home in another county, the County Department that makes a placement is the county of origin. That County Department retains responsibility for the client regardless of whether or not the case is subsequently closed. While there could be an agreement regarding supervision of the placement, the ultimate responsibility for any necessary action lies with the county of origin. See "Case Records During Out-Of-County Placements" in Chapter I, Section C.

e. Procedures for Working with Medicaid Termination of Nursing Home Participation Termination of a facility's participation in Medicaid is based on a recommendation from the Bureau of Health Provider Standards, Department of Public Health, to Center for Medicaid or Medicare Services (CMS) Region IV, in Atlanta, who makes a recommendation to the Alabama Medicaid Agency (AMA). Recommendation for termination is the result of a visit to the facility in which one or more requirements (infection control, nursing services, quality of care, pharmacy, etc.) are found to be unacceptable. If requirements not in compliance are considered a serious threat to health and safety, CMS places the facility on a 23-day fast-track termination process. Although facilities may submit additional documentation to CMS, a revisit by ADPH can only be authorized by CMS once the termination process has begun.

[201] Revised AS Letter 2007-12
May 2007

Alabama Medicaid Agency advises recipients and sponsors of Medicaid recipients in the affected facility of the termination and last date of Medicaid payment to the facility. Residents who do not have a relative, guardian or someone to act for them are advised to contact the Department of Human Resources if placement assistance is needed. Medicaid sends DHR a list of patients and sponsors, as well as a vacant bed report for the previous month for all nursing homes, and a copy of the letter sent to patients and sponsors. Residents and sponsors who request assistance with locating alternative placements should be referred to the Long Term Care Ombudsman.[202]

When a nursing home facility's participation in the Medicaid program is being terminated, DHR has a responsibility to assist in locating alternative placements for residents without sponsors or residents whose sponsors fail to make another placement plan. An assessment of un-sponsored, self-sponsored, or residents whose sponsors fail to make a plan must be completed in order to determine whether the individual can consent to another placement or whether a court order for placement is required. If the Department has a protective service court order on an adult in such a facility, the Department clearly has responsibility for placement of that individual. The patient and sponsor must be told that DHR cannot pay for care. It is recommended that one individual in the County DHR be designated as coordinator for assisting in the relocation of patients. That coordinator should keep track of all placements, act as liaison with other County Departments and with Adult Protective Services, SDHR, and ensure that all activities related to termination of Medicaid participation, placement of clients, necessary court orders, and continuity of client entitlements are completed on a timely basis. A single coordinator will also be designated in Adult Protective Services, SDHR.

For clients placed by the Department in a facility outside their county of residence, planning responsibility remains with the county Department that made the placement (county of origin). The county of origin will be responsible for locating an alternative placement. If the Department did not make the placement, and the client lived in a county other than the one in which the nursing home is located prior to entering the nursing home, the files in the client's former county of residence should be cleared to determine if the client ever received services from that County Department or has family resources there. If the client has received services in a former county of residence, that County Department should assume the

[202] Revised AS Letter 2007-12
May 2007

responsibility of locating another placement. If a question arises about which County Department should assume the responsibility for placement, contact the Adult Protective Services Consultant. If the client has not received services from any County Department prior to the Medicaid termination, the County Department where the nursing home is located will be responsible for securing another placement for the client.

A report of suspected abuse, neglect, or exploitation should be completed on residents who are un-sponsored, self-sponsored and whose sponsors fail to plan for them. An investigation must be conducted to determine which patients may be adults in need of protective services. The allegations would be that the client is at risk of losing shelter and medical care. This investigation should begin with the administrator of patients identified as having no sponsor, the nursing home as sponsor, or being self-sponsored. The assessment should include a determination of whether the client can request placement services, whether there are any family resources who may act, or whether a court order will be needed to move the client. It is not necessary to use DHR-ASD-1789, DHR Investigation of Report Received Alleging Abuse, Neglect, or Exploitation. The local attorney should be advised of the situation so that he or she can be prepared to present necessary petitions.[203]

The assessment must also involve a recommendation of level of care required, diagnosis, Medicaid-resource status, and possible sponsor information. It will be necessary to obtain a copy of the patient's medical records to forward to a new nursing home placement. This should include the client's current history and physical, TB test, chest x-ray, Level I/Level II screening, and most recent progress reports. A physician's recommendation is required when care other than nursing home care is being considered (assisted living facility, foster care, or relative's home). Doctors' orders and discharge to another facility are also required. The Department of Public Health may waive certain admission criteria, such as recent TB screenings, for the receiving facility.

Although the affected facility's Medicaid participation may be terminated and payment to that facility ceases in the middle of a month, a client remains eligible for Medicaid through the end of that month. Therefore, a patient can be relocated to a new facility anytime prior to the last date of Medicaid participation. Example - Last date of payment is 8/20/07. Individual clients will continue to be Medicaid eligible through 8/31/07 although no payment can be

[203] Revised AS Letter 2007-12
May 2007

made to the terminated facility. The patient could be transferred to another Medicaid approved facility through 8/31/07 without losing Medicaid status. However, if a client transfers to another facility on 9/l/07, or any time after the month in which eligibility ends, a new Medicaid application must be filed.

Transportation of patients to another placement may be made by ambulance or other means and may be authorized for reimbursement through the Medicaid Agency. Check with your APS Consultant for specific arrangements regarding needed transportation. The physician must determine that ambulance transportation is medically necessary. When patients can be transported safely by means other than ambulance, the receiving nursing home may supply transportation, particularly if several patients are going to one facility. Relatives and friends may transport, as may caseworkers and volunteers, when a determination is made that such transportation is safe to all parties.

The DHR Caseworker responsible for the placement must notify the Medicaid District Office of relocations. SSA, VA, and other income sources should be notified as appropriate. SSI recipients who remain in a Title XIX (Medicaid) terminated facility, or who move to a community placement may be eligible for an increased SSI payment. Medicaid recipients in the nursing home whose SSA income is less than the allowed maximum per month may be eligible for SSI if they reside outside a Title XIX facility.[204]

Receiving nursing homes may be advised to apply to become representative payee for SSI or SSA benefits as appropriate.
Monies collected by the Medicaid Agency from sanctioned nursing homes may be used to meet the needs of residents who must relocate to another facility. Contact Adult Protective Services at SDHR for information on accessing this fund.

The State Health Officer of the Department of Public Health may revoke the license of a nursing home. An emergency suspension of the license may be effective immediately whereas a revocation proceeding may take 35 days or longer.

In most situations, termination of Medicaid participation results in the closing of the nursing facility. However, residents with responsible sponsors may continue to stay in the facility as private pay residents unless the facility loses its license to operate and order to close is issued.

[204] Revised AS Letter 2007-12
May 2007

7. Group Homes for Persons with Developmental Disabilities

De-institutionalization of citizens with services in the community has been a goal for the Department of Mental Health for many years. Residential service is now provided through group homes throughout the state.

To access placement services for the persons with developmental disabilities, unless the placement is court ordered, family members or guardians must contact 1-800-361-4491 to apply for community services. The application process is described in the Department of Mental Health website at www.mh.alabama.gov under Developmental Disabilities, Waiting List. Process for Enrollment.[205]

When DHR does the referral for an adult protective services client, the assigned worker must search the Alabama Sex Offender Registry before a referral is made (see Chapter II-H, page 78).

In addition to long term placement in a group home, temporary short-term admission of an individual may be sought for respite care or crisis stabilization. Crisis stabilization admission may be appropriate for an individual who is experiencing difficulties in social adjustment, or is in behavioral or medical crisis, when there is no alternative option available in their current setting. Respite care may be available for eligible individuals from a family home to provide the caregiver a period of rest from their responsibilities.

Additional information regarding services for persons with developmental disabilities may be obtained by calling their 24-hour referral line at 1-800-367-0955. Certification status verification can be obtained by calling Ms. Debbie Popwell, Director of the Office of Certification, (334) 353-2069, or the Office of Advocacy Services, 1-800-367-0955 or by email, Debbie.Popwell@mh.alabama.gov.

8. Resources for the Mentally Ill Including Transitional Homes, Hospitals and Institutions

Refer to "Commitment to a Mental Institution" in this section. Transitional Home placements may be made from State Hospitals for the Mentally Ill and possibly from the community. The local mental health center should be contacted to see how they might assist in securing protective placements for mentally ill clients. The local mental health authority may also be of assistance in securing hospitalization or institutionalization as appropriate.

The Adult Protective Services Consultant should be contacted whenever a

[205] Revised AS Letter 2012-01
January 2012

caseworker is unable to locate an appropriate placement

VI. THE LEGAL SYSTEM.[206]

A. The Decision to Involve the Legal System

During the course of an investigation or upon completion of an investigation, it may become necessary for the Department to initiate one of several different legal procedures to assure that the client's needs are met and that the client is protected. Workers may want to consider presenting a case to their adult services multidisciplinary team for assistance in determining if legal action is appropriate. Some of the legal procedures in which the Department may become involved include:

- motion to freeze assets and petition for temporary guardian;
- petition for protective placement of an adult;
- petition for emergency protective placement;
- petition for limited guardianship;
- petition for appointment of a legal guardian of the person;
- petition for appointment of a conservator of the estate;
- petition for commitment of an individual to a state mental institution,
- motion to freeze financial assets,
- petition for restraining order,
- petition for discovery, and
- petition for securing authorization for medical treatment.

B. Freeze Assets and Temporary Guardian

In cases of suspected exploitation, it may be necessary to immediately protect the resources of a vulnerable client before the person allegedly responsible is able to further diminish the assets. If the County DHR has reason to believe that the client is unable to manage his or her financial affairs and cannot protect him or herself from exploitation, a motion to freeze the assets and appoint a temporary guardian may be filed in Circuit Court. Sample motion and order are in the Sample Petitions and Court Orders of the APS manual.

C. Protective Placement

Petitioning the circuit court to order protective placement for an individual is the very last resort in case planning. All reasonable efforts must be made to provide the protection needed by the client while he or she remains in his or her present location or a location of his or her own choosing.

1. Decision Process

Before petitioning the circuit court for protective placement, the following conditions should be met:

[206] Revised AS Letter 2012-01
January 2012

a. A very careful investigation must have been made using every reasonable effort to determine the client's true situation, and a decision reached that the client is being abused, neglected or exploited and that there exists a present and very real danger for the client and no one is available to provide the level of protection required[207]

b. A determination should be made that the client cannot receive adequate protection in his present location; and

c. A determination should be made that the client does not have the capability of protecting himself from abuse, neglect, or exploitation or there is conflicting information about whether the client has the capability of protecting himself or herself. A final decision of whether the client is capable of preventing his or her own abuse, neglect, or exploitation is made by the court.

If, after taking the above steps, it is determined that court ordered protective placement is needed, a further matter to be considered is the kind of protective placement that can be arranged for the client if such should be ordered by the court. Since the State Department of Human Resources cannot pay room and board for an adult, except for emergency shelter care, the resources that would be available to pay for care must be explored very carefully. Income from some source will be necessary if payment is to be made for adult foster care, nursing home care, care in an assisted living facility or hospitalization.

For suggestions for placement, see "Placement Resources in part IV Provision of Adult Protective Services earlier in this chapter. In case of emergency placement ordered by the court, a resource will need to be immediately available. Before petitioning the court for protective placement, the County Department should have at least some tentative plan for the client.

In most cases a physician's evaluation or recommendation for care will be needed in order to determine the least restrictive and most appropriate placement. This might be accomplished by utilizing Medicaid or Medicare coverage, the client's own private insurance coverage, or by petitioning the court that any evaluation costs be assessed to the client's estate and that a conservator be appointed to administer that estate.

When making plans for the client, there must be awareness on the part of all concerned that Section 38-9-6, Code of Alabama states that, "Nothing in this act shall be construed to authorize or require medical care or treatment for a person in

[207] Revised AS Letter 2007-18
August 2007

contravention of his or her stated or implied objection thereto upon the grounds that such medical care and treatment conflict with his or her religious beliefs and practices." It further states that no person may be committed to a mental health facility under this law. This means that the Adult Protective Services Act cannot be used as a basis for commitment to a state institution for the mentally ill or mentally disabled.

After all the above has been accomplished, the petition for protective placement will be filed by the County Department only if:

- The person is incapable of consenting or does not consent to the Department's arranging for his or her care and his or her health or safety is in danger; and
- There is not a responsible relative or friend who is able and willing to do so; and
- The County Director or his or her designee, the service worker's supervisor, and the service worker agree that it is in the best interest of the client to petition the court for protective placement or if they question the client's ability to protect him or herself from abuse, neglect, or exploitation. The court then determines if he is an "adult in need of protective services."

2. Petition to the Court[208]

Any interested person may petition the circuit court to order protective placement or other protective services for an adult in need of protective services. Such an interested person would be encouraged to file the petition. Otherwise, the Department of Human Resources would do so. If a relative or interested individual is willing to file a petition but cannot afford an attorney, that person should be referred to the county district attorney's office. If necessary to bring the matter before the court, the County DHR may file the petition and request that the relative join the DHR petition or testify at the hearing. The law specifies that at the hearing any relative or other interested person may appear to oppose or join in the petition of the Department. Following investigation of the allegations, the service worker or Department representative who has direct knowledge of the situation may sign the petition. The County DHR should utilize the approved attorney for their respective county.

It is most important that the petition include allegations that can be proven. Such proof must be based on facts which can be established to the satisfaction of the court. Unconfirmed suspicions and hearsay are not acceptable.

[208] Revised AS Letter 2008-11
July 2008

Refer to 'Sample Petitions and Court Orders" in this manual. If a sample is used, it is to be adapted to fit the particular situation, with additions, deletions, and changes in wording as needed.

3. Court Hearings

Section 38-9-6, Code of Alabama, binds the court to set a date for a hearing not more than 30 days from the filing of the petition. It also specifies that, if the person is not represented by counsel, the court is to appoint a guardian ad litem, and that such hearings will be conducted before a jury of six persons. (For payment of the guardian ad litem see "Legal Costs for Protective Services." this section.)

A judge may decide that a jury trial is not necessary if the client's attorney or guardian ad litem "stipulates to the facts." That is, if he or she agrees to the allegations of the petition and concurs that the client is in need of protective services or a jury trial may be waived if the client's attorney or guardian ad litem is in agreement.

The Supreme Court of Alabama has declined to review an adult protective services case in which the Court of Civil Appeals upheld the trial court's decision finding an adult in need of protective service and protective placement when a trial by jury was waived. The decision rendered by the Court of Civil Appeals, Section 12-16-1 Code of Alabama (1975) indicates that trial by jury can be waived by the parties in a case such as the one reviewed in which a trial was provided for by statute. In this particular case, the trial court specifically recognized that all parties were represented by counsel and adopted an agreement. The Court of Civil Appeals further found that a jury trial within Section 38-9-6 is not of a mandatory nature and thus is capable of waiver under appropriate circumstances. The case establishing this waiver case is Tillery v. State Department of Pensions and Security, 481 So. 2d 386 (Alabama Civil Appeal 1985).

Before ordering protective placement of any person, except as discussed in "Emergency Protective Services" the court is to direct a comprehensive evaluation of the person, if such an evaluation has not already been made The court may direct the County DHR to arrange for the evaluation. The evaluation is to include at least the following:

a. The address of the place where the client is residing and the person or agency who is providing services at present, if any;

b. A resume' of any professional services provided to the person by the Department of Human Resources or other agency in connection with the problems creating a need for placement; and

c. A medical, psychological, social, vocational and educational evaluation and review, where necessary. (See "Legal Costs for Protective Services", this section.)

A copy of the evaluation is to be provided to the guardian ad litem or attorney representing the client.

According to Section 38-9-6(g), Code of Alabama, when a circuit court is considering a petition for protective services, the court may also appoint a guardian or conservator for the person who is the subject of the petition if that person agrees to the appointment of the guardian or conservator.

If the person who is the subject of the petition for protective services does not agree to the appointment of a guardian or conservator, the circuit court may appoint a guardian or conservator without holding a separate hearing, provided the procedures specified in the Alabama Uniform Guardianship and Protective Proceedings Act are followed.

Guardians and conservators appointed in this fashion will have the same powers, duties, and obligations as guardians and conservators for incapacitated persons appointed under the Alabama Uniform Guardianship and Protective Proceedings Act.[209]

If the adult in need of protection is to appear at the court hearing, it is the service worker's responsibility, with the help of the attorney representing the Department, to prepare the client to the extent possible for that appearance, explaining the makeup of the court, other persons expected to be present, and what will be expected of the client. The client should also be advised that his or her choice of an attorney or a court appointed guardian ad litem, as well as the service worker and possibly other members of the County Department staff will be present.

Some judges will require a court report to explain or elaborate on the allegations made in the petition. The court report can be used to inform the court of information gathered during the protective services investigation and of services which have been offered or provided by the Department prior to the hearing. Also, the court report may include the worker's recommendation for placement or appointment of a guardian or conservator.

4. Placement

If protective placement of a client in a particular kind of living arrangement (such as a foster home, mental health group home, or a nursing home) is ordered by the court and unless the court order specifies otherwise, it is the responsibility of the service worker to arrange for the client to be moved to such a facility as soon as the appropriate arrangements for care and arrangement for payment for that care can be completed. (See "Eligibility" in this section). For any placement in a foster home, policies found in Chapter II, Section G, Foster Care for Adults, are to be

[209] Revised AS Letter 2007-18
August 2007

followed, and the Alabama Sex Offender Registration and Community Notification Act, 2011-640 regarding sex offender registration requirements are met. If nursing home care is ordered, the worker will be guided by policies regarding placement found in 'Placement Resources" in this section, and in "Services Related to Nursing Home Care" in Chapter II, Section A.

The Alabama Sex Offender Registration and Community Notification Act, Alabama Act No. 2011-640, became effective on July 1, 2011. An adult sex offender is subject to registration requirements for life. Registration information (exclusive of Social Security No., victim identity, arrest only information) is required to be posted on the Department of Public Safety public registry website, www.dps.state.alabama.us, and is searchable by name, city, county, and zip code.[210]

When an APS client, who is a registered sex offender requires or requests nursing home placement, the client's sex offender status should be considered in nursing home placement for the client. When the client's physician recommends nursing home placement and the client is agreeing to placement, the physician and the prospective nursing home should be informed of the client's sex offender status and the requirement of registration as a sex offender in the nursing home. The client's sex offender status must be included in the court report and documented in the client's case file in FACTS. A terminally ill or permanently immobile sex offender may petition the court for relief from the residency restrictions. This relief is only available for nursing home placements. The Petition for relief from residency restrictions and supporting documentation may be filed in the circuit court where relief is being sought during the time a sex offender is terminally or permanently immobile. A Guardian can file a petition for relief from restrictions as a single transaction when an APS nursing home placement is needed for a protective services client who is terminally ill or permanently immobile where nursing home placement is the case goal. This relief is available only for nursing home placement. A court hearing is to be held within 30 days of filing of the petition, but may be continued on the request of the prosecuting attorney for good cause. A filing fee of $200.00 is required at the time the petition is filed, if filed 30 or more days after sentencing. The court may issue an order releasing the sex offender from any of the residency restrictions if the court finds, by clear and convincing evidence, that the sex offender does not pose a substantial risk of perpetrating any future dangerous sexual offense, or that the sex offender is not likely to reoffend. The court may relieve a sex offender from any residency restrictions indefinitely or for a specific period of time. If at any time the sex offender is no longer terminally ill or permanently immobile, the sex offender shall immediately register, in person,

[210] Revised AS Letter 2012-01
January 2012

with local law enforcement in each county of residence, and update all required registration information.[211]

The Court may enter orders granting the Department additional time to locate an appropriate licensed facility in which to place a person living in an unlicensed facility. Such an order should be requested when the Department anticipates difficulty in finding placements when an unlicensed facility is being closed. The Department of Human Resources has established a coordinating council, by a Memorandum of Understanding, with agencies and groups to promote coordination, placement, and service delivery for persons living in unlicensed facilities and needing placement in a licensed facility. Refer to Appendix C, Adult Services Manual, Forms and Appendices.

The Department of Human Resources can be appointed custodian of the client only for the limited purpose, where appropriate, of transporting the client for protective placement. It must be recognized that no civil rights are relinquished as a result of any protective placement (Section 38-9-6(i)), Code of Alabama); no person may be committed to a mental health facility under the Adult Protective Services Act (Section 38-9-6(f)); and no medical care or treatment which a person says or implies is contrary to his or her religious beliefs and practices may be ordered for that person (Section 38-9-6(i)).

When an individual has been ordered into a protective placement by the court it is the responsibility of the service worker to visit the individual on a monthly or as often as necessary to assess the safety and well-being of the client. The experience leading up to the placement may be traumatic for the client and support may be needed to help the client to deal with adjustment to their new surroundings. Frequency of visits and the amount and kind of help needed by the client may depend on the independence of the client, support offered through the placement and the client's ability to accept the placement.

5. Court Ordered Responsibilities

The court order for protective service or protective placement should specify any particular responsibilities of the Department. For example, if DHR is to transport a client and assist in admitting him or her to a facility, the order should so specify. When specific medical treatment is needed, the court order may include authorization for that treatment. The DHR attorney should be made aware of any anticipated problems or special needs of the protective service client so that they can be adequately addressed with the court.

6. Evaluation of Court-Ordered Protective Placement

[211] APS Letter 2021-11
August 2021

The worker *must see the client monthly or as often as necessary to assess the safety and well-being of the client.* In addition, the worker must evaluate the placement to determine whether changing conditions or circumstances require changes in the plan for the client and make a written report to the court covering the physical, mental and social condition of the client at least every 6 months. This evaluation must include documentation of the level of care required and whether care is being provided in the least restrictive setting required under the circumstances. Such documentation may be secured through participation and written documentation of facility care plan reviews, review of client charts, or written evaluation from a physician.[212]

When the client is a registered sex offender with a petition of relief from residency requirements granted by the court, the evaluation should address any changes in the client's medical, functioning condition and ability.

The client's condition and his or her adjustment to the new surroundings will determine the frequency of additional visits necessary. County staff will probably need some guidance from the judge as to other changes in the client's condition he or she would want brought to his attention. In addition to the above, the report to the Court should include documentation of the placement provider's continued license, approval or certification; assessment of the level of care required and being provided; and the provider's assessment of the client's progress toward established goals.

The judge, as well as SDHR APS, must be informed immediately if the client dies, runs away, or becomes seriously ill either physically or mentally, or the placement facility's license or certification is revoked by the approving state regulatory agency. A court appointed Guardian or Conservator in a court ordered placement case should be notified immediately if a placement facility's license or certification is revoked or suspended by the approving state regulatory agency. If the client becomes seriously ill in protective placement and cannot or does not consent to treatment and has no responsible relative or other person with legal authority (e.g. a guardian) to act for him, it will be necessary to petition the court for such treatment.

If, for any reason a change in living arrangement is necessary, a recommendation to that effect must be made to the court. Examples would be if it appears that a less restrictive environment would be appropriate for the client, or if the client's condition is such that a change is needed to a placement that might be more restrictive but could better meet the client's needs or the placement facility is no longer certified or approved by the appropriate state regulatory agency. If the court orders a change in placement, county staff will cooperate with the court in arranging for the new placement and will also, so far as is feasible, prepare the client for the change. Another circumstance that should be brought to the attention of the court

[212] APS Letter 2021-11
August 2021

would be a need to move the client because of a change in the placement itself, such as serious illness in the foster home.

Policy requires that a protective service client be seen monthly or as often as necessary to assess the safety and well-being of the client. In the case of out-of-county court-ordered placements, it may be necessary for the county of origin to request that the county of placement visit the client who is in the county of placement under a protective placement order. The county of origin is responsible for reporting to the court, based on information received from the county of placement. This does not prohibit the county of origin from making a visit to the client who has been placed out of county and under court order. When workers are visiting across county lines, it is courteous to inform the county of placement that a visit is planned.[213]

7. Termination of Court-Ordered Protective Placement

It is anticipated that termination of court-ordered protective placement may be needed for any one of the following reasons:

a. The client dies, runs away and cannot be located, or moves out of state; or

b. The client's condition improves to the extent that protective services are no longer necessary; or

c. The client can receive necessary protection from an individual such as a responsible relative who becomes available, willing, and able to provide protection and care. Stabilization in a nursing home, foster home, or other placement does not warrant termination of court ordered placement.

Since the Adult Protective Service statute does not specifically provide for termination of a protective order, some courts may be reluctant to issue such an order in response to a DHR petition. In the absence of such statutory authorization, the Department's position is that continued protection of a person no longer in need of protective services is a constitutional violation and looks to the mental health rulings below as an example of how to address the issue.

Section 38-9-3, Code of Alabama, states that the chapter is designed "to place the least possible restriction on personal liberty and exercise of constitutional rights consistent with due process and protection from abuse, exploitation and neglect." In the mental health context, the federal courts have ruled repeatedly that constitutional due process requires "post- commitment periodic judicial reviews" to determine if the requirements for commitment continue to be met. If the person

[213] APS Letter 2021-11
August 2021

is determined to no longer meet those requirements, the federal cases hold that the person must be released. Wyatt by and through Rawlins v. King, 773 F. Supp. 1508 (M.D. Ala. 1991), clarified 781 F. Supp. 750 (now terminated); Schell v. State Department of Mental Health and Mental Retardation, 606 So. 2d 1149 (Ala. Civ. App. 1992) (affirming denial of issuance of a writ of habeas corpus but stating the general principle that a writ may be granted where proven that the person was no longer mentally ill or dangerous, citing state and federal cases); see also Stitt v. Department of Mental Health and Mental Retardation, 562 So.2d 259, 260 (Ala. Civ. App. 1990)("When a committee seeks to be released from custody, his remedy is to petition for a writ of habeas corpus pursuant to section 15-21-3, Ala. Code 1975"). [214]

Note: Writ of habeas corpus is a written order to bring a person before a court or judge in order to release that person from unlawful restraint or detention.

[214] Revised AS Letter 2012-08
July 2012

Procedures to be followed by County staff are:

1.) If the client dies, that information should be included in a report to the court. If the client runs away and cannot be located, that information should also be reported to the court. Either of those reports is filed immediately. A very careful evaluation of the client's condition and the circumstances should be made to determine whether further steps (including possible request for help of law enforcement officials) should be taken to locate the client.

2.) When a client under a protective placement order moves out-of-state, a motion to vacate the order should be filed with the Circuit Court. The state of residence should be notified of the client's location there through written correspondence sent by certified mail, return receipt requested. The case summary to the state of residence should include circumstances which precipitated the protective placement order, services rendered to the client, and a recommendation for follow-up action.

3.) If the service worker and his or her supervisor make a decision that protective services are no longer needed by the client, county staff should petition the court to be relieved of the protective placement order.

4.) If adequate protection can now be provided from some other source, such as a responsible relative or guardian, the Department should advise the responsible person to seek the writ of habeas corpus and request that the Department of Human Resources be relieved of the protective placement court order. The writ of habeas corpus should cite §15-21-3, Code of Alabama, as a reason to terminate the order of protection for the least possible restriction on the individual's personal liberty and exercise of constitutional rights.[215]

D. Emergency Protective Services

Section 38-9-5, Code of Alabama, specifies that if the client's health or safety is in immediate danger and the client is incapable of giving consent or does not consent, the Department will petition the circuit court for an order authorizing the Department to arrange for care for such person immediately, if it appears that delay would cause irreparable harm. According to Section 38-9-5, Code of Alabama, the Department is the only authorized petitioner for emergency protective placement. A relative or interested person may join in the petition with the Department. If the court finds that such care is urgently and immediately necessary to protect the health and safety of the client, the Court will issue an order authorizing county staff to arrange for the placement of such a person

[215] Revised AS Letter 2007-18
August 2007

in an approved foster home, licensed nursing home, or other similar facility immediately. In such case, if the County Department is unable to arrange for a satisfactory placement immediately, contact Adult Protective Services, SDHR, immediately for consultation. At the court proceeding, any relative or other interested person may appear to oppose or join the petition. (Attention is called to the discussion under "Eligibility" for payment for the client's room, board, etc.) When such placement has been made, it is the responsibility of the court, within the next 10 days, to set a date for a hearing and to give notice to the person and, as appropriate, his or her spouse and to other interested persons of the action of the court, the present whereabouts of the person, and plans for the hearing regarding the person's need for protective placement, the appropriateness of the present placement, and arrangements for future care.[216]

See "Sample Petitions and Court Orders" in this section.

E. The Alabama Uniform Guardianship and Protective Proceedings Act

The Alabama Uniform Guardianship and Protective Proceedings Act of 1987 (AUGPPA) established procedures for the appointment of a guardian of the person and a conservator of the estate for "incapacitated persons" as well as the powers and duties of each appointment. The AUGPPA established the concept of a "guardian" as being responsible for the person and a "conservator" as being responsible for the estate and financial affairs. With this Act, it became possible to address an individual's specific needs regarding health, support, education and maintenance or need for a protective order related to the estate and business affairs.

The Department is empowered under this act as an "other interested person" to petition for appointment of a guardian of the person or conservator of the estate. (Code of Alabama, Sections 26-2A-20-(13) (15); 26-2A-102; and 26 2A-133) Passage of this Act does not change the Department's responsibility for protective service to adults but provides another legal alternative to assist in that protection. An investigation and a determination that there is no one ready, willing and available to assume the protection necessary as well as "Indicated" finding for abuse, neglect, or exploitation is necessary for the Department to petition for appointment of a guardian or conservator.

See "Sample Petitions and Court Orders" in this manual.

1. Role of the Service Worker

The role of the service worker is to identify the need for appointment of a guardian or conservator; assist in obtaining evaluations, and assist in locating an appropriate guardian or conservator. *The Department of Human Resources may not be appointed to be a guardian or a conservator.*

[216] Revised AS Letter 2014-04
February 2014

2. Appointment of DHR as Court Representative

Section 26-2A-102 and Section 26-2A-135 of the AUGPPA provides that an alleged incapacitated person must be interviewed by a court representative. The probate court may utilize the service of any public or charitable agency such as DHR, as court representative to evaluate the condition of the alleged incapacitated person. A report of AANE must be completed if the court indicates AANE is a possibility, but otherwise it would be opened as a preventive protective service case. The court representative will interview the alleged incapacitated person, the petitioner and the nominated guardian or conservator. In addition, a visit to the current and proposed place of residence of the alleged incapacitated person will be made. A written report is to be submitted to the court. A guide for the report to the court is included in "Sample Petitions and Court Orders" in this manual which includes the information required in the statute (26-2A-102(b); 26-2A-130(c); and 26-2A-135). Please see "Legal Costs for Protective Services" "7. Payment to SDHR as Court Representative" for guidance in seeking compensation for providing this service to the Court. [217]

When DHR petitions for appointment of a guardian or conservator, the court may appoint another agency as court representative.

3. AUGPPA Definitions Relevant to Adult Protective Services (Section 26-2A-20)

Conservator is a person who is appointed by a court to manage the estate of a protected person and includes a limited conservator as described in Section 26-2A-148a.

Court as used in AUGPPA is any probate court of this state.

Court Representative is a person appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

Guardian is a person who has qualified as a guardian of a minor or incapacitated person pursuant to parental or spousal nomination or court appointed and includes a limited guardian as described in Section 26-2A-78 and 26-2A-105c, but excludes one who is merely a guardian ad litem.

Incapacitated Person is any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication or other

[217] Revised AS Letter 2007-18
August 2007

cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

Minor is a person who is under 19 years of age and has not otherwise had the disabilities of minority removed.

Parent includes any person entitled to take, or who would be entitled to take, if the child died without a will, as a parent by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

Protected Person is a minor or other person for whom a conservator has been appointed or other protective order has been made as provided in Sections 26-2A-136 and 26-2A-137.

Protective Proceeding is a court proceeding to appoint a conservator and obtain protective orders.

Ward is a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

F. Appointment of Guardian of the Person

According to Section 26-2A-102(a), Code of Alabama, an incapacitated person or any person interested in the welfare of the incapacitated person may petition the probate court for the appointment of a guardian. This section allows the Department to petition for appointment of a guardian. A petition may be filed where the incapacitated person resides or is present at the time the proceedings are commenced.[218]

1. Due Process Protection

The AUGPPA provides considerable due process protection including:

a. trial by a six-member jury (26-2A-35);

b. proof of notice to the person or his attorney (25-2A-50);

c. appointment of a guardian ad litem unless the person retains his own counsel (26-2A-102(b));

d. the right to be present at the hearing, to be represented by counsel, to present evidence, to cross-examine witnesses and to demand a

[218] Revised AS Letter 2007-18
August 2007

jury trial in courts having general equity jurisdiction which currently includes only Mobile and Jefferson Counties.

Additional protections include:

a. examination of the alleged incapacitated person by a "physician" or "other qualified person," and

b. an evaluation by a court representative (26-2A-102(b)). "Other qualified person" permits the court to appoint a psychologist to interview the alleged incapacitated person, the petitioner, and the proposed guardian. In addition, the court representative must visit the place where the alleged incapacitated person currently lives and the proposed residence or place of detention. (See "Appointment of DHR as Court Representative".)

2. Who May Be Appointed Guardian

Section 26-2A-104 provides for any qualified person to be appointed guardian of an incapacitated person. §26-2A-20(15), defines person as "An *individual or an organization*, unless the context otherwise requires." The court will give consideration for appointment in this order listed below but can, in the best interest of the incapacitated person, appoint a person with a low priority or no priority:[219]

a. The person most recently nominated for durable power of attorney;

b. The spouse or person nominated by will or nominated in writing by the deceased spouse and attested by two witnesses;

c. The adult child of the incapacitated person;

d. A parent of an incapacitated person or a person nominated by will of a deceased parent or nominated by other writing signed by a parent and attested by at least two witnesses;

e. Any relative with whom the person has resided for more than six months prior to the filling of the petition;

f. A person nominated by the person who is caring for or paying for the care of the incapacitated person.

The worker or Department cannot be appointed guardian.

3. Parental or Sibling Appointment as Guardian of Developmentally delayed Child at Age of Majority

[219] Revised AS Letter 2007-18 August 2007

Section 26-2A-102(d)(e) of the AUGPPA allows the custodial parent(s) or adult custodial sibling of a developmentally delayed child after that child has passed his or her minority to file a *written request* (in lieu of petition) to be appointed guardian of that adult child or sibling. The court, based on a written report of the findings certifying incapacity due to developmentally delayed by a physician or other qualified person, may waive any or all procedural requirements of the AUGPPA. Following an informal hearing, the judge of probate may issue an order of guardianship as requested, deny the request, or delay a determination based on additional information. This procedure was developed to provide an informal and less expensive procedure to guard the needs of an incapacitated developmentally delayed person being cared for by family members.[220]

4. Parental or Spousal Appointment of a Guardian for Incapacitated Person

The AUGPPA provides for parental or spousal appointment of a guardian of an incapacitated individual. Section 26-2A-100(a)(b)(c)(d) stipulates that a parent or spouse may appoint a guardian by will or other writing, signed by the parent or spouse and attested by at least two witnesses. Such an appointment is terminated at the written objection of the incapacitated person, but the court may appoint the nominated guardian or another suitable person upon the adjudication of incapacity of the individual. An appointment by a spouse has priority over an appointment by a parent. Both appointments require the nominated guardian to file acceptance of appointment in the court.

5. Emergency Order and Temporary Guardians

Section 26-2A-107 provides that if an incapacitated person has no guardian, and an emergency exists, and no one appears to have the authority to act in the situation, the court can appoint a temporary guardian for a period not to exceed 30 days. The court can renew the appointment for an additional period depending upon the situation.

If the court finds that an appointed guardian is not effectively executing his or her duties of the appointment, a temporary guardian may be appointed for the incapacitated person for a specified period not to exceed six (6) months. The authority of the permanent guardian is suspended as long as the temporary guardian has authority.

6. Power and Duties of a Guardian

Effective January 1, 2017, Section 26-2A-108 of the Code of Alabama 1975 (Act 2016-404) was amended to state a guardian of an incapacitated person has the power to limit or enforce the ward's right to visitation or

[220] Revised AS Letter 2016-24
December 21, 2016

communication with anyone, including the right to receive visitors, telephone calls and personal mail. Specifically the guardian must (26-2A-78).

a. Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health.

b. Take reasonable care of the ward's personal effects and initiate protective proceedings, if necessary, to protect other property of the ward.

c. Apply any available money of the ward to the ward's current needs for health, support, education or maintenance.

d. Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs.

e. Report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court or petition of any person interested in the ward's welfare or as required by court rule.[221]

In addition to the above duties, the guardian may:

a. Receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit (SSI, SS Benefits) or insurance system or any private contract, devise, trust, conservatorship, or custodianship, and money or property pursuant to Section 26-2A-6 (Refer to "F. Use of Resources by a Guardian").

b Take custody of ward and establish the ward's place of residence in or out of state, consistent with the terms of any court order of competent jurisdiction regarding living arrangements of the ward.

c. If no conservator for the estate of the ward has been appointed, the guardian may institute proceedings, or take appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

[221] APS Letter2016-24
December 2016

d. Consent to medical or professional care, treatment or advice for the ward without liability unless a parent would have been liable in the circumstances.

e. Consent to the marriage or adoption of the ward.

f. If reasonable under all circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

In order for an adult to remain as self-reliant and independent as possible, the court may limit the above statutory powers of a guardian and establish a limited guardianship (26-2A-78e and 26-2A-105c). Any limitation on the statutory power of a guardian must be endorsed on the guardian's letters. A limitation may be removed.

7. Receipt of Resources by a Guardian and Posting of Bond

The AUGPPA makes a clear distinction between a guardian of a person and one of the property (conservator). However, there are certain circumstances under which a guardian may receive money or personal property. According to Section 26-2A-6, persons may pay specified amounts of money to a guardian if a conservator has not been appointed. *Payments must not exceed $5,000 in a single payment or $3,000 a year if paid in a series of payments*. The guardian is obligated to apply the money to the health, support, education or maintenance of the ward, and may not pay themselves for anything except *out-of-pocket expenses for goods and services*. In cases having no guardian or conservator appointed, the judge of probate in the county of residence can receive money or personal property of an incapacitated person. (26-2A-6(3). [222]

8. Compensation or Termination of a Guardian

A guardian may be compensated for his or her services and be *reimbursed* for room, board, and clothing personally provided by the guardian, but only *as approved by the court*. If a conservator, other than the guardian, has been appointed, *reasonable compensation and reimbursement* may be approved and paid by the conservator without order of the court. (26-2A-78d)

Authority and responsibility of a guardian of an incapacitated person terminates at the death of a guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation of the guardian.

[222]APS Letter 2016-24
December 2016

The court may specify a minimum period of the incapacity not exceeding one year. Subject to this restriction, the court may entertain a petition to remove the adjudication of incapacity.
(26-2A-109; 26-2A-101; 26-2A-111)

9. Relative Visitation Rights and Ward

Effective January 1, 2017, Section 26-2A-113 Code of Alabama 1975, was amended to provide that a relative may file a petition with the court to compel visitation with a ward from whom he or she has been isolated. The petition for visitation is to be filed "in the court having jurisdiction over the guardianship of the ward." The court shall provide notice not less than 14 days before the hearing in the manner specified in Section 26-2A-103, Code of Alabama 1975. i.e. notice of the hearing must be given to the ward, guardian, and any other person as ordered by court. A determination by the court regarding capacity under this section may not be used as evidence of capacity in any other proceeding. If the petition filed under this law states that the ward's health is in significant decline or that the ward's death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but not later than 10 days after the petition is filed. Further, on motion of either the petitioner or the guardian or the court, the petition shall be transferred to the circuit court for the sole purpose of a determination of any relief under this law.[223]

a. The petition for visitation must contain:

1. Known condition of the ward's physical and mental health and
2. Efforts to obtain visitation with the ward; and
3. Proposed visitation that is sought; and
4. Deficit or deficits in the ward's mental functions that are impaired and an identification of a link between the deficit or deficits and the ward's inability to respond knowingly and intelligently to queries about the requested visitation, and
5. Known names and addresses of the spouse and relatives of the first degree of the ward.

b. Definitions:

[223] APS Letter 2016-24
December 2016

1. A RELATIVE is defined as a sibling, child, parent, grandparent, or grandchild of a person who shares this same relationship through adoption or a spouse of the ward.
2. VISITATION is defined as an order issued by the court after notice and hearing regarding the visitation with a ward by his or her relative specifying the approval or disapproval of any visitation and the specifics of that visitation.
3. A VISITATION ORDER is defined as an order issued by the court after notice and hearing regarding the visitation with a ward by his or her relative specifying the approval of any visitation and the specifics of that visitation.[224]
4. A WARD is defined as an adult for whom a guardian has been appointed.

c. DHR Report

The court may order DHR or the Court Representative to do any or all of the following duties related to the visitation petition.

1) Conduct interviews with the ward, all petitioners, the relatives of the ward, and to the extent practical, neighbors and, if known, close friends of the ward.
2) Inform the ward of the contents of the petition.
3) Determine whether the ward has the capacity to consent to the requested visitation. In determining the ward's capacity to make a decision on visitation, the worker should consider whether the ward makes decisions on any other areas of his or her daily life such as what to eat, what to wear, what he or she wants to do during the day, the ward's reaction to the petitioner, his or her reaction and interaction with other people, whether he or she has visits from others, etc. If there is any question regarding the ward's capacity to make a decision regarding visitation, the worker should request an evaluation by a physician for this specific purpose and request the cost of such an evaluation be assessed against the petitioner.
4) Determine whether the ward desires the proposed visitation.
5) Report to the court in writing, at least seven days before the hearing, concerning 1) through 4) above.

[224] APS Letter 2016-24
December 2016

6) Mail, at least seven days before the hearing, a copy of the report to the court to the petitioner or his or her attorney, the guardian ad litem of the ward for the petition of visitation, the guardian, and any other person as the court orders.

The form "Visitation Report to the _____ Court" has been developed for use in completing the Visitation Report to the Court. The purpose of the report is to convey factual information collected during the required interviews. The report should refrain from stating opinions or recommendations not specifically required by the statue, including, but not limited to, recommendations concerning visitation. The report to the court on visitation is confidential and can only be made available to the parties, persons listed in 6) above, persons given notice of the petition who have requested the report or who have appeared in the proceedings, their attorneys, and the court. If DHR or the Court Representative has performed an investigation within the preceding 12 months, and provided a report to the court, the court may order that another investigation is not necessary or that a more limited investigation may be performed.[225]

The APS worker should attend the visitation hearing only if subpoenaed and when subpoenaed, attend along with a DHR attorney.

Such referrals from the Court may be entered on FACTS as either a Prevention or an Investigation depending on whether there are allegations of abuse, neglect or exploitation. When an AANE investigation is conducted, caution should be taken to ensure that only the above requirements related to visitation are included in the Visitation Report.

DHR has no duty to keep a Court referred visitation case open for services unless there is a need for protective services.

d. Court Ruling

The law requires that the court conduct a hearing to determine whether the ward has sufficient capacity to make a knowing and intelligent visitation decision based on evidence presented. If court determines that the ward has sufficient capacity to make a knowing and intelligent decision and the ward expresses a desire for visitation with the petitioner, the court shall order visitation.

[225] APS Letter 2016-24
December 2016

If the court determines that the ward has capacity to make a visitation decision and does not desire visitation with the petitioner, the court shall not order visitation.

If the court determines that the ward does not have capacity to make a visitation decision, the court shall determine whether to order visitation based on the best interest of the ward as determined by the evidence presented to the court.

The court shall order the petitioner to pay court costs and reasonable fees and expenses of any attorney or court representative appointed under this law. Please see "Legal Costs for Protective Services" "9. Payment to SDHR as Court Representative" for guidance in seeking compensation for providing the Visitation Report to the Court.[226]

e. Guardian Notice to Relative

The guardian shall provide certain notices to the relative who has provided his or her current contact information unless the court relieves the guardian of providing notice finding that:

1) The relative entitled to notice about the ward has submitted a written request to the guardian electing not to receive notice about a ward's health and residence.
2) A protective order was issued against the relative to protect the ward.
3) The Court ordered that the relative not be given information.

Unless the court relieves the guardian of providing, the guardian shall as soon as practicable inform relatives of any of the following:

1) The ward dies.
2) The ward is admitted to a medical facility for acute or chronic care for a period of three days or more.
3) The ward's residence has changed.
4) The ward is staying at a location other than the ward's residence for a period that exceeds one calendar week.

[226] APS Letter 2016-24
December 2016

5) In the case of the ward's death, the guardian shall inform relatives or any funeral arrangements and the location of the ward's final resting place.

f. Continuing Jurisdiction:

The court has continuing jurisdiction to revoke or modify an order made pursuant to this law upon a petition filed, noticed, and heard in the same manner as the original petition was filed. [227]

G. Uniform Veterans' Guardianship Act (§26-9-1)

When the United States Veterans Administration has determined a veteran to be mentally incompetent, a petition for the appointment of a guardian may be filed in any court of competent jurisdiction, as defined by the Veterans Administration, by any responsible person. The petition must not only attest to the fact that the person has been rated incompetent but also that the appointment of a guardian is a condition for payment of any moneys due such person as evidence of the necessity of such appointment. A guardian, approved and appointed by the court, must execute and file a bond as required by state laws. Annually, the guardian shall file with the court a full account under oath of all moneys received and all disbursements showing the balance of funds being held for the veteran. Failure to file such an account as required constitutes grounds for removal as guardian.

When it appears that commitment to a U.S. Veterans Hospital is necessary for proper care and treatment of the veteran, the courts are authorized to approach the V. A. Administration for certification that the veteran is entitled to care through that system and that a facility is available to provide the needed care. When those conditions have been met, the court may then direct the veteran's commitment to the designated V. A. Hospital.

H. Appointment of a Conservator of the Estate

Appointment of a conservator of the estate with regard to incapacitated adults is the method of taking over the management of real and personal property of a person who cannot responsibly use his or her assets for his or her own benefit. The conservator controls only income and resources of the incapacitated person. The decision to ask for appointment of a conservator of the estate should be a last resort, based upon sound evidence that the individual is unable to manage his or her estate and financial affairs even with the help of preventive and supportive services from the Department or through referral to other community resources.

[227] APS Letter 2016-24
December 2016

The Alabama Uniform Guardianship and Protective Proceedings Act (AUGPPA) of 1987, is the statute which establishes the procedures for appointment of a conservator and the duties and powers of a conservator.

1. Filing of Petition for Appointment of Conservator

A petition for appointment of a conservator is to be filed "in the court of the place in the state where the person to be protected resides." That is, venue lies in the county of residence. Residence as used in the AUGPPA includes a temporary, permanent or transient place of abode. In the case of a non-resident of the state, petitions can be filed in the court "at any place where property of the person is located." (Section 26-2A-132), Code of Alabama.

The person to be protected or any interested person including a parent, child, guardian, custodian, or any person who would be adversely affected by mismanagement of the person's business affairs may petition for appointment of a conservator or for some other protective order. The Department can file on behalf of a client (Section 26-2A-133a) but cannot be appointed the conservator.

Petitions must include identifying information on the person to be protected, names and addresses of persons to be given notice and a general statement of the person's property and estimated value. In addition the petition must include a statement of why the conservator is needed, if a bond has been received and the name, address, and priority of the proposed conservator. When the Department petitions for appointment of a conservator, the worker will need to provide this information to the attorney for the Department. (Section 36-2A-133b)[228]

In order for a conservator to be appointed, the court must determine that:

a. the person is unable to effectively manage business affairs due to mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, confinement detention by a foreign power, or disappearance, and

b. the person has property that will be wasted or squandered, or

c. protection is needed to obtain or provide funds for the health, support, education, or maintenance of the person or those entitled to the person's support. (Section 26-2A-130(c))

It may be necessary for the Department to arrange for an evaluation to assist the court in making these determinations. (Refer to "Diagnosis and Evaluation" in this section).

[228] Revised AS Letter 2007-18
August 2007

2. Due Process Protections

The AUGPPA provides similar due process protections in the appointment of a conservator as in the appointment of a guardian. The same notice to the person is required, as well as notice to specified others. (Sections 26-2A-134; 26-2A-103; 26-2A-50) Other protections include:

a. appointment of a guardian ad litem, unless the person has retained counsel;

b. an examination of the person by a physician or "other qualified person" when the alleged disability is mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, or chronic intoxication. (It is preferable that the physician or other qualified person not be connected with an institution in which the person is a patient or is detained.);

c. presence at the hearing, unless the court determines, prior to the hearing, that it is in the best interest of the person to be absent; and

d. the right to counsel, to present evidence, to cross examine witnesses and to have a trial by jury. The court may appoint a court representative who may be guardian ad litem, officer or employee of the court or a representative of a public or private agency. (Section 26-2A-135) (Refer to "Appointment of DHR as Court Representative.")[229]

3. Permissible Protective Orders

AUGPPA admonishes the court against exercising more authority over the individual than is necessary given the person's disabilities. The statute adopts the concept of a limited guardianship, allowing the person to develop "maximum self-reliance and independence." (Section 26-2A-136a)
Operating under the concept of limited guardianship the court may take the following actions directly or through a conservator:

[229] Revised AS Letter 2007-18
August 2007

a. While a petition is pending, the court may preserve and apply the property of the person.

b. After a hearing and upon determining that a basis exists for appointment of a conservator or other protective order for reasons other than minority, the court has power over the estate and business affairs of the person except the power to make a will.

c. The court may exercise or direct the exercise of the following powers if it is in the best interests of the protected person and if the person is incapable of consenting or has consented:

1.) to exercise or release powers of appointments of which the protected person is done.

2.) to renounce or disclaim interests.

3.) to make gifts in trust or, otherwise exceeding 20 percent of the year's income of the estate; and

4.) to change insurance and annuity policy beneficiaries. (Section 26-2A-136(b)(c))

If a petition has been filed by the Department and it comes to the attention of the Department that action should be taken to protect the client's property before a conservator is appointed, the Department should apprise the court of the facts so that the court may take appropriate action. The Department should not undertake financial responsibility to protect property. Under the exclusive jurisdiction and permissible protective orders provisions (Section 26-2A-131), the court has the authority to protect a person's property, until the proceedings to appoint a conservator are terminated.[230]

4. Protective Arrangements and Single Transactions

Section 26-2A-137 of the AUGPPA provides for the court to approve single transactions without appointing a conservator, including payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or addition to or establishment of a suitable trust. The court must establish in a proper proceeding that a basis exists for the appointment of a conservator and that the transaction related to the person's property and business affairs is in the best interest of the person. The court may

[230] Revised AS Letter 2007-18
August 2007

appoint a special conservator to accomplish the protective arrangement or other transaction. This section eliminates the necessity of establishing long-term conservators. An example of the use of this provision may be to make a limited number of payments of an individual's funds to a nursing facility for the purpose of depleting the person's funds below the maximum allowed for Medicaid in a nursing home, *to sell property or to sign a lien on property* for Medicaid eligibility purposes, or to establish a Medicaid approved trust. In such cases, the County Department should discuss this procedure with the local court and contact the Adult Services Consultant if further direction is needed.

5. Priority for Conservator Appointment

Section 26-2A-138 of the AUGPPA provides for a flexible system of priorities for appointment of a conservator. A parent or spouse may nominate a conservator but only the court can appoint. The following list of persons are entitled to consideration for appointment in the order listed: [231]

a. a conservator, guardian of property, or any other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected person resides.

b. an individual or corporation nominated by the protected person who is fourteen (14) or more years of age and of sufficient mental capacity to make an intelligent choice.

c. an attorney-in-fact under a valid Durable Power of Attorney previously executed by the protected person and giving the attorney-in-fact reasonably broad powers over the property of the protected person.

d. the spouse of the protected person, or a person nominated by the will of a deceased spouse to whom the protected person was married at the decedent's death and the protected person has not remarried.

e. an adult child of the protected person.

f. a parent of the protected person, or a person nominated by the will of a deceased parent.

g. any relative of the protected person who has resided with the protected person for more than six months before the filing of the petition.

h. a person nominated by one who is caring for or paying benefits to the protected person.

[231] Revised AS Letter 2007-18
August 2007

i. a general conservator or sheriff for the county who must be appointed and act as conservator when no other person applies for appointment and qualifies. The Attorney General stated in opinion 98-00098 "The general conservator of the county must be appointed conservator of an incapacitated person if no other suitable person applies for appointment and qualifies and if there be no general conservator the sheriff must be appointed". The Attorney General further stated in this opinion, "The sheriff, once appointed conservator of an incapacitated person by the probate judge, cannot refuse the appointment."[232]

Persons in (a.), (d.), (e.), (f.), or (g.) may designate in writing a substitute and thereby transfer the priority to the substitute. The court may pass over a person of higher priority, and appoint a person of lower priority, when acting in the best interest of the protected person. (Section 26-2A-138)

6. Bond

The court must require a conservator to furnish a bond. Section 26-2A-139 sets forth a formula for determining the amount of the bond. The court may reduce or increase the bond of the conservator to protect the interest of the protected individual. However, there is no provision for the bond to be waived except in those cases in which the conservator was nominated by those who have authority to nominate and there was an exemption of the bond by the person who nominated the conservator. Even in these cases a bond can be set if the court determines that

a. the interest of the protected person will be endangered for want of security or

b. the estate is likely to be wasted without a bond.

The technical administration of the setting of bond amounts may differ somewhat from probate court to probate court. Generally, the court will determine the amount of the estate on which a bond must be secured. The conservator will be referred to a commercial bonding company which will have a rate for the bond premium. In those cases that payment of the bond premium by the appointed conservator presents a financial burden, the worker may want to suggest that the county conservator or sheriff be appointed in which case a general bond would have been paid. If the County DHR elects to pay the bond premium from local funds, the Adult Services Consultant should be contacted. Such payment should not be conditioned on repayment, but reimbursement should be sought where the estate later has sufficient funds.

[232] Revised AS Letter 2014-04
February 2014

7. Compensation; Inventory and Records; Accounts; Standard of Care; Removal of Conservator

AUGPPA addresses each of the above issues separately. Section 26-2A-142 provides as follows:

a) If not otherwise reasonably compensated for services rendered, any court representative, attorney, physician, conservator, or special conservator appointed in a protective proceeding and any attorney whose services resulted in a protective order or in an order that was beneficial to a protected person's estate is entitled to reasonable compensation from the estate. The conservator shall be allowed from the estate of the protective person all reasonable premiums paid on his or her bond and reimbursement of any court costs paid.

b) If not otherwise reasonably compensated for services rendered, any court representative, attorney, physician appointed in a guardianship, and any attorney whose services resulted in a guardianship order or in an order that was beneficial to a ward is entitled to reasonable compensation from the estate. The guardian may be reimbursed from the estate of the ward for any court costs paid.

c) Except when the petitioner is related by blood or marriage to the individual who is the subject of the proceeding, if the assets of the estate in a protective proceeding or in a guardianship proceeding are not sufficient to provide reasonable compensation and pay court costs as permitted in subsections (a) and (b), the compensation of any guardian ad litem, court representative, or physician appointed by the court and court costs associated with the petition or motion may be taxed by the court with regard to any particular petition or motion presented to the court to the petitioner as additional costs to the petitioner.[233]

Conservator costs administration of an estate are not listed as a cost that can be taxed against the petitioner. Therefore, for appointment of a conservator, it is crucial that there be assets to administer and that they are sufficient to cover the cost of administration by the conservator.

[233] Revised AS Letter 2014-04
February 2014

In summary, the Department, as the petitioner, may pay costs associated with appointment of a conservator including costs of the guardian ad litem, court representative, physician appointed by the court, and court costs when the assets of the estate are insufficient to pay these listed costs.

For benefits received from the Veteran's Administration, the compensation is that provided in the Uniform Veteran's Guardianship Act.

Within ninety days of the appointment, the conservator will file with the appointing court, a complete inventory of the estate. In addition, the conservator will provide a copy of the inventory to the protected person and to any guardian or parent with whom the protected person resides. Suitable records will be maintained and made available to any interested person. (Section 26-2A-146)

8. Petition Subsequent to Appointment of a Conservator

Once a conservator has been appointed, the court acts only upon a petition filed by the moving party, or on its own motion. The court may enter an order

a. requiring bond or collateral or additional bond or collateral, or reducing bond;

b. requiring an accounting for the administration of the trust;

c. directing distribution;

d. removing the conservator and appointing a temporary or successor conservator; or

e. granting other appropriate relief.

If there is no satisfactory cause for the petition, the petition must be dismissed at cost to the petitioner. (Section 26-2A-144)

9. Powers of Conservators

A conservator shall have all of the powers listed below plus any additional powers conferred by law on trustees in the state. A conservator may invest and reinvest funds of the estate without court authorization. Other actions which can be performed without court authorization are:[234]

[234] Revised AS Letter 2007-18
August 2007

a. Collect, hold, and retain assets of the estate until determining that disposition of the assets should be made.

b. Receive additions to the estate.

c. Acquire an undivided interest in an asset of the estate that is otherwise an investment authorized for the conservator and in which the conservator, in any fiduciary capacity, holds an undivided interest.

d. Invest and reinvest estate assets.

e. Deposit estate funds to the extent insured in a state or federally insured financial institution, including one operated by the conservator.

f. Acquire of an asset for the estate that is an authorized investment for conservators, including land in another state, for cash or on credit, at public or private sale; and manage, develop, improve, partition, or change the character of an estate asset.

g. Dispose of an asset, other than real property, of the estate for cash or credit, at public or private sale, and manage or change the character of an estate asset.

h. Make ordinary or extraordinary repairs or alterations to buildings or other structures.

i. Enter for any purpose into a lease as lessor or lessee for a term not exceeding five years.

j. Enter into a lease or arrange for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

k. Grant an option for a period not exceeding one year involving disposition of an estate asset.

l. Vote a security, in person or by general or limited proxy.

m. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

n. Sell or exercise stock-subscription or conversion rights.

o. Deposit any stocks, bonds, or other securities at any time held in any pool or voting trust containing terms or provisions approved by the conservator.

p. Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

q. Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons.

r. Borrow money for the protection of the estate; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or of an estate's assets.

s. Pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and release any claim belonging to the estate to the extent the claim is not collectible.

t. Pay reasonable annual compensation to the conservator, subject to final approval of the court.

u. Pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate.

v. Allocate items of income or expense to either estate income or principal, as provided by the applicable principal and income act or other law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties.

w. Pay any sum distributable to a protected person or dependent of the protected person.

x. Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist in the performance of administrative duties.

y. Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties.

z. Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator. [235]

aa. Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held.

Section 26-2A-152(d) sets forth those actions for which a conservator must have prior court approval. These actions concern operating businesses, demolishing or disposing of real property and buildings, use of real property, and leasing of real property. These actions are generally necessary in those cases in which assets need to be liquidated in order to pay for the care of a client.

These powers may be endorsed on the conservator's letters of appointment at the initial appointment, or the court may issue a subsequent order granting these powers. *If the case worker is aware that real property will need to be liquidated or otherwise managed, the Department should request that the conservator be granted such power in the initial letters of appointment in order to expedite the liquidation of the property.*

10. Distributive Duties and Powers of the Conservator

AUGPPA provides principles under which a conservator can distribute income of the estate. Provision is made that distribution may be according to the size of the estate, the standard of living to which the protected person is accustomed, and other sources used for the support/maintenance of the protected person. The statute provides for distribution in the event of the death of the protected person. (Section 26-2A-153(3)) In working with a conservator, the worker can provide information about the standard of living which the client is accustomed. Also, the conservator should be advised of any knowledge which the Department has obtained during the investigation which is pertinent to the administration of the client's financial affairs.

11. Termination of Protective Proceedings

The protected person, the conservator or any other interested person may petition the court to terminate a conservatorship. The conservator may account to the protected person or may present a verified petition to the court in which a final consent settlement by and between the conservator and the protected person is set forth. An order terminating a conservatorship may be recorded, as evidence of transfer of title.

[235] Revised AS Letter 2007-18
August 2007

I. Commitment to a Mental Institution

When there is evidence of mental illness or deterioration, outpatient or inpatient commitment may be considered. Outpatient commitment may be considered when a client is unable to make a rational and informed decision concerning treatment and will, if not treated, continue to suffer mental distress, and will continue to experience a deterioration in the ability to function independently. Inpatient commitment to a mental; hospital is undertaken only when alternate plans, including, but not limited to, outpatient commitment have been considered and found to be inadequate and care in a mental hospital is found to be essential. Referral to the area mental health center, private psychiatrist professionals should be considered for outpatient care, inpatient care or help with arrangements for commitments when appropriate.

Examples of behavior which might indicate a need for commitment are: being physically destructive to self, property or other people; neglecting bodily needs (food, shelter, clothing); extreme weight loss; living in unsanitary conditions, and being disoriented to time, person, or place. Some of the above conditions might occur and be an indication that social services such as homemaker services are needed. However, the total situation must be assessed and a psychiatrist or other mental health professional consulted in order to determine the most appropriate course of action. In some situations, a commitment petition may be necessary to obtain the professional consultation.

1. Voluntary Admission to a Mental Institution

If the client can recognize the need for treatment in a mental hospital, he or she may voluntarily admit himself or herself to a psychiatric hospital.

2. Medicaid Payment for Mental Health Services

Mental Health Centers are eligible for reimbursement from Medicaid for the following services: diagnostic assessment; individual, group, and family therapy; medication check-up; pre-hospitalization screening and day treatment. Except for D & E, these services may be provided for Medicaid clients "pursuant to a primary psychiatric diagnosis code" and cannot be related to substance abuse or mental disabilities or a diagnosis in which a mental disorder is not present. Refer to "Diagnosis and Evaluation", and "Mental Health Counseling" in this section.[236]

3. Petition for Involuntary Commitment

Any person can file a petition with the probate court for involuntary commitment. The Mental Health Center professional, hospital staff, or law enforcement familiar with the situation may be asked to petition for commitment. If commitment is

[236] APS Letter 2021-10
August 2021

necessary for the protection of the person or others, and no relative or friend or professional knowledgeable of the facts can be found who is willing to take such steps, according to Alabama law, the County Department staff are not barred from initiating commitment procedures, but the matter should be discussed with the adult protective services supervisor. Any action taken by the County Department will follow a Report of Suspected AANE and an investigation and a determination that the client meets the definition of an adult in need of protection, including a finding that the adult has no one ready, willing and available to take protective action.

According to Section 22-52-1 Code of Alabama 1975, a petition for commitment shall be filed "with the probate judge of the county in which such person is located." The probate court has jurisdiction over all adults located within the county with the exception of individuals who are incarcerated. Petitions concerning incarcerated individuals are filed in the Circuit Court, See 6, Commitment of Incarcerated Adults. According to an Attorney General's opinion dated August 3, 1984, Section 22-52-7 authorizes the probate judge of a county in which a petition has been properly filed (person is located in the county at the time the petition to commit is filed) to order the return of a person who has left the county since the filing of the petition. County Departments of Human Resources of counties in which mental hospitals are located may be asked to petition for commitment of persons who are not residents of that county but who may have voluntarily been hospitalized in that county. County Departments of the county in which the person resides and the county in which the person is located should coordinate the APS investigation.

The petition for commitment must contain:

a. name and address of the petitioner; and
b. name and location of the person to be committed spouse, attorney, or next of kin; and
c. that petitioner has reason to believe the person to be committed is mentally ill; and
d. petitioner's beliefs are based on specific behavior, acts, attempts, or threats which are described in detail; and
e. names and addresses of other people with knowledge of the person's mental illness who may be called as witnesses.[237]

See "Sample Petitions and Court Orders" for involuntary commitment petitions and subsequent orders. The Probate Court may appoint an attorney to represent the person sought to be committed, and an attorney to represent the petitioner. See Section 7, "Legal Representation Costs in Commitment Proceedings".

4. Hearing Process

[237]APS Letter 2021-10
August 2021

The probate judge will immediately review the petition and may question the petitioner. When DHR is the petitioner, the APS worker can only testify on conditions and behaviors personally observed. This may include concerns raised by information gathered during the course of the investigation. For example, information that the person has a prior diagnosis or hospitalization is not independent evidence but is admissible for the purpose of demonstrating the reason for the worker's actions during the investigation and may corroborate concerns noted due to observed behaviors. If the judge determines that the petition is without merit, he shall dismiss the petition. If the petition is not dismissed, the judge will order the sheriff to serve the petition and notification of a hearing on the person in question known as the respondent. The court must also notify the DMH or designated mental health facility. A guardian ad litem will be appointed by the court. The respondent also has the right to secure services of a private attorney. If he or she is without funds or does not have the mental ability to secure an attorney, the judge will appoint an attorney who may be the same as the guardian ad litem. None of the respondent's actions or statements in the probate judge's presence prior to his or her obtaining an attorney can be considered by the court in determining whether or not a person is to be committed.

When a petition is filed seeking limitations or restrictions on the respondent pending outcome of the final hearing, the judge will order the county sheriff where the respondent is located to serve the petition and bring the person before the judge immediately. At that time the judge will read the petition to the person and inform him or her of the next hearing, his or her rights, and possible consequences of the hearing. An attorney may be appointed to represent the person. According to Section 22-52-7, no person sought to be committed shall be placed in a jail or other facility for persons accused of or convicted of committing crimes. The person may be detained in a hospital or designated mental health facility on an emergency basis if the judge determines that the person may do harm to himself or herself or others or if he or she may leave the area prior to the hearing. If he or she is detained, a probable cause hearing must be held within seven days of the date of detention. A final commitment hearing must be held within 30 days from the date the petition to commit was served. All hearings are heard by the probate judge without a jury and are open to the public unless the person sought to be committed or his or her attorney requests in writing that the hearings be closed to the public. Expert testimony of a physician, psychiatrist, or other Mental Health professional in support of the petition is strongly recommended.[238]

5. Criteria for Commitment

At the final hearing on an involuntary commitment petition, the probate judge may enter an order for outpatient treatment or inpatient treatment or the petition could

[238] APS Letter 2021-10
August 2021

be dismissed if the criteria for commitment is not proven. The least restrictive alternative necessary and available for treatment shall be ordered.

The criteria for inpatient *commitment are:*

Clear, unequivocal, and convincing evidence that:

a. the respondent is mentally ill; and
b. because of the mental illness, the person poses a real and present threat of substantial harm to himself or to others, and
c. respondent will continue to experience mental distress and deterioration of ability to function independently if not treated; and
d. respondent is unable to make a rational decision regarding treatment.

The commitment order is not to exceed 150 days. If the designated mental health facility notifies the probate court of noncompliance with the outpatient treatment order, the court will hold a hearing on a petition for revocation. The probate court may then enter an order for commitment to inpatient treatment.

The criteria for outpatient commitment are:

Clear, unequivocal, and convincing evidence that:

a. the respondent is mentally ill
b. because of the mental illness, respondent will continue to experience mental distress and deterioration of ability to function independently if not treated; and
c. respondent is unable to make a rational decision regarding treatment.

An order for inpatient treatment shall not exceed 150 days. The director of a state mental health facility or his designee may petition for renewal of an inpatient commitment order. This petition is filed in the county where the facility is located. The county probate court from which the commitment was made is to be notified of the subsequent order. [239]

An order for outpatient commitment is not to exceed 150 days. If the designated mental health facility notifies the probate court of noncompliance with the outpatient treatment order, the court will hold a hearing on a petition for revocation. The probate court may then enter an order for commitment to inpatient treatment. A petition for renewal of an outpatient commitment order may be filed by the

[239] APS Letter 2021-10
August 2021

director of a designated mental health facility or his or her designee at least 30 days prior to the expiration of the current commitment order. The petition, together with a copy of the original commitment order and copies of any subsequent renewal commitment orders, shall be filed with the probate court of the county where the commitment was originally ordered. A renewal order may not exceed one year.

If a person has been discharged from a facility or treatment and it appears recommitment is necessary, a full hearing should be held with all due process rights, regardless of previous commitment status or length of time from previous discharge.

6. Commitment of Incarcerated Persons

Section 22-52-1 Code of Alabama 1975, the general commitment statute, is used when a person is not incarcerated. Section 15-16-20 pertains to the commitment of an individual if he is incarcerated. Section 22-52-31 establishes procedures for the civil commitment of persons accused of crimes who have been committed to the custody of the Department of Mental Health pursuant to 15-16-20-21 or -22. In *Havis v. City of Guntersville*, 586 So. 2d 947 (Ala. Civ. App. 1991). The Court of Appeals clarified that the probate court did not have jurisdiction over individuals confined in jail or "in the actual custody of officers of the law."[240]

The circuit court is required to investigate when an incarcerated adult appears to be insane. The investigation requires an evaluation by a respectable physician and may include other witnesses and a jury, if the person is found to be insane, the circuit judge may order his or her confinement to a state hospital where he or she must remain until restored to his right mind. Once treated, the person is remanded back to jail or is discharged.

7. Appeals

The probate court's decision to commit may be appealed to the circuit court and a trial by jury may be requested unless the probate judge who granted the petition has a law degree, in which case, the appeal is to the Alabama Court of Civil Appeals and is based on the record (Section 22-52-15). The circuit court's decision to commit may be appealed to the Alabama Court of Civil Appeals.

[240] APS Letter 2021-10
August 2021

8. Pursuant to Section 22-52-4, the probate judge must determine whether the person sought to be committed has funds and the mental ability to employ an attorney to represent himself or herself. If the person does not have the funds or ability, the probate judge must appoint an attorney to represent him or her.[241]

   Pursuant to Section 22-52-5, the probate judge must appoint an attorney to serve as the advocate in support of the petition unless the petitioner wishes to employ his or her own attorney. When the Department of Human Resources acts as petitioner for commitment, a DHR approved attorney should be engaged.

9. Court Costs in Commitment Proceedings

   According to Section 22-52-17, fees for an attorney appointed by the court to represent the petitioner or the person sought to be committed, as well as the fee of any expert witness employed by the court appointed attorney for the person to be committed (in such amounts as are found reasonable by the probate judge) are to be paid by the state general fund upon order of the probate judge to include a law enforcement officer or other public official acting within the line and scope of his or her duties. If the petition is denied, all cost may be taxed against the petitioner unless the petitioner is indigent, if costs are assessed against DHR, SDHR/Legal should be immediately contacted so that the order might be properly challenged on appeal. Any petition presented by DHR would be considered in the line and scope of departmental duties. If the petition is granted and the person sought to be committed is not indigent, costs may be assessed against the estate of the person committed.

10. Involuntarily Committed Veterans

    A person (respondent) involuntarily committed who is entitled to care and treatment by the Veterans Administration may be transferred by the Department of Mental Health. The Veterans Administration is then responsible for the treatment, retention, transfer, or discharge of the respondent. Please see "Uniform Veterans' Guardianship Act in this section for additional information.

[241] APS Letter 2021-10
August 2021

J. Securing Authorization for Medical Treatment

The Department is often requested to assist in securing authorization for medical treatment when an adult is unable to consent and there are no relatives readily available. A petition for protective services should be filed with the circuit court for an order authorizing the medical treatment recommended by the client's physician. The worker must be aware that the Adult Protective Services Law includes Section 38-9-7 which states that, "Nothing in this act shall be construed to authorize or require medical care or treatment for a person in contravention of his stated or implied objection thereto upon the grounds that such medical care and treatment conflict with his religious beliefs and practices."

Section 22-8-1, Code of Alabama, provides that "No consent shall be required in order for a licensed physician, psychiatrist or psychologist to render any legally authorized medical or mental health services to a person when said person is either physically unable to consent or mentally unable to consent and who, but for said mental or physical disability would be able to consent and who has no known relatives or legal guardian; provided, that two or more licensed physicians, psychiatrists or psychologists, after having consultation, must indicate, in writing, that such medical services are necessary, in their judgment, and any attempt to secure consent from any court or to further endeavor to locate unknown relatives would result in delay of treatment which would increase the risk to the person's life or health." However, in some instances the County Department may still be contacted by the medical community to secure authorization from the court.

See "Sample Petitions and Court Orders" in this section.

K. The Elder Abuse Protection Order and Enforcement Act[242]

Effective August 1, 2017, ACT No. 2017-284 relating to elder abuse; amended Section 15-10-3, Code of Alabama 1975; to establish the Elder Abuse Protection Order and Enforcement Act. This Act provides for the issuance of elder abuse protection orders, define terms, authorize certain individuals in addition to the victim to petition for an elder abuse protection order, provide penalties for violating an elder abuse protection order.

The Elder Abuse Protection Order and Enforcement Act provide maximize protection of victims of elder abuse. It creates a flexible and expeditious method of obtaining a protection order against an individual who has committed elder abuse and it expands the ability of law enforcement officers to assist victims. The order enforces the law effectively in cases of elder abuse, in order to prevent further incidents of abuse.

[242]APS Letter 2017-05
July 2017

A violation of an elder abuse protection order is a Class A misdemeanor, which shall be punishable as provided in law.

The Elder Abuse Protection Order shall not be used for a protection placement court order. Refer to Chapter 2 Section F Protective Services for Adults Section C. Protective Placement for protection placement court order.

The Elder Abuse Protection Order and Enforcement Act 2017 -284 is located in iDHR/APS/ Appendices, Forms and Templates/Appendix B-Section J. The Petition for Elder Abuse Protection Order, the Protection Order and EX Parte Protection Order are located in iDHR/APS/ Appendices, Forms and Templates/ Sample APS Legal Forms.

A. Nothing in this act shall be construed to limit the enforcement of any other laws or rules that protect vulnerable adults or limit the jurisdiction of or action by any regulatory or law enforcement agency.

A restraining order, injunctive order, or order of release from custody issued by a circuit, district, municipal, or probate court that seeks to protect an elderly person.

An order issued by a circuit, district, or municipal court that places conditions on the pre-trial release of a defendant in a criminal case, which may include provisions of bail pursuant to Section 15-13-190, Code of Alabama 1975 that seeks to protect an elderly person.

Definitions:

1. **ELDERLY PERSON**- A person 60 years of age or older.

2. **PLAINTIFF-** An elderly person in need of protection from elder abuse.

3. **THREAT** – Any word or action, expressed or implied, made to cause a plaintiff to fear for his or her safety or the safety of another person.

4. **VIOLATION**- the knowing commission of any act or conduct prohibited by an elder abuse protection order or any willful failure to abide by its terms.

B. The following terms have the following meanings as defined by the Elder Abuse Protection Order and Enforcement Act:[243]

[243] APS Letter 2017-05
July 2017

1. **CAREGIVER** - the term as defined in Section 13A-6-191, Code of Alabama 1975.

2. **ELDER ABUSE** – the commission of any of the following acts against an elderly person:

    a. **Abuse**, as defined in Section 38-9-2, Code of Alabama 1975.

    b. **Arson**, as defined in Sections 13A-6-20 to 13A-6-22, inclusive, Code of Alabama 1975.

    c. **Assault,** as defined in Sections 13A-6-20 to 13A-6-22, inclusive, Code of Alabama 1975.

    d. **Criminal coercion**, as defined in Section 13A-6-25 Code of Alabama 1975.

    e. **Criminal trespass** as defined in Sections 13A-7-2 to 13A-7-4.1, inclusive, Code of Alabama 1975.

    f. **Emotional abuse**, as defined in Section 13A-6-191, Code of Alabama 1975.

    g. **Financial exploitation**, as defined in Sections 13A-6-191 and 8-6-171, Code of Alabama 1975.

    h. **Harassment,** as defined in Section 13A-11-8, Code of Alabama 1975.

    i. **Kidnapping**, as defined in Sections 13A-6-43 and 13A-6-44, Code of Alabama 1975.

    j. **Menacing**, as defined in Section 13A-6-23, Code of Alabama 1975.

    k. **Reckless endangerment**, as defined in Section 13A-6-24, Code of Alabama 1975.

    l. **Sexual abuse,** as defined as any of the acts in Sections 13A-6-60 to 13A-6-68, Code of Alabama 1975.

    m. **Stalking**, as defined in Sections 13A-6-90 to 13A-6-91.1, inclusive, Code of Alabama 1975.

    n. **Theft,** as defined in Sections 13A-8-2 to 13A-8-5, inclusive, Code of Alabama 1975.

o. **Unlawful imprisonment**, as defined in Sections 13A-6-41 and 13A-6-42, Code of Alabama 1975.

3. Other definitions:

a. **ex parte communication -** Ex parte communications are communications to a court involve fewer than all of the parties who are legally entitled to be present on a matter.

b. **Preponderance** – The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

C. **Filing a Petition**:

1. The following courts have jurisdiction to issue elder abuse protection orders
   a. Circuit courts
   b. A special circuit court judge appointed pursuant to Section 12-4-14 or 12-1-14.1, Code of Alabama 1975.[244]
   c. A district court judge designated by a written standing order from the presiding circuit court judge.
2. A petition for an elder abuse protection order may be filed in any of the following locations;
   a. Where the plaintiff or defendant resides.
   b. Where the plaintiff is temporarily located if he or she has left his or her residence to avoid further abuse.
   c. Where the abuse occurred.
3. If a plaintiff lacks the physical or mental capacity to seek protection for himself or herself, the following may file a sworn petition for relief on behalf of the plaintiff:
   a. A court appointed guardian. The petition must include a copy of the court order appointing the petitioner as the plaintiff's guardian.
   b. A court appointed conservator. The petition must include a copy of the court order appointing the petitioner as the plaintiff's conservator.
   c. A temporary guardian appointed pursuant to Section 26-2A-107, Code of Alabama 1975. The petition must include a copy of the court order appointing the petitioner as the plaintiff's temporary guardian.
   d. An agent, co-agent, or successor agent appointed under the plaintiff's validly executed power of attorney who acts within the authority of the power of attorney. The petition shall include a copy of the power of attorney.

[244] APS Letter 2017-05
July 2017

e. A health care proxy appointed under the plaintiff's validly executed Advance Directive for Health Care, or similar document, who acts within the authority of the designation. The petition shall include a copy of the Advance Directive for Health Care or similar document.

f. An interested person who has the authority to petition for protective placement or other protective services under Section 38-9-6, Code of Alabama 1975. [245]

1. The Department is empowered under this act as an "other interested person" to have the authority to petition for protective placement or other protective services.
2. The Application For Adult Protective Services form DHR-FSP 1966 (revised, 6/20) should be completed with client.
3. An AANE has been received and an investigation pending or completed with a finding of "indicated".
4. A referral has been made to law enforcement.

D. The Court Process

1. A sworn petition shall allege the incidents of abuse and the specific facts and circumstances that form the basis upon which relief is sought. Standardized petitions for actions pursuant to this act shall be made available through the circuit clerk's offices throughout the state. A circuit clerk shall not be required to provide assistance to individuals in completing the forms or in presenting the petitioner's case to the court. The elderly person for whom the petition is filed must be served with the petition pursuant to the Alabama Rules of Civil Procedure. The court may not assess court costs or other fees for the filing or service of a petition or the issuance of a witness subpoena under this act against a petitioner or plaintiff. Costs and fees may be assessed against the defendant at the discretion of the court.

a. The court shall hold a hearing after the filing of a petition under this act upon the request of the defendant or within 10 days of the perfection of service. A final hearing shall be set at which the standard of proof shall be a preponderance of the evidence. If the defendant has not been served, a final hearing may be continued to allow for service to be perfected.

b. The court may enter such temporary ex parte protection orders as it deems necessary to protect the plaintiff from abuse. The court shall grant or deny a petition for a temporary ex parte protection order filed under this act within three business days of the filing of the petition. Any granted temporary ex parte protection order shall be effective until the final hearing date.

[245] APS Letter 2017-05
July 2017

c. If a final hearing under subsection (1) is continued, the court may make or extend temporary ex parte protection orders under subsection (2) as it deems reasonably necessary.

d. If it appears from a petition for an elder abuse protection order or a petition to modify an elder abuse protection order that elder abuse has occurred or a modification is warranted, the court may do either of the following:

1. Without notice or hearing, immediately issue an ex parte elder abuse protection order or modify an ex parte elder abuse protection order as it deems necessary
2. After providing notice as required by the Alabama Rules of Civil Procedure, issue an elder abuse protection order or modify an elder abuse protection order after a hearing whether or not the defendant appears.

e. Based upon a risk of imminent potential harm to the plaintiff, a court may grant one or more of the following ex parte forms of relief without prior notice to the defendant or a hearing:

1. Enjoin the defendant from threatening to commit or committing acts of elder abuse against the plaintiff and any other individual designated by the court.
2. Restrain and enjoin the defendant from harassing, stalking, annoying, telephoning, contacting, or otherwise communicating, either directly or indirectly, with the plaintiff or threatening or engaging in conduct that would place the plaintiff or any other individual designated by the court in reasonable fear of bodily injury.
3. Order the defendant to stay away from the plaintiff's residence, place of employment or any specified place frequented by the plaintiff that the defendant has no legitimate reason to frequent.
4. Remove and exclude the defendant from the residence of the plaintiff, regardless of ownership of the residence.
5. Order possession and use of automobile or other essential personal effects, regardless of ownership, and direct the appropriate law enforcement officer to accompany the plaintiff to the residence of the plaintiff or other specified location as necessary to protect the plaintiff from abuse.[246]
6. Prohibit the defendant from transferring, concealing, encumbering, or otherwise disposing of specified property mutually owned or leased by the parties or in which the plaintiff had an ownership interest within the last 12 months.

[246] APS Letter 2017-05
July 2017

7. Prohibit the defendant from transferring the funds, benefits, property, resources, belongings, or assets of the plaintiff to any person other than the plaintiff.
8. Direct the defendant to refrain from exercising control over the fund, benefits, property, resources, belongings, or assets of the plaintiff.
9. Require the defendant to provide an accounting of the disposition of the plaintiff's income and other resources, and of the plaintiff's debts and expenses.
10. Restrain the defendant from exercising any powers the defendant has been granted as the plaintiff's agent under power of attorney.
11. Require the defendant to comply with the instructions of the plaintiff's guardian, conservator, or agent under power of attorney
12. Order other relief as it deems necessary to provide for the safety and welfare of the plaintiff and any individual designated by the court.

E. The court may grant one or more of the following forms of relief in a final order after notice and hearing:

1. Grant the relief available in section E of the policy and subsection (b) ACT #2017-284.
2. Require the defendant to return custody or control of the funds, benefits, property, *resources, belongings or assets to the plaintiff.*
3. Order restitution
4. Prohibit the defendant from possessing a firearm or other weapon specified by the court, except when the weapon is necessary for employment as a law enforcement officer or military personnel.
5. Order the defendant to pay attorney's fees and court costs.

Any temporary ex parte protection order issued pursuant to this act shall remain in effect until the final order is entered.

1. Any final elder abuse protection order shall be of permanent duration unless otherwise specified by the court.
2. An elder abuse protection order may not affect in any manner title to real property.

F. A copy of an elder abuse protection order shall be issued to the **plaintiff**, the **defendant**, and the **law enforcement officials with jurisdiction** to enforce the protection order.

1. If the defendant is appointed as the plaintiff's guardian or conservator, a copy of any protection order shall be issued to the court that made the appointment.

2. Ex parte and final elder abuse protection orders shall be in a format as provided by the Administrative Office of Courts. (The Court, if wishes, can attach additional pages containing additional information) [247]

G. Violations of an elder abuse protection order:

1. A violation of an elder abuse protection order is a Class A misdemeanor, shall be punishable as provided in law.

2. A second conviction for a violation of an elder abuse protection order, in addition to any penalty or fine, shall be punishable by a minimum of 30 days imprisonment, which may not be suspended. A third or subsequent conviction, in addition to any other penalties or fines, shall be punishable by a minimum sentence of 120 days imprisonment, which may not be suspended.

VII. OTHER LEGAL ISSUES

A. Legal Representation for County Departments

Services for legal representation of the County Department must be obtained when the County Department is petitioning the circuit court to provide protection for an adult pursuant to the Adult Protective Services Act or petitioning the probate court for the appointment of a guardian or conservator. Any local attorney approved to represent the Department may assist county staff in adult protective service cases. Legal services should be sought when a County Department is planning to take a case to court or is involved in an adversarial court action. Local attorneys should not be asked to provide legal services to clients such as writing wills, handling divorces, or Social Security appeals, as these services cannot be paid as adult protective services and are not paid by the Department. They should also not be asked to serve as guardians or conservators. See "Legal Costs for Protective Services" as well as "Legal Counsel for the Elderly – A Resource."

Local attorneys may not be used for policy interpretations. These should be directed to Adult Protective Services, SDHR.

B. Preparation for Testimony

It will be most helpful to preview with the DHR attorney the manner in which he or she plans to present the case. The attorney will qualify the DHR worker as an expert witness. This involves a statement of educational background and professional experience and enables the DHR worker's opinions and recommendations to be introduced. The attorney's questions may be open-ended or direct.

[247] APS Letter 2017-05
July 2017

The following pointers may be of assistance when preparing for court testimony.

- Dress neatly and appropriately for court. The jury may assess your professional abilities by your appearance. Be pleasant, polite, and respectful of the court. Use "Your Honor" when addressing the judge.

- Speak clearly. The court reporter must hear and record your answer; therefore, do not respond by shaking your head "yes" or "no". Speak to the jury.

- If asked whether you have discussed the case with anyone, you should indicate any occasion that you have talked with your supervisor, director, attorney, or others.

- Listen carefully to the questions and make sure you understand what you have been asked before you respond. If you do not understand, ask that the question be repeated. If you do not know the answer to a question, say that you do not know.

- Pause after a question to allow your attorney time to object.

- If you realize you have answered a question incorrectly, ask the judge if you may correct your mistake.

- Do not use abbreviation for programs such as "SUP". Remember that jurors will probably not be familiar with DHR programs or services.

- Always use courtesy titles "Mr., Mrs., Miss" when referring to your client.

- Be thoroughly familiar with the case record. You may take notes to the witness stand; however the opposing attorney has the right to examine your notes if he or she chooses.

- Be prepared to explain agency policy and procedures.

- Be prepared to testify to what services have been offered the client and what events led to and caused the petition to be filed.

- Answer only the questions that are asked; do not attempt to elaborate.

- Be prepared to explain your background of training, education, degree(s), and level of experience in APS to establish why you are equipped to make professional judgments about clients.

C. Legal Costs for Protective Services

1. Guardian or Conservator Fees

The Uniform Guardianship Act as amended (Act 06-529) clarifies how costs will be levied in a protective proceeding under this act. If the assets of the estate are not sufficient to provide adequate compensation, the court may require the petitioner (not related by blood or marriage) to pay certain costs. Costs which may be taxed to the petitioner include compensation of any guardian ad litem, court representative, or physician appointed by the court and court costs associated with the petition or motion. This act does *not* permit DHR to be charged for the general on-going fees and expenses for the guardian or conservator fees. [248]

2. Guardian Ad Litem Fees

When a decision is made to petition the court in adult protective service cases, include in the petition a request that the judge appoint a guardian ad litem. The court order should state the name of the guardian ad litem, the amount of the fee and who is ordered to pay.

If the client has resources sufficient to pay the guardian ad litem fee and court costs, or if the amount of a client's resources is not known, include in the petition a request that the court review the client's resources to determine whether these can be assessed against the client. The court may assess costs to DHR.

If the court does not honor the Department's request regarding assessment of costs or if the costs assessed against the Department are extremely high, the County Director, Assistant Director or Program Supervisor should contact Adult Protective Services, SDHR. The Adult Service Consultant will coordinate with the County Department and the Legal Office to determine whether a motion for reconsideration of the charges is appropriate.

When guardian ad litem fees are assessed to DHR by the court, the guardian ad litem's bill should include two copies of the court order. The court order must specify the name of the guardian ad litem, the exact amount to be paid, and that the Department is to pay this amount. It is recommended that the attorney invoice the department at least quarterly. Notarized invoices must be itemized as to the services rendered detailing time spent and the hourly charge. The County Director must sign each copy of the guardian ad litem's bill as approval of the payment. The bill must contain the client's name; court number; DHR case number; and "Adult Protective Service" as the category of eligibility. The full name and address of the person or court to be paid must also be included on the bill. The guardian ad litem's social security number or federal tax identification number must be listed. Some circuit judges prefer that the payment be made to the circuit court clerk while others prefer that it be paid directly to the guardian ad litem. The County Department should check to see which method is preferred.

[248] Revised AS Letter 2007-18
August 2007

When the court orders DHR to pay guardian ad litem fees, PSD-BSD-783, Request for Payment for Guardian Ad Litem Fees, will be used to request payment for guardian ad litem for adults. The original form and two copies with the court order must be submitted to the DHR Legal Office. After it has been reviewed, approved, and signed, it is then forwarded to the Finance Division for payment.

If the guardian ad litem's fee is to be paid to the circuit court and is included on a civil cost bill with other court costs, send the original and two copies of the civil cost bill together with two copies of the order (which have been approved by the County Director) to the State Department, Attention: Legal Office. The County Director must indicate approval on the civil cost bill in order for the bill to be paid. For deadlines on submitting bills for the current fiscal year, see "2. DHR Attorney Fees" below.[249]

3. DHR Attorney Fees

Attorneys should submit bills for legal fees and court costs to the County Department. Each bill submitted for payment should contain an statement of services rendered, which includes the time spent on each activity and the hourly charge for the service. The bill should include the court case number, and the nature of the services for which payment is being requested. The bill should bear the original signature of the attorney.

Upon receiving a bill from an attorney, the County Department will verify that the fees charged by the attorney do not exceed $50.00 per hour for work done out of court and $70.00 per hour for work done in court. The County Department should be sure the full name, address, and federal tax ID number (or Social Security number) of the attorney who is requesting payment are shown on the bill. The client's name, DHR case number and "Adult Protective Service" must be included on the bill.

The County Department will submit the original bill and three copies, each signed and approved for payment by the County Director, to the State Department, Attention: Legal Office.

> NOTE: Copying – This Department will pay for copies of necessary documents at a rate of 10 cents per page. Under certain circumstances, this Department will pay more than 10 cents per page if it is for copies obtained from the court or some other institution and the charge is a set rate charged by that court or institution.

[249] Revised AS Letter 2007-18
August 2007

Mileage or gasoline – It is not the policy of this Department to pay for mileage or gasoline. The attorney may be paid for the time spent en route at the regular out of court rate of $50.00 per hour.

All bills submitted for the fiscal year (ending September 30) should be submitted to the Legal Office by November 10. The bills will be forwarded to the Finance Division by November 30. This timetable is necessary since bills for the fiscal year must be paid by the end of the calendar year.

Payment for legal services rendered in a prior fiscal year will not be made after December 31 of the current year, even if legal services may be ongoing in a particular case. October 31 is the deadline for attorneys to submit bills to the County DHR for services rendered in the prior fiscal year. The County Department should forward these to the Legal Office by November 10.

4. Evaluation Costs

When the Court has directed that an evaluation of the client's condition be secured in preparation for a hearing, efforts should be made to secure the evaluation at no cost to the agency. It should be at the expense of the client if the client has resources to pay for it, or through a third party carrier or provider. If it is not available through any such arrangements, the worker will need to seek other means of paying for the evaluation. Refer to "Purchased Adult Protective Services" in this section.

5. Court Cost

If the client has sufficient resources to pay for court costs, or if the amount of the client's resources is not known, include in the petition a request that the court review the client's resources to determine whether these can be assessed against the client.

In some jurisdictions, filing fees are required. When the DHR attorney will not pay these fees and seeks DHR reimbursement on his bill, County DHR offices may pay the fee out of local funds and seek SDHR reimbursement through the Legal Office.

The court may assess costs to DHR. However, state agencies are not required to prepay docket fees (Reference: Attorney General's Opinion dated 12/21/79 on Courts-Agencies-Fees). Court costs may be paid by the DHR approved attorney. He may submit a receipt for that expense with his bill and be reimbursed for that expense with the County Director's approval. See "2. DHR Attorney Fees" for instructions when submitting these bills. Court costs which include a fee for a guardian ad litem should be submitted for payment using the guidelines in. "1. Guardian Ad Litem Fees". Bills for court costs which do not include a guardian ad litem fee should be forwarded to the State Department, Attention: Legal Office, for payment.

6. Process Servers

In court cases where a private process server is needed, the counties that have in-house attorneys are to secure approval from the Legal office based on two reasonable estimates. The bill must also be approved by the County Director and submitted to Legal for payment. Private attorneys approved to represent DHR may pay the process server and submit a receipt for payment attached to his bill for services, or the bill may be forwarded to the County Director to approve and submit to the Legal Office.[250]

7. Expert Witness Fees

The Legal Office must approve all fees for expert witness testimony. Expert fees shall not exceed the Medicaid reimbursement rate currently approved for the level of service and position of the person providing the service. Several factors will be considered when the Legal Office makes a decision about paying expert witness fees, and not every expert who testifies on behalf of the Department will receive a fee. Among the factors which will be considered are who requested and paid for the evaluation or treatment provided by the expert, and whether the expert was under contract with the Department at the time the service was provided. Generally, the Department may approve expert witness fees to individuals who provided evaluation or treatment at the request of the Department. Expert witness fees may not be approved for persons who evaluated or treated the client at the request of any agency other than the Department. County Departments must receive approval from the Legal Office for payment of an expert witness fee prior to the expert's appearance in court. County Departments seeking approval for payment should contact their Adult Protective Services Consultant after an agreement is reached with the expert witness regarding the fee to be paid for testifying (not to exceed the Medicaid rate for services provided by Medicaid qualified providers). The Adult Protective Services Consultant will discuss the request with the Legal Office and confirm the approval.

After the County Department has received verbal approval for an expert witness fee to be paid, the attorney should send a letter of confirmation to the Legal Office. The County Department may also wish to instruct their locally approved attorney to keep the expert witness "on call" on the day of the hearing, to minimize the amount of time the expert is in court.

Bills for expert witness testimony must be paid by the locally approved attorney and submitted as part of his or her locally approved attorney's bill.

[250] Revised AS Letter 2010-13
June 2010

8. Publication Costs

The Legal Department must approve all publication costs that are part of court ordered publication in an Adult Protective Service court case. The court ordered publication costs must be reasonable. County Departments seeking approval for payment of publication costs should contact their Adult Protective Services Consultant in SDHR to discuss the request with the Legal Office and confirm the approval.[251]

9. Payment to SDHR as Court Representative

The request for the Department to be paid as court representative should be made in the report to the court. The Department should request to be compensated at a rate of $50.00 per hour and include the supervision of the case worker. See a guide for the report to the court in "Sample Petitions and Court Orders" in this manual. The Probate Court is asked to order the person's estate to pay the court representative. The payment will be made to the Probate Court which will send the money to SDHR. Finance, 50 Ripley Street, Montgomery, AL 36130-4000. The payment should be identified as money awarded to the Department for completion of an investigation to the appointment of a guardian or conservator. Refer to the sample attorney bill for guidance in appropriate billing.

10. Other Costs

Prior approval must be obtained from the State Department of Human Resources Legal Office for any other costs such as court reporters, etc. The DHR attorney may pay the court reporter and submit a receipt for payment attached to his bill for services or the bill may be forwarded to the County Director to approve and submit to the Legal Office.

D. Legal Counsel for the Elderly – A Resource

Legal Counsel for the Elderly is a service grant-funded by the Department of Senior Services, operated through the Area Agency on Aging. A full range of civil cases are handled with emphasis placed on government benefit programs, i.e., Medicare, Medicaid, Social Security, SSI, etc. Eligibility is based only on age. Anyone sixty years of age or older and their spouse qualifies for legal services. There is no charge to the client for attorney's fees but the client must pay court costs or other expenses of litigation. This service is not authorized to represent the Department in legal actions but may represent individuals age sixty or older who request legal assistance to protect themselves. This service may include Protection from Abuse Act.

Following is a list of addresses and telephone numbers for the Legal Counsel Office serving each county:

[251] Revised AS Letter 2010
June 2010

Legal Counsel for the Elderly Program in Alabama[252]

ADDRESS AND TELEPHONE NUMBERS	COUNTIES SERVED
Alabama Tombigbee Regional Commission 107 Broad Street Camden, AL 36726 (334) 682-5206/ 888-617-0500 FAX 334-682-9851	Choctaw, Clarke, Conecuh, Dallas, Marengo, Monroe, Perry, Sumter, Washington, Wilcox,
Central Alabama Aging Consortium 400 Cotton Gin Rd Montgomery, AL 36117 (800) 264-4680 FAX 334-240-4681	Autauga, Elmore, Montgomery
East Alabama Regional Planning & Development Commission P.O. Box 2186 1130 Quintard Ave, Suite 300 Anniston, AL 36202 (256) 237-6741 (800) 239-6741 Fax 256-237-6763	Calhoun, Chambers, Cherokee, Clay, Cleburne, Coosa, Etowah, Randolph, Talladega, Tallapoosa
Lee-Russell Area Agency on Aging 2207 Gateway Dr. Opelika, AL 36801 (334) 749-5264 FAX 334-749-6582	Lee, Russell
Middle Alabama Area Agency on Aging 209 Cloverdale Circle Alabaster, AL 35007 PO Drawer 618 Saginaw, AL 35137 (205) 670-5770 (866) 570-2998 FAX (205) 670-5750	Blount, Chilton, Shelby, Saint Clair, Walker
North Central Alabama Regional Council of Governments PO Box C Decatur, AL 35602 (256) 355-4515 FAX (256) 351-1380	Cullman, Lawrence, Morgan
Northwest Alabama Council of Local Governments P.O. Box 2603, 103 Student Dr. Muscle Shoals, AL 35662 (256) 389-0500 (800) 838-5845 FAX (256) 389-0599	Colbert, Franklin, Lauderdale, Marion, Winston
Regional Planning Commission of Greater Birmingham 2 20th Street North Suite 1200 Birmingham AL 35203 (205) 623-3551 FAX (205) 236-2121	Jefferson
South Alabama Regional Planning Commission PO Box 1665 Mobile, AL 36633 110 Beauregard Street Suite 207 Mobile AL 36602 (251)433-6541 FAX 251) 706-0896	Baldwin, Escambia, Mobile
South Central Alabama Development Commission 5900 Carmichael Way Montgomery, AL 36117 (334) 244-6903 FAX (334) 270-0038	Bullock, Butler, Crenshaw, Lowndes, Macon, Montgomery, Pike

[252] APS Letter 2018-06
August 2018

Southern Alabama Regional Council on Aging 1075 South Brannon Stand Road Dothan, AL 36305 (334) 793-6843 (800) 239-3507 FAX (334) 671-3651	Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston
Top of Alabama Regional Council of Governments 7037 Old Madison Pike, Suite 450 Huntsville, AL 35805 (256) 830-0818 FAX (256) 830-0843	DeKalb, Jackson, Limestone, Madison, Marshall
United Way AAA of Jefferson County 3600 8th Avenue South PO Box 320189 Birmingham, AL 35232 (205) 458-3330	
West of Alabama Regional Commission 4200 Hwy 69 N Suite 1 PO Box 509 Northport, AL 35476 (205) 333-2990 (800) 432-5030 FAX (205) 333-2713	Bibb, Fayette, Greene, Hale, Lamar, Pickens, Tuscaloosa

E. Legal Assistance with Resource Management

One responsibility of the service worker is to help identify those clients who cannot manage their finances without assistance. Some clients may have always been marginally competent. For some, inability to manage may come as a result of changes within themselves or in the number of resources available. Clues to the need for help might be hiding money and being unable to find it, frequently losing assistance checks, having utilities cut off because bills are not paid, spending all of the month's income long before the next check is due, etc. Single instances of this nature would not necessarily indicate inability to manage but consistent patterns of such behavior over a period of time should alert the worker to a possible need for someone else to manage the client's finances.

1. Appointment and Termination of Legal Representative

A legal representative for DHR payments may be appointed by the probate court for either a physically or mentally disabled person. If the client receives TANF or State Supplementation from the Department of Human Resources and there is no one close to the client who is able and willing to provide the help needed, the DHR Financial Assistance worker may arrange to have a legal representative appointed. The service worker should assist in locating someone to serve in that capacity. As an agent of the Department, an employee of DHR cannot act as the legal representative for payment benefits for an adult client. Appointment as a legal representative authorizes that representative to handle the Human Resource payment, not other assets. The same person may be appointed to serve as a representative payee for Social Security purposes.

A legal representative appointed by the probate judge may be removed by the probate judge for failure to discharge his or her duties or at the request of the client or legal representative. The service worker should take pertinent recommendations

to the Financial Assistance worker regarding the client's capability to handle his or her money or the inappropriate handling by the current legal representative.

2. Appointment and Termination of Representative Payee

When a client is unable to manage his or her finances without assistance and the income is from the Social Security Administration, the worker should bring the situation to the attention of the agency and furnish that agency with pertinent information about the client. Social Security determines the need for a representative payee based on medical or psychiatric evidence that recipient is unable to manage benefit payments in his or her interest. If asked to do so, the worker could also help locate someone who is reliable and interested in the client to serve as the representative payee.[253]

Also, if requested, the service worker could assist the representative payee in planning expenditures for the individual concerned.

As an agent of the Department, an employee of DHR cannot act as representative payee for an adult client.

Change in or termination of representative payee is the responsibility of the Social Security Administration. The service worker should notify the Social Security Administration by telephone, letter, or SSA 1610 about information that might necessitate a change in or termination of the representative payee, such as a change in living arrangements or misuse of funds by the representative payee.

3. Appointment of Authorized Representative

Authorized representative refers to an individual who is not a member of the food assistance household who is appointed by a responsible household member to represent the household in a specific capacity with regard to food assistance only. Depending upon the type of authorization completed, an authorized representative may:

a. File an application and be interviewed for the household, or

b. Obtain and use the household's EBT (Electronic Benefits Transfer) account

It is the responsibility of the service worker to identify the need for an authorized representative or emergency representative and refer the matter to the Food Assistance worker for resolution. The service worker may assist in locating appropriate resource persons to serve as authorized representatives or emergency representatives.

[253] Revised AS Letter 2007-18
August 2007

Department of Human Resources employees and retailers who are authorized to accept EBT cards may not act as authorized representatives unless it is determined that no one else is available to act on behalf of the household. The County Director must give specific written approval for an employee or retailer to serve as an authorized representative.

4. Trust

A trust is an agreement between two people to the effect that one will manage the property of another. The beneficiary may be a third person or the original property owner. A trust is an excellent device for making use of benefit of the property available at the present time while reserving the management of the property to the trustee.[254]
The most important decision in setting up a trust is selecting the trustee and designing the trustee's powers. Trustees may be corporations such as banks, or individuals such as relatives or attorneys. A person must be mentally competent to set up a trust.

There are two types of trusts with which staff should be familiar.

a. Alabama Family Trust (AFT) – This program was established to supplement the care, support, habilitation, and treatment of persons who have a mental or physical impairment. These trusts are usually set up by the family of the disabled person. The AFT allows individuals to qualify for Medicaid and SSI while resources are set aside for more sophisticated dental, medical and diagnostic work or treatment than otherwise available through Medicaid payment in addition to providing many other benefits that enhance the quality of life. All such disbursements are reviewed and approved by the AFT Board of Trustees. Medicaid will be reimbursed for the medical assistance they have provided at the end of the active life of the trust. Information regarding this trust can be obtained by contacting the Executive Director, Alabama Family Trust at P.O. Box 301410, Montgomery, AL 36130-1410 or calling (1-800)-711-1303. Information is also available online at www.alabamafamilytrust.com .

b. Qualifying Income Trust (QIT) – This trust (previously known as "Miller Trust") may allow income (part or all) of an individual to go into an account where the income can be disregarded in the eligibility determination for Institutional (nursing home) Medicaid. For those who qualify, the trust funds will then be used for the proper health, support and maintenance of the nursing home resident. At the termination of the Trust, the funds shall be distributed to the Alabama Medicaid Agency in an amount not to exceed the amount paid by Medicaid. The assets placed in the trust must be the applicant's income only, may not consist of any other

[254] Revised AS Letter 2007-18
August 2007

resource and the trust must be irrevocable. Information regarding those eligible should be addressed to the Alabama Medicaid District Office.[255]

5. Conservator

See VI. F, "Appointment of a Conservator" this section.

6. Power of Attorney or Durable Power of Attorney

Power of Attorney (PoA) is a document conferring on someone else the authority to act on behalf of the first party known as the principal. The PoA designee may concern selling or managing real estate or other property. It may also concern authority over the person. The principal makes the decision on what responsibilities will be assumed by the agent and the designee or agent has all the power of an attorney and may act in place of the person conferring the power. Power of attorney may only be made by someone who is mentally competent and the power of attorney terminates automatically when the maker is no longer mentally competent. However, a "durable power of attorney" may be made whereby the principal can specify that the power of attorney will continue after he or she is no longer mentally competent. Refer to Section 26-1-2, 1985 Cumulative Supplement Code of Alabama, regarding durable power of attorney.

VIII. Additional Issues Related to Adult Protective Services

A. Duties and Responsibilities of Community Ombudsman

Duties of the Community Ombudsman as administered through the Department of Senior Services include the following:

1. To receive, investigate, respond to, and attempt informally to resolve complaints made by or on behalf of recipients of any long-term residential health care;

2. To report immediately instances of fraud, abuse, neglect, misappropriation of property, or exploitation to the Department of Human Resources or the Department of Public Health for investigation and follow-up pursuant to Chapter 9 of Title 38, the Adult Protective Services Act of 1976, as amended, and Article 1 of Chapter 16 of Title 26, the Child Abuse and Neglect Prevention Act;

3. To serve as a third-party mechanism for protecting the health, safety, welfare, and human rights of recipients of Ombudsman services;

[255] Revised AS Letter 2007-18
August 2007

4. To report immediately any complaint that cannot be resolved informally to the State Ombudsman for appropriate action;

5. To collect data about the number and kinds of complaints handled; and

6. To report regularly to the State Ombudsman about the data collected and activities of the Community Ombudsman program.

A Community Ombudsman may require remedial action from a facility administrator or provider. If remedial action is not taken within a reasonable time, the Community Ombudsman may refer the case to the State Ombudsman who may take one of the following actions:[256]

1. Allow more time if there is reason to believe such action would facilitate resolution of the complaint;

2. Refer a complaint regarding a nursing home, hospital or assisted living facility in writing to the Department of Public Health;

3. Refer a complaint regarding a boarding home to the appropriate agency and request that appropriate action be initiated; or

4. Refer any and all complaints arising out of, or in any way related to, the provision of any medical or surgical service or medical care and treatment to a recipient by a physician licensed to practice medicine in Alabama, in whatever setting the complaint should arise, to the State Board of Medical Examiners only.

Examples of appropriate referrals from this Department to ombudsmen include unappetizing food, poorly done laundry, lack of privacy in visiting, inconvenient visiting hours, lack of stimulating activity, requests for discharge planning, admission and re-admission problems.

The Community Ombudsman is required by law to respect the right to privacy of all involved parties when engaged in resolving complaints. Any request to review information concerning the medical condition of a recipient or any health care facility records of a recipient must be accompanied by a current valid duly executed authorization and release which has been signed by the recipient or by one legally authorized to act on behalf of the recipient.

B. Natural Death Act

In order that the rights of individuals may be respected even after they are no longer able to participate actively in decisions about themselves, the Legislature determined that the

[256] Revised AS Letter 2007-18
August 2007

laws of Alabama should recognize the right of a competent adult person to make a written declaration instructing his or her physician to provide, withhold, or withdraw life-sustaining treatment and artificially provided nutrition and hydration, or to designate by a lawful written form a health care proxy to make those decisions on behalf of the adult person in instances of terminal conditions and permanent unconsciousness. The Legislature further desired to provide for the appointment of surrogate decision makers in instances where the individual has not made such a designation.[257]

Under the Natural Death Act (Section 22-8A-1 through Section 22-8A-13, Code of Alabama 1997) as amended (Act 97-187), the Department has responsibility for participating in the review of matters brought before a health care facility committee regarding providing, withdrawing, or withholding treatment of patients in certain circumstances. The Department's review is according to its responsibilities under the Adult Protective Services Act.

The amendment to the Natural Death Act authorizes competent adults to make written directions concerning the providing, withholding, or withdrawing of life-sustaining treatment and artificially provided nutrition and hydration in instances of terminal conditions and permanent unconsciousness, permits the designation of proxy decision makers, and provides for the appointment of surrogate decision makers, and provides for the appointment of surrogate decision makers in instances where the patient has not made such a designation. The Act further provides that when no relatives are known or can be found, a committee composed of the patient's primary treating physician and the ethics committee of the facility where the patient is receiving treatment or care may serve as a surrogate decision maker. Where there is no ethics committee, a surrogate decision may be made by unanimous consent of a committee appointed by the chief of medical staff or chief executive officer of the facility and consisting of at least the following:

- the primary treating physician;
- the chief of medical staff or his or her designee;
- the patient's clergyman, if known or available, or a member of the clergy who is associated with, but not employed by or an independent contractor of the facility, or a social worker associated with but neither employed by nor serving as an independent contractor of the facility.

When a surrogate decision is being made by an ethics committee or an appointed committee, the facility where the patient is receiving care or treatment must notify the Department of Human Resources " for the purpose of allowing the department to participate in the review of the matter pursuant to its responsibilities under the Adult Protective Services Act, Chapter 9 of Title 38". Refer to Section 2 of the Act. Please note that the Department does not participate in the decision making process. *The Department's responsibility is to investigate any report of suspected abuse, neglect, or exploitation,*

[257] Revised AS Letter 2007-18
August 2007

participate in the committee meeting to ensure there is no abuse, neglect, or exploitation, and make an Adult Protective Services legal filing if appropriate. A Report of AANE is to be completed when the circumstances of the case would otherwise warrant investigation. Examples of such circumstances include but are not limited to the following:[258]

1. The worker suspects a decision to provide, withhold, or withdraw treatment is being made based on financial considerations or convenience of care; or

2. A facility staff member who is not on the committee makes a report of suspected wrong doing related to the proposed provision, withholding or withdrawing of the life-sustaining treatment.

Immediate response by the Department will be necessary. Collateral assistance from health care professionals should be requested as needed. When a determination is made that abuse or neglect may occur if the committee's decision is carried out, a petition for a temporary restraining order should be filed pursuant to the Adult Protective Services Act.

According to the Adult Protective Services Act, Section 38-9-8 (c), Code of Alabama, 1979, the Department is not required to investigate reports of abuse, neglect, or exploitation occurring in facilities owned and operated by the Alabama Department of Corrections or the Alabama Department of Mental Health. Therefore, a surrogate decision made by a committee of a state owned and operated facility of the Alabama Department of Corrections or the Alabama Department of Mental Health would not be subject to review by the Department of Human Resources.

The Durable Power of Attorney Amendment (Act 97-360) is a companion to the Natural Death Act Amendment. It authorizes the appointment of an attorney in fact to make health care decision on behalf of a principal in the event that the individual can no longer make or communicate those decisions.

C. Alcohol or Drug Abuse and Suicidal Gestures or Tendencies

Alcohol and drug abuse, as well as other behaviors such as suicidal tendencies, may render a person unable to provide for his basic needs. These conditions, which can result in serious damage to the health and well-being of the client, may constitute self-neglect. Protective services shall be provided if the client meets the definition of an adult in need of protective services.

An adult who appears to have a problem with alcohol or drug abuse should be referred to counseling services provided by a professional trained in this area. This may be available through the local mental health center or Alcoholics Anonymous (AA). Clients and families seeking help with substance abuse problems may call a 24 hour hotline sponsored by the Council on Substance Abuse – National Council on Alcoholism and Drug

[258] Revised AS Letter 2007-18
August 2007

Dependence, Inc. Information is given on treatment centers, bed availability, and support groups. The statewide number is 1-334-262-1629.

A client who makes suicidal gestures or displays suicidal tendencies should be referred to the local mental health center, a professionally trained therapist, or other appropriate professional. In addition, clients may also be referred to the national crisis hotline, LIFELINE: 1-800-273-TALK (8255). Calls to this number are then routed to a crisis hotline within the state.[259]

It may be that as the result of alcohol or drug abuse or suicidal gestures or tendencies, other agency services are needed. This may be a referral to the Food Assistance Program when income is improperly used to support the abuse instead of providing necessities. Workers may need to assist such clients with securing food, clothing, and shelter. Referrals to other community agencies may be appropriate. A conservator could be appointed to manage the person's financial affairs. Whenever minor children are involved, a referral should be made to the Child Protective Services unit.

D. Domestic Violence

Protective Services shall be provided to a victim of domestic violence who is determined to be an "adult in need of protective services."

Whether or not an "adult in need of protective services", a spouse abuse victim may be in need of a variety of services including emergency shelter, medical treatment, and counseling. A referral to a domestic abuse shelter is appropriate for those areas having such a shelter. Where no shelter exists, temporary housing may be found with the Salvation Army or other temporary housing facility. Where no such facilities exist, church or civic organizations may be contacted as shelter resources. Emergency medical treatment may be secured as in any other medical crisis treatment plan, including the emergency room of a hospital or at a Hill-Burton funded clinic. The victim may want to secure services of an attorney to determine what legal alternatives are available or contact law enforcement or the Victim's Services Officer, Office of Prosecution Services, District Attorney's Office regarding criminal charges.

Counseling should be provided by a professional trained in domestic violence counseling if at all possible. Such counseling may be available through the local Mental Health Center. The DHR worker may provide protective services and preventive protective services as appropriate. Assistance is also available by calling the state domestic violence hotline at 1-800-650-6522.

Whenever minor children are involved, a referral should be made to the Child Protective Services unit.

[259] Revised AS Letter 2007-18
August 2007

Victims of domestic violence may be reluctant to sign a warrant for the arrest of their abuser. However, under certain circumstances, law enforcement may make an arrest without a warrant. An officer may arrest a person without a warrant when: [260]

1. a public offense or breach of the peace has been committed in the presence of the officer;
2. a felony has been committed by the person arrested;
3. the officer has reasonable cause to believe the person arrested has committed a felony;
4. a charge has been made that the person arrested committed a felony;
5. the officer has knowledge that a warrant for the person's arrest has been issued;
6. the officer has reason to believe that the person arrested violated a protection order;
7. an offense involves an incident resulting in the abuse, assault, harassment, or the attempt or threats between family, household, or dating or engagement relationship members.

The APS worker should notify local law enforcement when active domestic violence is involved during the Adult Protective Services investigation, or as part of an ongoing service provision for at risk clients.

E. Protection from Abuse Act

The Protection from Abuse Act is designed to assure domestic violence victims maximum protection from abuse in a flexible and speedy manner. It is designed to provide relief for adults who have been involved in recent frequent romantic or sexual relations with their abuser. It expands the ability of law enforcement to assist victims and prevent further incidents of abuse. This act also provides for the issuance of protection orders to prevent domestic violence. The Act is a valuable tool for those victims who can seek relief on their own behalf as well as for parents, legal guardians, legal custodians, and the Department of Human Resources under certain circumstances.

Jurisdiction:

Filings under this act are made in Circuit Court and if the Circuit Judge is unavailable, a District Court Judge may handle the case. The Presiding Circuit Judge may also designate a District Judge to handle these cases. A petition may be filed:

1. where the person in need of protection or where the alleged abuser resides.
2. where the person in need of protection is temporarily located if they have left their residence to avoid abuse.
3. where a civil matter is pending before the court and the person in need of protection and the alleged abuser are opposing parties.

[260] Revised AS Letter 2011-19
December 2011

Any protection order issued in the State under this Act is effective throughout the State. In addition, any protection order issued by the Court of another State is enforceable as if it was issued in Alabama.[261]

Who May File:

> Under the Protection from Abuse Act (Section 30-5-1 through Section 30-5-11, Code of Alabama 1975), an adult 18 years of age or older, who is or has been married, or otherwise emancipated may seek relief for himself or herself, or for minor children, by filing a petition with the circuit court. In accordance with Section 30-5-5, Code of Alabama 1975, Protection from Abuse Act (amended August 2010), a parent, legal guardian, legal custodian, or **the State Department of Human Resources may petition for relief on behalf of the following:**
> (l) a minor.
> (2) **any person prevented by physical or mental incapacity from seeking a protection order.**
>
> Standardized petitions are available through the Circuit Clerk's office, and it is not necessary for an individual to have an attorney to file under this Act. However, it may be necessary to refer the abused person to an attorney in order to determine the appropriate legal course of action. No addresses or telephone numbers of the person in need of protection, their family, or household can be contained in the court document made available to the public or the defendant (alleged abuser). No court costs and fees are assessed for filing, service of a petition, issuance or registration of an order, or for the issuance of a witness subpoena. Costs and fees may be assessed against the defendant.

Hearing:

A hearing must be held within 10 days of the service of the petition. The Court may issue a temporary order to protect the plaintiff (person in need of protection) from abuse, or the immediate and present danger of abuse. The Court must grant or deny the petition for a temporary order within 3 business days of the filing. A temporary order by be continued by the Court.

Protection Orders:

The court may issue a wide variety of orders under the Protection from Abuse Act. The Court may immediately issue an order, without notice or hearing, as it deems necessary.

A court may grant any of the following relief without notice and a hearing in an ex parte protection order or an ex parte modification of a protection order:

[261] Revised AS Letter 2011-19
December 2011

(1) Enjoin the defendant from threatening to commit or committing acts of abuse against the plaintiff and any other person designated by the court.
(2) Restrain and enjoin the defendant from harassing, stalking, annoying, telephoning, contacting, or otherwise communicating, directly or indirectly, with the plaintiff, or threatening or engaging in conduct that would place the plaintiff, or any other person designated by the court, in reasonable fear of bodily injury.
(3) Order the defendant to stay away from the residence, school, or place of employment of the plaintiff, or any other person designated by the court, or order the defendant to stay away from any specified place frequented by the plaintiff, or any person designated by the court, where the court determines the defendant has no legitimate reason to frequent.
(4) Remove and exclude the defendant from the residence of the plaintiff, regardless of ownership of the residence.
(5) Order possession and use of an automobile and other essential personal effects, regardless of ownership, and direct the appropriate law enforcement officer to accompany the plaintiff to the residence of the parties or to other specified locations, as necessary, to protect plaintiff from abuse.
(6) Any other relief the court deems necessary for the safety and welfare of the person who needs protection.
(7) Prohibit the defendant from transferring, concealing, encumbering, or otherwise disposing of specified property mutually owned or leased by the parties.

The court may grant any of the following relief in a final protection order or a modification of a protection order after notice and a hearing, whether or not the defendant appears:

(1) Grant, <u>any of the above listed,</u> relief.
(2) Order the defendant to pay attorney's fees and court costs.
(3) When the defendant has a duty to support the plaintiff, and the defendant is the sole owner or lessee, grant to the plaintiff possession of the residence or household to the exclusion of the defendant by evicting the defendant or restoring possession to the plaintiff, or both, or by consent agreement allowing the defendant to provide suitable alternate housing.
(4) Order the defendant to pay temporary reasonable support for the plaintiff.
(5) Order the defendant to provide temporary possession of a vehicle to the plaintiff if the plaintiff has no other means of transportation of his or her own and the defendant either has control of more than one vehicle or has alternate means of transportation.

Any temporary ex parte order issued under this Act shall remain in effect until the final protection order is entered. While the final protection order is in effect, the court may amend its order at any time upon subsequent petition being filed by either party, and a hearing held.

Any final protection order is of permanent duration unless otherwise specified or modified by a subsequent court order.[262]

In summary, this Act provides another tool for the protection of vulnerable adults from persons to whom they have one of the following relationships:

1. related to the alleged abuser by marriage, including common law marriage.
2. had a former marriage or common law marriage with the alleged abuser.
3. has a child in common with the alleged abuser.
4. has a dating relationship with the alleged abuser, which includes an affectionate or sexual involvement within the last six months.
5. is a current or former household member with whom there is a romantic or sexual relationship.

Use of this Act may be most appropriate when the APS client can live safely in the community if the abuser, with whom the client has had a marital, romantic or sexual relationship, is kept away from the client.[263]

F. Pauper Burials

According to Section 38-8-1, Code of Alabama, each county commission is to assume responsibility for burial expenses when a person dies without resources to pay for these and there are not relatives able to do so. The County Department should be familiar with the necessary procedures to secure approval from its county commission. A Memorandum of Understanding may be completed by the local county DHR and the local county commission to establish procedures for pauper burial referrals. Affidavits in Support of Request for Assistance with Burial Expenses (ARSA) have been developed for completion by individuals who seek assistance with burial expenses due to economic hardship. (See Appendix D, Adult Services Appendices, Forms, and Templates.)

G. Reimbursement to Local Funds for Photocopying Expenses

Each County Department will need to establish an agreement with its probate court to be billed for the costs of photocopying documents. Photocopying of legal documents is necessary when they are needed to accompany Medicaid applications for protective services clients who are in need of nursing home placement. These clients are without family or responsible person to file for Medicaid on their behalf.

[262] Revised AS Letter 2011-19
December 2011

The County DHR will pay directly to the probate court from local funds for the amount billed. Requests for reimbursement to local funds will then be submitted to the Finance Division monthly, or preferably, quarterly.

After an agreement is reached between the County Department and the probate office, these procedures should be followed:

The probate court submits an itemized bill to the County DHR in accordance with the agreement. The bill should include each date copies were made, the number of copies, price per copy, and the daily total charge. Example:8-01-07, 30 copies @ $1.00 $30.00.

The County DHR makes payment from local funds to the probate court in accordance with the agreement.

Monthly or quarterly the County DHR submits a written request for reimbursement, a copy of the local disbursement authorization, and the original bill to:

Finance Division
SDHR
ATTN: Accounts Payable

The written request must state the total amount of reimbursement requested and that the expenses are for adult protective services clients. It is not necessary to identify clients individually.

Section VIII. Additional Issues Related to Adult Protective Services

H. Protection of Vulnerable Adults from Financial Exploitation Code of Alabama, Section 8-6-170[264]

The Protection of Vulnerable Adults from Financial Exploitation Act No. 2016-141 mandates reporting to the Alabama Securities Commission and the Alabama Department of Human Resources by "qualified individuals" (agents, investment adviser representatives, and persons who serve in a supervisory, compliance, legal, or member capacity of a broker-dealer or investment adviser) who reasonably believe that financial exploitation of a vulnerable adult may have occurred, been attempted, or is being attempted.

A QUALIFIED INDIVIDUAL is defined as any agent, investment adviser representative, or person who serves in a supervisory, compliance, legal, or associated member capacity of a broker-dealer or investment adviser.

[264] APS Letter 2016-11
June 2016

A VULNERABLE ADULT is defined to include both "a person 65 years or older" and a "protected person," as defined in Chapter 9, Title 38 of the Code of Alabama.

The Alabama Securities Commission is responsible for regulation of the securities industry in Alabama. The Alabama Securities Commission protects investors against securities fraud and provides aggressive enforcement actions against any firm or individual who has violated the Alabama Securities Act or other state and federal statues to the determent of Alabama investors. It is a law enforcement entity.

The Protection of Vulnerable Adults from Financial Exploitation Act also contains the following key provisions:

- Requires a qualified individual who reasonably believes that financial exploitation of a vulnerable adult may have occurred, may have been attempted, or is being attempted, to promptly notify the department and the commission within 2 days of the request for the disbursement;
- Provides for an internal investigation by the broker-dealer or investment adviser and a report of any additional results to DHR and the Securities Commission within 7 days of the request for disbursement;
- Authorizes disclosure to third parties in certain instances where a vulnerable adult has a legal relationship with the third party;
- Prohibits disclosure to the third party if the qualified individual suspects the third party of the financial exploitation;
- Provides immunity from administrative and civil liability for actions that might otherwise arise from such disclosure and delay of disbursement;
- Enables qualified individuals who suspect financial exploitation to delay disbursing funds from a vulnerable adult's account for up to 15 business days if financial exploitation is suspected; and
- Requires qualified individuals to provide records that are relevant to the suspected or attempted financial exploitation to the Alabama Securities Commission and the Alabama Department of Human Resources and law enforcement.

The delay can be extended for an additional 10 days at the request of either the Alabama Securities Commission or the Alabama Department of Human Resources. A Court of competent jurisdiction may extend, or order other protective relief based on a petition by DHR, the Securities Commission, broker-dealer or investment adviser or other interested party.

Investment professional staff will notify SDHR and the Securities Commission of reports of suspected financial exploitation of their clients who are vulnerable adults by using the

form "Alabama Securities Commission and Department of Human Resources Report of Adult Suspected to be Financially Exploited" located on iDHR and the DHR website. The form will be submitted to SDHR APS email at aps@dhr.alabama.gov. A FACTS clearance will be completed and the report forwarded to the appropriate County Department on the same business day when received during normal business hours. Reports received on weekends and State holidays will be processed the next business day. The report will be emailed to persons identified as being responsible for APS Intake in the appropriate county. The Securities Commission will take the lead in analyzing the financial records. DHR will conduct an investigation of financial exploitation according to existing policy. [265]

I. Glossary of Legal Terms

-A-

Action- proceeding taken in a court of law. Synonymous with case, suit, lawsuit.

Adversary System- the system of trial practice in which each of the opposing or adversary parties has full opportunity to present and establish its opposing contentions before the court.

Affidavit- a written statement of fact, signed and sworn to before a person having authority to administer an oath.

Allegation- the assertion, declaration or statement of a party to an action made in a pleading, stating what he expects to prove.

Appeal- process by which a case is brought from one court to a higher court for review.

Appearance- the formal proceeding by which a defendant submits himself to the jurisdiction of the court.

Appellant- party appealing a decision or judgment to a higher court.

Appellate Court- a court having jurisdiction over appeal and review.

Appellee- the party against whom an appeal is taken.

-B-

Bailiff- court attendant whose duties include keeping order in the courtroom and maintaining custody of the jury.
Burden of Proof- obligation of a party to prove facts at issue in the trial of a case.

-C-

[265] Revised AS Letter 2010-10
June 2010

Case- any proceedings, action, cause, suit, lawsuit, or controversy initiated through the court system by filing a complaint, petition, or indictment.

Certiorari- document or action removing a case from a trial court to an appellate court for review or from an appellate court to the Supreme Court.

Challenge for Cause- to formally call into question the capability of a venireman to serve as a juror in a case.

Charge to the Jury- a judge's instructions to the jury, which contains information, the laws that relate to the issues to be decided

Circumstantial Evidence- all evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.

Citation- reference to legal authorities and precedents.

Clerk of Court- officer of a court, whose principal duty is to maintain court records, summaries by both parties, closing argument of evidence presented during the trial.

Code- an official compilation of permanent laws in force, classified according to subject matter.

Commit- to lawfully send a person to prison, an asylum, or reformatory.

Complainant- synonymous with "plaintiff".

Contempt of Court- an act that is meant to embarrass, hinder or obstruct a court in the administration of justice. Direct contempt is committed in the presence of the court; indirect contempt is when a lawful order is not carried out or is refused.

Continuance- adjournment of the proceedings in a case from one day or term to another.

Corroborating Evidence- evidence supplementary to that already given and tending to strengthen or confirm it.

Counsel- an attorney; one who gives advice, especially legal advice.

Court- 1. Place where justice is administered; 2. Judge or judges formally engaged in administering justice.

Court Reporter- person who records and transcribes the testimony at court sessions.

Cross-Examination- questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

-D-

Decree- a decision or order of the court. A final decree completes the suit; an interlocutory decree is a provisional or preliminary decree, which is not final.

Defendant- the person against whom a lawsuit is started. The defendant is sometimes called the "respondent".

Deposition- testimony taken and recorded in an authorized place outside of the courtroom.

Direct Examination- the first interrogation of a witness by the party on whose behalf he is called.

Discovery- a pre-trial proceeding where a party to an action may be informed about the facts known by other parties or witnesses.

Disposition- determination of a charge; termination of any legal action.

Domicile- that place where a person has his true and permanent home. A person may have several residences, but only one domicile.

Due Process- constitutional provision which guarantees that rights will not be affected without notice and an opportunity to be heard.[266]

-E-

Enjoin- to require a person, by writ of injunction issued by a court to perform, or to abstain from some act.

Evidence- any form or proof legally presented at a trial through witnesses, records, documents, etc.

Ex Parte- by or for one party; done for in behalf of, or on the application of, during a trial or hearing.

Exhibit- paper, document or other object received by the court as evidence, during a trial or hearing.

Expert Witness- one who by study, practice, experience, or observation as a particular subject has required knowledge beyond that of an ordinary witness or juror. The trial judge determines whether a witness is qualified to testify as an expert witness.

-F-

[266] Revised AS Letter 2007-18
August 2007

Fraud- an international perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right, or in some manner to do him injury.

-G-

Guardian Ad Litem- one who is appointed by a court to represent the ward in legal proceedings to which he is a party defendant. Power is confined to the particular case at bar.

-H-

Habeas Corpus- An order to bring a person before a court or judge in order to release that person from unlawful restraint or detention.

Hearing- appearance before the judge by attorneys and interested parties in a case, generally open to the public.

Hearsay- evidence based on what the witness has heard someone else say, rather than what he has personally experienced.

Hostile Witness- a witness who is subject to cross-examination by the party who called him to testify, because of his evident antagonism toward that party as exhibited in his direct examination.

Hung Jury- when a jury cannot agree on a verdict.[267]

-I-

Immunity- freedom from duty or penalty.

Impeachment of Witness- an attack on the credibility of a witness.

Indigent- impoverished; needy; poor; without funds.

Injunction- writ or order by a court prohibiting a specific action from being carried out by a person or group.

Instruction- direction given by a judge to the jury regarding the law in a case.

Interlocutory- provisional; temporary; not final. Refers to orders and decrees of a court.

Interrogatories- written questions developed by one party's attorney for the adversary in a case who must respond in writing and under oath.

[267] Revised AS Letter 2007-18
August 2007

Invoking the Rule- an attorney's request to the court to exclude all witnesses from the courtroom while the other testimony is being given.

-J-

Judge- an elected or appointed official with authority to hear and decide cases in a court of law.

Judgment- a final determination by a court of the rights and claims of the parties in an action.

Jurisdiction- authority of a court to exercise judicial power.

Jury- specific number of people selected as prescribed by law to render a decision (verdict) in a trial.

Jury Deliberation- the jury considers the evidence and reaches a verdict.

-L-

Law- rules and principles of conduct promulgated by the legislature, court decisions, or local customs.

Leading Question- one which instructs a witness how to answer or suggest the answer desired. Prohibited on direct examination.

Litigant- one who is engaged in a lawsuit.

Litigation- contest in court.[268]

-M-

Magistrate- court officials with limited authority to issue warrants.

Misdemeanor- offense less serious than felonies; generally those punishable by fine or imprisonment for less than one year.

Mistrial- an erroneous or invalid trial; a trial declared defective and void due to prejudicial error in the proceeding.

-N-

Next Friend- person acting for the benefit of a child or adult without being appointed guardian.

[268] Revised AS Letter 2007-18
August 2007

-P-

Panel- a list of jurors to serve in a particular court or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

Parties- persons, corporations, or associations who have brought a lawsuit or who are defendants.

Perjury- criminal offense of making false statements under oath.

Petition- original pleading (complaint) filed by the plaintiff seeking equitable relief.

Petitioner- person who begins an action seeking equitable relief.

Plaintiff- party in a civil suit who files a complaint seeking legal relief.

Polling the Jury- a practice whereby the jurors are asked individually whether they agree to the verdict.

Power of Attorney- document authorizing another to act as one's agent or attorney.

Precedent- previously decided case, which is recognized as the authority for determining future cases.

Preponderance of Evidence- greater weight of evidence which is more credible and convincing to the mind.

Probate- civil action involving wills, the settlement of estates and guardianships.

Proceeding- particular legal action or course of action.[269]

-R-

Rebuttal- the introduction of refuting evidence; the attempt to show that statements of witnesses as to what occurred are not true.

Redirect Examination- follows cross-examination and is exercised by the party who first examined the witness.

Remand- (n) a disposition by an appellate court that results in sending the case back to the original court where it was tried so that some action can be taken; (v) to send back.

[269] Revised AS Letter 2007-18
August 2007

Request for Admissions- written statement of certain facts that one side asks the other side to admit or deny.

Request for Production of Documents- written requests by one party asking the other party to make available certain documents for inspection and copying.

Rest- a party is said to "rest" or "rest the case" when he has presented all the evidence he intends to offer.

Reversal- setting aside, annulling, vacating or changing to the contrary the decision of a lower court or other body.

Review- to re-examine judicially; a reconsideration. Used especially in the examination of a cause by an appellate court.

-S-

Service- delivery of communication of a legal document in a suit to the opposite party.

Settlement- conclusion of a legal matter; a compromise reached by the opposing parties in a civil suit eliminating the need for the judge to resolve the controversy.

Statute- the law as enacted by the legislature.

Stay- halting of a judicial proceeding by order of the court.

Stipulation- agreement by the attorneys and parties on opposite sides of a case regarding any matter in the trial proceedings.

Striking a Jury- process of selecting a trial jury where attorneys "strike" or excuse jurors from the trial until only the number needed remains.[270]

Subpoena- document issued by the court to compel a witness to appear and give testimony.

Subpoena Duces Tecum- literally "under penalty you shall take it with you." A process by which the court commands a witness to produce specific documents or records in a trial.

Suit- any court proceeding in which an individual seeks a decision (see case).

Summons- document directing the sheriff or another officer to notify the person named in an action that he is being sued and that he is required to appear on a day named and answer the complaint in such action.

Sustain- the court's granting an objection.

[270] Revised AS Letter 2007-18
August 2007

-T-

Temporary Restraining Order- Any order of a court the purpose of which is to prohibit, until another order is issued, a person from committing any or all of the following acts: harass, annoy, alarm, intimidate, assault, communicate with, or otherwise bother another person. The order is granted to prevent the adversary from acting to frustrate the purpose of the action; for example, by wasting or hiding assets.[271]

Testimony- any statement made by a witness under oath in a legal proceeding.

Transcript- official record of proceedings in a hearing or trial.

Trial- examination of issues of fact and law in a suit before a court that has jurisdiction over the case.

Trial De Novo- trial on appeal to a higher trial court which is held as if no previous trial had been held.

-V-

Venire- members of a panel of jurors.

Venue- specific county, city or geographical area in which a court with jurisdiction may hear a case.
Change of Venue-removal of a suit started in one county to another for trial, or from one court to another in the same county.

Verdict- formal decision made by a jury, read before the court and accepted by the judge.

Voir Dire- to speak the truth. The preliminary examination of a witness or juror as to qualifications.

-W-

Waive- to give up a right, claim or privilege voluntarily.

Willful- a "willful" act is one done intentionally, as distinguished from an act done carelessly or inadvertently.

Witness- person who testifies before a court under oath regarding what he has seen, heard, or otherwise observed.

Writ- written order directing a specific person to perform or refrain from performing a specific act.

[271] Revised AS Letter 2007-18
August 2007

Writ of Certiorari- petition to the Supreme Court of Alabama to review a decision of the Court of Criminal Appeals or the Court of Civil Appeals.[272]

J. Sample Itemized Statements and Letters

The following samples are provided for the social worker's information and use and for sharing with attorneys, nursing homes, and pharmacies as appropriate. Additions, deletions, and changes may be made as needed. Samples included are:

- Attorney's itemized statement
- Nursing home itemized bill for Limited Payment
- Pharmacy itemized bill for Limited Payment
- In-State Travel Expense Voucher (DHR-FD-1147) for worker to receive reimbursement for meals purchased for clients.
- Letter to nursing homes requesting client's name be placed on waiting list.

[272] Revised AS Letter 2007-18
August 2007

(SAMPLE ATTORNEY'S ITEMIZED STATEMENT)[273]

To Be Used When Attorney Represents the County Department in an Adult Services Case
LETTERHEAD
(Address and Social Security or Federal Tax Number)

Date: _____

RE: Legal Service in the matter of

(client's name)_____

in the Circuit Court of _____ County
Court Case No. CV –

Initial interview with representative of DHR (Date)	1 hour
Review of file and presentation of petition (Date)	1 hour
Telephone conference (Date)	25 minutes
Interview with caseworker (Date)	50 minutes
Conference with judge (Date)	1 hour
Review of case and trial presentation (Date)	2 hours
Representation of court hearing (Date)	1 ½ hours
Total	7 hours 45 mins.

TOTAL BALANCE DUE:

7 and ¾ hours at $XX.xx per hour $XXX.xx

I hereby certify that the above itemized statement is true and correct and that payment therefore has not been previously requested by me.

Signature_____

Sworn to and subscribed before me this the _____ day of _____. _____

Notary Public_____

The case number and category of eligibility of the above-name client is:

Case No._____
Approved for Payment _____
Director
_____ County Department of Human Resources

[273] Revised AS Letter 2007-18
August 2007

SAMPLE) **NURSING HOME INVOICE**[274]

Date _____

TO: _____ County Department of Human Resources

P.O. Box 000
Anywhere, AL 36000-0000

FROM: **(Any Nursing Home)**

RE: **(Client)**

Itemized Billing as follows:

		QUANTITY	PRICE	TOTAL
DRUGS:	Xanax	90	.66 each	59.40
	Halcion	30	.64 each	25.20
PERSONAL ITEMS:	Toothbrush	1	1.95 each	1.95
	Shaving Cream	3	2.65 each	7.95
	Razor	1	1.55 each	1.55
LAUNDRY CHARGES:				$

TOTAL CHARGE: $96.05

I hereby certify that the above items were not covered by Medicaid nor have they been previously billed for the above listed patient and are due and payable upon receipt not to exceed the amount stipulated by the terms of the agreement.

_____

Nursing Home Official

[274] Revised AS Letter 2007-18
August 2007

(SAMPLE)[275]

PHARMACY
INVOICE

_____
Date

TO: (ANY)_____ County Department of Human Resources
P.O. Box 000
Anywhere, AL 36000-0000

FROM: (Any Pharmacy)_____
_____
_____

RE: (Client)_____

Itemized Billing as follows:

MEDICATION/DRUGS:	QUANTITY	PRICE	TOTAL
Xanax	90	$.66 each	$59.40
Halcion	30	.64 each	25.20

TOTAL CHARGE: $84.60

I hereby certify that the above items were not covered by Medicaid nor have they been previously billed for the above listed patient and are due and payable upon receipt not to exceed $__*__ per quarter.

_____
Pharmacy Official

*This amount combined with payment to nursing home must not exceed $150 per quarter. Refer to "DHR Limited Payment to Nursing Homes."

[275] Revised AS Letter 2007-18
August 2007

COUNTY LETTERHEAD[276]

_____ (Any Nursing Home)
_____
_____

Please add the following person to your current waiting list:

Name _____ Age/DOB _____

Address _____

Phone _____ Marital Status _____

Physician _____

Diagnosis _____

Medications _____

(Check all that Apply)

_____ Walks/No Assistance Needed _____Walks/With Assistance
_____ Uses Walker _____Wheelchair Bound _____ Bedfast

_____Bladder Continent _____ Bowel Continent
_____Tube Feed _____ Must be Fed

Sponsor: _____

Method of Payment:

_____ Medicaid _____ Medicare
_____ Private Pay _____ Medicaid Application Upon Admission

Please contact _____
when a bed is available

[276] Revised AS Letter 2007-18
August 2007

K. List of Sample Petitions and Court Orders

The following list is a sample of petitions and orders provided for the service worker's information and for the use of attorneys approved to represent the Department. It is not necessary to use any of these samples but, when they are used, they are to be adapted to fit the particular situation with additions, deletions, and changes in wording being made as needed. Every fact and every item of information in the petition and in the court orders must be pertinent to the particular situation for which the petition or court order is being used at that time. Samples included are:[277]

1. Circuit Court

    a. Petition for Emergency Protective Placement (Nursing Home, Foster Home, etc.)

    b. Court Order Granting Immediate Placement, Appointing a Guardian Ad Litem, and setting a Hearing Date (Nursing Home or Foster Home)

    c. Petition for Emergency Protective Placement in a Hospital

    d. Order granting Emergency Protective Placement in a Hospital Appointing a Guardian Ad Litem, and Setting a Hearing Date

    e. Notice of Protective Placement Hearing

    f. Court Order for Protective Placement

    g. Court Report on Status of Protective Placement

    h. Motion to Vacate Protective Placement Order

    i. Motion for Order Granting Emergency Medical Treatment

    j. Order Granting Emergency Medical Treatment

    k. Petition for Protection from Abuse

    l. Ex Parte Order of Protection from Abuse

    m. Motion to Freeze Assets & for Temporary Guardian

    n. Certificate of Service

    o. Order Granting Motion to Freeze Assets & for Temporary Guardian

[277] Revised AS Letter 2007-18
August 2007

2. Probate Court[278]

   a. Petition for Appointment of a Temporary Guardian

   b. Petition for Appointment of a Temporary Limited Guardian

   c. Petition for letters of Guardianship

   d. Petition for letters of Limited Guardianship

   e. Petition for Letters of Conservatorship

   f. Petitioner's Notice of Hearing

   g. Motion for Alternate Service

   h. Order Setting Date for Guardianship or Conservatorship Hearing

   i. Order to Court Representative

   j. Report to Probate Court (Court Representative)

   k. Order Granting Petition for Temporary Guardian

   l. Order Granting Petition for Temporary Limited Guardian

   m. Order Granting Petition for Guardianship

   n. Order Granting Petition for Limited Guardianship

   o. Order Granting Petition for Conservatorship

   p. Order Granting Petition for Conservatorship upon filing Bond

   q. Letters of Guardianship

   r. Letters of Conservatorship

   s. Petition for Involuntary Commitment

   t. Emergency Order (Involuntary Commitment)

   u. Order on Probable Cause

[278] Revised AS Letter 2007-18
August 2007

v. Order Denying Petition to Commit

w. Order for Outpatient Commitment

x. Order for Inpatient Commitment

y. Amendment to Commitment Order[279]

[279] Revised AS Letter 2007-18
August 2007

IN RE: THE MATTER OF	)	IN THE CIRCUIT COURT FOR
	)	
___	)	_____ COUNTY, ALABAMA
	)	
	)	
	)	CASE NO.

COURT ORDER GRANTING EMERGENCY PROTECTIVE PLACEMENT IN A HOSPITAL, APPOINTING A GUARDIAN AD LITEM, AND SETTING A HEARING DATE

The verified petition of ___, agent of the ___ County Department of Human Resources, and facts having been presented to the Court indicating that ___ is (___), who is in need of protective services, that said person is unable, due to physical and/or mental disabilities, to provide for his basic physical needs and health care, and cannot protect himself from abuse, neglect, or exploitation by others; and it appearing to the Court that such protective service is necessary to protect the health or safety of the person from danger;

It is, therefore, ORDERED, ADJUGED, AND DECREED by the Court as follows:

1. That the Honorable ____, a duly licensed attorney, be appointed as Guardian ad Litem to represent the interest of
___ pending further Order of Court;

2. That the matter of Protective Services for ___ be set down for hearing on the ___th day of ___, ___, at ___ o'clock ___ before the undersigned at the ___ County Courthouse, ___.

3. That the Sheriff of ___ County shall forthwith serve a copy of the Petition and this Order upon ___ and shall assist the Department of Human Resources in transporting him immediately to the licensed hospital facility known as ____. The Department of Human Resources is hereby authorized to arrange ambulance transportation for said individual. Said individual is ordered to remain at said ___ pending the completion of a physical examination and a mental evaluation and the following of the results thereof to this Court.

4. That notice of the Petition for protective placement shall, within ten (10) days of this Order, be given to the person and as appropriate his spouse and other interested person, of the action of the Court, and of the time set for hearing on the matter of the person's need for protective placement, and arrangements for future care pursuant to Code of Alabama 1975, Section 38-9-5 and 38-9-6.

5. That a psychological evaluation of said individual shall be performed by a licensed mental health care professional, and a copy of said evaluation shall be forward to the Court.

6. That a physical examination of said individual be performed by a licensed physician, and a copy of the results of said examination be forwarded to this Court.

DONE AND ORDERED this ___ day of ___, ___.

_____

Circuit Judge

Revision No. 108
December 1992[280]

IN RE: THE MATTER OF ___	)	IN THE CIRCUIT COURT OF
	)	
	)	___ COUNTY, ALABAMA
	)	
	)	
	)	CASE NO. CV -

MOTION TO BE RELIEVED OF REPORTING RESPONSIBILITY

Come now the ___ County Department of Human Resources, by and through its agent, ___, and shows and represents unto the Court as follows:

1. That the above-named person was determined to be an adult in need of protective services by order of this Court dated
___ and ordered placed in (a licensed nursing home) (an approved foster home).

2. That said person now resides ___ and it appears that said arrangement is satisfactory.

WHEREFORE, THE PREMISES CONSIDERED, the ___ County Department of Human Resources prays that this Honorable Court will relieve the Department of reporting responsibility.

RESPECTFULLY SUBMITTED,

_____

Attorney for ___ County
Department of Human Resources[281]

[281] Revision No. 108
December 1992

IN RE: THE MATTER OF _____ OF	)	IN THE CIRCUIT COURT
	)	
	)	_____ COUNTY, ALABAMA
	)	
	)	
	)	CASE NO. _____

MOTION FOR ORDER GRANTING EMERGENCY MEDICAL TREATMENT

Come now the _____ County Department of Human Resources by and through counsel of record, in accordance with Title 38-9-5 Code of Alabama 1975 and the general equity powers of the Circuit Court, and moves this Court for an Order granting permission for the performing of emergency medical treatment on the above-named person, to-wit: _____, and as grounds therefore states as follows:

1. That the above-named person was determined to be (age, mental/physical impairment) _____.

2. That said person is currently hospitalized at _____ and has been in said hospital since _____.

3. That said person is suffering from _____ which is currently life-threatening and requires, in the professional opinion of her attending physicians, _____ in order to protect the health and welfare of said person.

4. That there is no guardian or relative able, willing, and available to consent to said medical treatment.

WHEREFORE, PREMISES CONSIDERED, movant prays this Court enters an Order granting permission for the performance of emergency medical treatment of the above individual, to-wit: _____.

RESPECTFULLY SUBMITTED,

_____
Attorney for _____ County
Department of Human Resources[282]

[282] Revision No. 108
December 1992

	)	IN THE CIRCUIT COURT OF
Plaintiff,	)	
Vs.	)	___ COUNTY, ALABAMA
	)	
Defendant,	)	CASE NO.

EX PARTE ORDER OF PROTECTION FROM ABUSE

The verified Petition of the Plaintiff having been presented to the Court and the Court having considered the Petition and the testimony of the Plaintiff, this Court finds that Plaintiff is in need of emergency protection from abuse, wherefore, the premises considered,

It is therefore, ORDERED, ADJUDGED and DECREED by this Court as follows:

1. That ___, the Defendant in this action, is hereby restrained and enjoined from abusing, harassing or intimidating Plaintiff.

2. That Defendant is ordered to pay costs of these proceedings;

It is further ORDERED, ADJUDGED and DECREED:

1. That the Defendant ___ shall appear before this Court on the ___ day of ___, ___, at ___ to show cause why this order shall not be extended.

2. That a copy of this order shall be served on the Defendant John Doe and that a copy of the order shall be issued to the Plaintiff and to the law enforcement officials with jurisdiction to enforce the order.

DONE this ___ day of ___, ___.

_____
JUDGE[283]

[283] Revision No. 108
December 1992

TO ANY LAW ENFORCEMENT OFFICER:

You are hereby directed to assist in the enforcement of the attached order(s), assisting as necessary to protect the above-named child and arresting any person where there is probable cause to believe that person as violated the attached orders.

☐ You are hereby directed to accompany_____ to the residence to enforce this order.

☐ You are hereby directed to remove _____ from the _____ home and assist in the exclusion of said person from the home.

This ORDER shall be effective for a period of one year as provided herein and shall be effective throughout the state and in all counties.

☐ Upon request, this Court orders that the Petitioner's address, the address of any member of Petitioner's family or household, or an address that would reveal the confidential location of a shelter for victims of domestic violence be omitted or deleted from all documents filed with the Court, documents made available to the public, and documents made available to the Respondent.

NOTE: Under the Family Violence Protection Order Enforcement Act, Code of Alabama 1975, § 30-5A-1, et seq., a wilful first violation of this ORDER is a Class A misdemeanor which is punishable by a fine not to exceed two thousand ($2,000.00) or imprisonment for up to a year in jail, or both, and is also punishable for civil contempt. A second conviction is punishable by a minimum of 48 hours continuous imprisonment, not to be suspended, in addition to any permissible fine. A third or subsequent conviction is punishable by a minimum sentence of 30 days, not to be suspended, in addition to any permissible fine.

ORDERED this _____ day of _____, _____.

_____
Judge[284]

[284] Revision No 108
December 1992

LETTERS OF GUARDIANSHIP

THE STATE OF ALABAMA	**:**	**PROBATE COURT**
__ COUNTY	**:**	**__ (Date)**

BE IT REMEMBERED, AND MADE KNOWN TO ALL WHOM IT MAY CONCERN:

That on the application of __ to my said Court for guardianship by Court appointment I have caused these LETTERS OF GUARDIANSHIP to issue to ___, Guardian of ___, the incapacitated person, and, in every case which occasion may require, the said Guardian is authorized and directed to exercise the following powers and duties:

[All powers and duties conferred under Alabama Code § 26-2A-78]

[List limitations to general powers and duties]

[List additional powers and duties granted]

as the lawful Guardian of the said ward.

Witness my hand and official seal this date ___, ___.

_____

_____

Judge of Probate

_____,

County, Alabama

_____,

THE STATE OF ALABAMA
___COUNTY

I, ___, Judge of Probate, hereby certify that the foregoing is a true and correct copy of Letters of Guardianship issued to __ as Guardian of ___, as same appears of record in my office.

Witness my hand and official seal this date ___, ___.

_____

_____,Judge of Probate

_____County, Alabama[285]

[285] Revision No. 108
December 1992

THE STATE OF ALABAMA) COURT OF PROBATE

___ COUNTY)

LETTERS OF CONSERVATORSHIP
(Alabama Uniform Guardianship and Protective Proceedings Act)

Letters of Conservatorship over the Estate of

are hereby granted to

who has duly qualified and given bond as such Conservator in accordance with law. Said Conservator is granted those powers and duties set forth in § ____, Code of Alabama 1975, as amended, except the following limitations:

Witness my hand, and dated this the ___ day of ___, ___.

_____
Judge of Probate[286]

[286] Revision No. 108
December 1992

IN THE PROBATE COURT OF __ COUNTY, ALABAMA

__ CASE NO.

EMERGENCY ORDER

In the matter of the petition filed by __ for the involuntary commitment of the above named respondent to the Alabama Department of Mental Health; and now comes the said petitioner and moves the Court to issue an emergency order confining said respondent until such time as a probable cause hearing can be held; and the Court having now had the said respondent served with a copy of the petition by the Sheriff of __ County and brought before it for an interview; and upon due consideration of the results of said interview, the Court now finds that the following relief is appropriate; and

It is ORDERED by the Court that ___ be detained and confined on an emergency basis at until ___ at which time a probable cause hearing shall be held.

The Court also finds that Alabama Code § 22-52-7 and 8 are applicable and it is therefore further ORDERED that the said ___ be and is hereby authorized to impose such limitations and/or treatment as may become necessary and appropriate to prevent said respondent from doing substantial harm to self or to others, or to prevent said respondent from leaving the jurisdiction of the court pending a final hearing on the merits.

It is further ORDERED by the Court that the Sheriff of __ County or his authorized deputy shall take into custody the above named respondent and forthwith deliver said person to the proper authorities at ___.

Done and ORDERED this ___.

_____
Judge of Probate[287]

[287] Revision No. 108
December 1992

CHAPTER 2 SECTION G

I. Introduction

Foster care for adults is a service provided in private homes for persons who are in need of residential care in a family setting. This service must be provided in the permanent personal residence of the individual(s) approved to provide this level of care. Adult Foster Care serves eligible adults who are in need of protective services and are unable to live in their own homes and cannot live with their families because of the family's inability or unwillingness to provide adequate care. Foster care may be the best plan for the adult of any age who has received maximum benefits from institutional care and is ready to return to the community.[288]

The terms, "foster family home" and "foster home" are used interchangeably to describe the settings of foster care for adults. Foster care is less expensive and provides a less regimented family lifestyle than institutional care. Some persons released from institutions into foster family care respond with noticeable improvement in morale, general well being, and physical health.

Foster care for adults is intended to provide the security of a supportive family atmosphere and encouragement toward social interaction. It can be both rehabilitative and preventive. Physical rehabilitation within a foster home setting may be medically advisable because daily routine and pace can be adapted to the individual's capacities and preferences.

The families selected to provide foster care must be approved by the County Department of Human Resources and provide their services in accordance with standards established by the State Department of Human Resources, which are published in the Minimum Standards for Foster Homes for Adults.

II. The Foster Care Client

A. Criteria for Persons to be Served in Foster Care

In order for foster care to be considered appropriate, the following criteria must be met:

1. The client shall be able to live safely outside of an institution with the provision of foster care and other available services.

2. The client shall be unable to live alone due to the need for supervision or assistance with personal living activities (including self-feeding, dressing, grooming, personal hygiene, bathing and toileting) because of incapacity or infirmity, such as intellectual disability or physical limitations.

3. There is no family able, willing, or available to provide necessary care to

[288] APS Letter 2016-19
November 2016

the client. The client cannot be a member of the foster family, or

4. Foster care is continued for a client who was in the temporary or permanent legal custody of the Department when reaching the age of 21.

5. Payment for room, board, and service fee must come from the client's own income and resources, and

6. The client is either at risk of abuse, neglect, or exploitation or at risk of institutionalization.

The worker should evaluate the client's condition to determine whether any physical or mental condition would demand too much of the foster family or would mean that the client could not adjust to a family setting. In such cases, foster care is not appropriate. However, the ability of the client to be cared for in a foster home setting rather than the nature of the disability, will be the decisive factor.

In evaluating this situation, the worker must weigh the circumstances, physical and emotional endurance, resilience and adaptability, and the attitude of the client toward the placement. The combination of physical and behavioral reactions must be considered in arriving at a decision on suitability for placement.

Adult Foster Care is appropriate for insuring the safety, well being, comfort, and health of the individual who does not require a high level of care. It is also necessary for foster care to be desired by the individual adult with his or her participation in the selection of the home in which he or she will live. The only exception is that foster care placement can be made without agreement from the client when placement has been court ordered pursuant to the Adult Protective Services Act.[289]

B. Financial Considerations

Payment to the foster family shall consist of two parts: (a) payment for the client's room and board from the client's own income, and (b) a service fee paid the Department or by the client. The client may negotiate with the family to increase the amount of his or her payment if there is a need and the foster family agrees to provide additional services and supplies. The worker will assist the client and foster family with payment terms and procedures. This will include proration of the room and board payment of a partial month. Payment will be made to the provider through the placement validation screen in FACTS (See FACTS Roadmap/Enter a Paid Placement).

1. Payment to Foster Care Provider

[289]APS Letter 2016-19
November 2016

a. Room and Board

The minimum for room and board shall be an amount equal to 75 percent of the SSI maximum. The client makes this payment to the foster care provider. The client and provider should understand that the payment for room and board will increase whenever SSI payment levels are increased. The financial agreement (DHR-APS-1332) should be updated to reflect changes in the payment.

When it appears that payment to the foster family would leave the client without sufficient income to take care of personal needs, the circumstances surrounding the need to pay less than the minimum for room and board must be documented in the client's case record. A copy of this should be forwarded to the Adult Services Consultant for approval.[290]

b. Service Fee

The determination of whether the client or the Department pay the fee to the foster family and the amount of the service fee is based upon the client's income.

The monthly service fee to be paid to the foster care provider for all new foster care clients is $135.00. For those clients whose income is equal to or less than the maximum allowable for SSI, this fee will be paid by the Department.

Clients are considered to have sufficient resources to pay the fee if they would retain at least an amount equal to 25% of an SSI payment after payment of the appropriate board payment, monthly service fee and medical expenses not covered by insurance but which would be eligible for payment if the client received Medicaid.

If the client needs and the foster family agree to provide laundry, medical supplies, or transportation to places such as church and social events, the effect these items would have on the client's payment should be negotiated between the client and the foster family.

The client must also consider personal expenses such as prescription medicine not covered by Medicaid, or other insurances, clothing, shoes, shaving gear, and supplies, toiletries, burial insurance, etc.

[290]APS Letter 2016-19
November 2016

Unless it is negotiated in the payment with the foster family, the client will need to retain some income for these expenses.

The needs of each client and whether these needs are to be met by the client or the foster family should be considered when negotiating the amount of the client's payment. While the service worker does not make decisions for the foster family or the client, help is to be provided in anticipating expenses to be considered in estimating costs. The worker will help the client and foster family reach an agreement regarding payment for the additional services and supplies with the understanding that the matter will be discussed again after they have some experience with the agreement and have reached conclusions about whether the agreement is fair and reasonable.

2. Payment Procedures[291]

The payment agreement made by the client and the foster care provider with the social worker's assistance will be recorded on DHR-ASD-1332, Adult Foster Care Payment Agreement/Transportation Authorization. Enter payment request in FACTS.

Payment is made for the day of admission to foster care placement but not for the day of termination. The placement must be documented in the placement module in FACTS (see FACTS Roadmap/Enter a Paid Placement). The worker will validate the placement the first day of each month in FACTS (see FACTS Roadmap/Placement Validation Screen).

The foster care provider should be notified when payment of a service fee is to begin and also when payment is being terminated.

The DHR-FSD-1967, Notice of Application for Services and the DHR-FSD-1968, Notice of Reduction/Termination of Services, is to be used for these purposes. If payment is made for a partial month, specify the time period it covers and the amount. For an initial award, the amount and the effective month of the full service fee should also be included on the DHR-FSD-1967. A copy of the Notice of Application For Services/Notice of Reduction/Termination will be sent to the client and to the foster care provider and one copy filed in the client's case record and scanned into FACTS in the File Cabinet.

[291] APS Letter 2016-19
November 2016

Prospective foster care providers should be advised that the service fee should be received by the end of the month following the services.[292]

C. Foster Care Placement

1. Case Planning with the Client

When it has been determined that foster care should be considered, the worker should explain to the client and interested family members how the program operates. The client should be informed about what can be expected in terms of services, companionship, help and support, the foster family's expectation of the client, the mutual obligations, and the agency's role in the arrangement. The worker's assessment of the client and his or her need for foster care must be documented on FACTS.

This case plan should include an assessment of the client's special needs and the level of supervision required. Some clients may require close supervision and assistance with activities of daily living and monitoring of medications. Others may be higher functioning and able to meet most of their basic needs as well as be alone for some lengths of time. It is important to have a strong sense of the client's level of ability and awareness. It may be necessary to consult others such as the physician, mental health worker, or family members in making these decisions.

There should be a full discussion with the client regarding payment to the foster family. The client should be advised that payment for room and board would come from his or her own income.

It may be apparent that the client is not capable of managing finances without assistance due to physical or mental limitations. If unable to understand the explanation of payment to be made to the foster family or in court ordered placement, the client may not agree to voluntarily make payment. In such instances, it will probably be necessary to have someone appointed to handle the client's finances. The foster care provider may apply to become the Social Security representative payee for a foster care client when there are no other available applicants and when such application is a part of the foster care client's case plan. Foster Care providers approved by the Social Security Administration (SSA) as a representative payee must provide DHR with a copy of each annual Representative Payee Accounting Report submitted to SSA for benefits received on behalf of the adult foster care client. Refer to "Legal Assistance with Resource Management", Chapter II, Section F, Protective Services for Adults.

[292] APS Letter 2016-19
November 2016

2. Medical Evaluation[293]

Medical advice regarding foster home placement for the individual concerned must be secured to determine whether foster home care is an appropriate plan from a health standpoint, whether the client's condition would be hazardous in any way to the foster family, and what medical regime would be necessary. It is for these reasons that a medical evaluation must be secured before a definite decision is made about foster care.

A physician must complete **DHR-ASD-664**, Report of Physician's Examination for Day Care/Foster Care for Adults. The doctor's report and recommendation are to be evaluated with the welfare of the client and the foster family in mind.

It is the responsibility of the service worker to see that the client has a physical examination annually and at any other time the client's condition obviously changes to the extent an examination is needed. In extenuating circumstances (such as client refuses to submit to an examination), the Adult Services Consultant should be contacted for assistance.

Payment to a physician for the examination may be authorized when not available without cost to the Department. Medicaid, Medicare, or private insurance should be billed when the client has these resources. For amount of the payment and procedures to be followed regarding such authorization, see "Procedures Regarding Payment for Service Medical Examinations," in Chapter I, Section A see:
(FACTS Roadmap/DEMAND PAYMENTS/SDHR PAID).

3. Selection of Foster Homes

To achieve the best possible placement and to locate the foster home that will most adequately meet the needs of the particular client, it will be necessary to weigh some factors very carefully:

a. Physical needs of the client. The ability of a particular foster home to meet the physical needs will be important to assess. For example, someone severely disabled by arthritis would need some help with personal care and would be most comfortable in a ground-floor room near a bath. An elderly person with few physical limitations might appreciate a home located within walking distance of recreational facilities (such as a community center, library, etc).

[293]APS Letter 2016-19
November 2016

b Knowledge and ability of foster family. Consideration should be given not only to the physical setting of the home but also the services the prospective foster family can offer to meet the client's needs. If indicated, the family should receive training to alleviate, reduce and cope with the problems that affect the particular client for whom the home is being considered.

c. Compatibility of personalities. Any placement should meet the emotional needs of both the client and the foster family, as well as the ability of each to be flexible, understanding, and accepting. Adaptability will affect the success of the placement.

d. Location of the foster home. The client's need to be near former associates, in a familiar neighborhood or within reach of specific community resources should be considered.[294]

e. Differences in ethnic, religious, and cultural factors. The ability of the provider and the client to accept these differences should be considered. If the client wishes to continue participation in their preferred religious services and activities, it may be necessary to facilitate this with the assistance of a family friend or neighbor. In addition, the foster care client should be encouraged to share any religious practices or limitations he wishes to be respected, including dietary restrictions, the giving of certain presents or cards with religious messages, participation in certain activities that may be prohibited by his or her religion such as dancing, watching TV, listening to certain types of music, or the participation in holiday celebrations and rituals. All plans and arrangements should be recorded on the client's Case Plan under the "Needs" tab, section 10, Recreation/Socialization, Religious Affiliation, "Needs Noted" narrative box.

f. Standard of living. There is a possibility that the client would be uncomfortable in a setting that is economically far above or far below that of which he or she is accustomed.

Rarely, will the "perfect spot" for a client be found. There is, however, usually an outstanding characteristic, need or expectation that should be given primary consideration in the selection of a home.

Expressed preferences of the foster family either for or against particular personalities, characteristics and habits should be considered. Persons who express a dislike for smoking may find it impossible to have a warm and

[294]APS Letter 2016-19
November 2016

accepting attitude toward the person who smokes. The placement will be more successful if the foster family can accept the person's personality, characteristics, and habits.

4. Pre-placement

After the worker has given both the client and the prospective foster family some information about the other, if there are any areas of doubt, these should be weighed against any areas of special merit. If both parties are interested in further consideration, the client should visit the foster home at least one time (preferably more). Getting acquainted on this basis helps in making a good decision and can also make adjustment to the new situation easier. If circumstances prevent a pre-placement visit, the case record must clearly document why a pre-placement visit was not made.[295]

5. Placement Procedures

By the time placement occurs, the client, provider, and worker should have completed **DHR-ASD-1332**, Adult Foster Care Payment Agreement and Transportation Authorization. Service fee to be paid by the Department to the foster care provider should be authorized from the date of placement. (See Road Map/Provider Module in FACTS).

The service worker must prepare **DHR-ASD-500**, Emergency Information, and Adult Day Care/Foster Care, give it to the foster family, file a copy in the client's case record and scan in FACTS into the File Cabinet. The client or person responsible shall sign permission for emergency medical treatment and transportation. An after-hours emergency telephone number should be provided on **DHR-ASD-500**. This number should be the phone number of the worker, supervisor, or anyone who is authorized to accept telephone calls when an adult foster care emergency occurs. The name, type, and location of insurance policies should also be included on the form along with any additional comments about the adult in foster care.

The worker and foster family will need to share information that would require change on the **DHR-ASD-500**. Each will need to make the necessary changes on the appropriate copy of the form. A new **DHR-ASD-500** should be completed as needed.

Foster care is considered by the Social Security Administration as an independent living arrangement. If the client has been receiving an SSI check less than the maximum, the Social Security Administration should be notified immediately upon placement of the adult in foster care. This

[295]APS Letter 2016-19
November 2016

change in the client's living arrangement may have some effect on the client's payment from the Social Security Administration.

6. Supervision of the Placement

In the early days of placement, the worker needs to develop the proper foundation for a satisfactory three-way relationship involving the client, the foster family, and the worker. If the placement is to be successful, the worker must offer sufficient help to both the client and the foster family, allowing time to see the foster family and the client separately. Joint interviews may be used in addition to separate interviews. It will be necessary for the worker to observe the physical arrangements made for the client and ascertain whether the foster family is maintaining standards regarding meals, health, safety, etc. The physical comfort of the client can be an important factor in determining how readily adjustment is made to the new situation. [296]

The worker should observe the client's reaction to the change. In most cases, the client accepting foster care will be looking for protection and security, which may seem to him or her to be totally lacking if everything (food, family, room, neighborhood, etc.) is strange. There may be a tendency to withdraw or to find fault in everything; adjustment may come very slowly. The worker and foster family will need to combine their efforts to find ways to reassure and help the client with the problems brought on or aggravated by the change.

Ongoing supervision of the foster home requires visits to the home including the semiannual re-approval visits. **A private face to face interview with the client shall be held monthly or as often as necessary to assess the safety and well-being of the client in the foster home** In addition it is valuable to occasionally interview the client away from the home if possible. E.g. If a client is in foster care and receives Adult Day Care services they must be seen monthly in the foster home as well as every other month at the day care center.

Health care of the client will be a concern of the worker and the foster family. It is the worker's responsibility to have at the time of placement, adequate information about the client's physical and mental condition and a recommendation from the physician concerning day-to-day routine regarding health, and also information about when check-ups are necessary. It is the foster family's responsibility to see that the prescribed regimen is followed and to help the client make and keep necessary appointments for medical care.

[296] APS Letter 2021-11
August 2021

The attitude of the foster family will often reflect prevailing attitudes of the community toward the elderly and disabled, some of which the worker will need to help the foster family modify. If, for instance, the foster family regards an elderly or intellectually disabled person as a child, the client will not be given the opportunity to assume the role of an adult in the family setting, which would defeat a principal aim of foster care. The family that is overly solicitous of a disabled adult may stifle all initiative and help to speed both physical and emotional deterioration. The worker will need to help the foster family understand the physiological and behavioral changes that are common among elderly and disabled people. The foster family needs enough information about the client's usual behavioral pattern to be able to recognize changes that need to be reported to the agency. The foster family should be reminded that accidents, unusual sickness, and disturbing behavior always need to be reported. Prompt response to the foster family's requests for help may prevent more serious problems later, but foster family and client should be encouraged to settle minor problems among themselves.

Proper care of the client is the primary goal but it is important not to lose sight of the foster family as they provide for, live with, and care for the client 24 hours of the day. It is a taxing responsibility both physically and mentally. Both the worker and other staff of the Department should convey appreciation for the job being done. Continuous, active support of the foster family in carrying out its task is needed not only for the sake of quality care of the client but also because appreciation for the job being done is part of the foster family's reward for their efforts.[297]

In foster home care, rehabilitation possibilities should be considered. Life within the setting of a family may stimulate regeneration of capacities, skills, and abilities forgotten or given up because of emotional or physical strain. Social and physical rehabilitation can range from regained interest in some activity to return to employment or independent living. Planning and goals should be adapted to the individual's capacities and abilities. (Regarding organized rehabilitation activities, see "Other Services in Conjunction with Foster Care.")

D. Use of Other Services in Conjunction with Foster Care

Since foster care provides care and supervision for the client 24 hours per day, it is not usually expected that another service will provide care and supervision for the client for any part of that 24-hour day. However, the following are examples of situations when use of such a service in addition to foster care can be authorized:

[297]APS Letter 2016-19
November 2016

1. Adult Day Care out of the foster home for part of the day may make the situation tolerable for the foster family, and preserve for the client a foster home that the client needs. For instance, some persons develop behavioral problems that the foster family finds intolerable if the client is in the home all day every day.

2. Training in personal care and self-help skills is available and is needed by a disabled adult living in foster care.

3. Training directed toward eventual employment is available and needed by a disabled adult living in foster care.

E. Investigation of Reports of Abuse, Neglect and Exploitation

Reports alleging abuse, neglect, or exploitation of a client by a member of the foster family shall be investigated immediately and action taken in accordance with the Adult Protective Services Act and following policies and procedures in Chapter II, Section F, Protective Services for Adults. Preferably, the investigation will not be completed by the worker who approves or supervises the foster home.

The SDHR Adult Protective Services shall be notified when a report is received, using the SDHR APS Notification Form located on iDHR, Forms, with a copy to the Adult Protective Services Consultant. The SDHR APS Notification Form should have sufficient identifying information for the consultant to review the case on FACTS. This is to be followed within thirty (30) days by a brief e-mail notice of the disposition of the investigation and any actions taken as a result. Policy and procedures regarding investigative hearings must be followed. Refer to "Procedures for Protective Services Investigative Hearings", Chapter II, Section F. Procedures in this paragraph should also be followed for any report of AANE of an adult foster care client or in a case in which any adult foster care provider or any household member of the adult foster home is named as an alleged perpetrator (see Adult Protective Service Manual, Chapter II, Section F, pages "Reporting to the SDHR Adult Protective Service.") [298]

F. Temporary Absence from the Foster Home

If the client is temporarily out of the home (such as for hospitalization), and the case worker agrees that returning to the foster home is the appropriate plan for the client, payment of the service fee may be continued for a maximum of 30 days, provided all of the following conditions exist:

[298] APS Letter 2016-19
November 2016

1. The client makes a definite decision that he or she wants to return to the foster home.

2. The client agrees to make his or her regular payment to the foster family for the time he is away from the home.

3. The foster family agrees to reserve the space for the client.

G. Termination of Placement

Any change in placement of a client might be a difficult experience for the client and the foster family; both need understanding and support from the service worker. Many times moving a client who has become a part of a foster family can be detrimental to the client and to the foster family. Great care should be taken before moving a client, giving consideration to the emotional attachment of both the client and the foster family.[299]

If a placement is to be terminated, whether at the request of the client or the foster family or for some other reason, advance notice should be given to all parties concerned. If the foster family requests the termination, a two-week notice to the County Department is required. The service worker should try to minimize any negative effects that might be expected to result from the client's move, especially if the move is being made because the placement was not successful. If a client's first placement has not been satisfactory, the worker will need to use much skill and discretion to ease the ill effects resulting from the first placement, and take extraordinary precautions to assure success of the second. Other plans should be considered when a client improves greatly in a foster home and a decision is made that the care in a foster home is no longer needed.

Termination of placement may become necessary for reasons other than at the request of the client or foster family. The following are some of the reasons termination may be required:

a. Client has no money available to pay for room and board.
b. Client is in need of institutional care.
c. Client recovers from infirmity and can live alone.
d. Client's mental and emotional condition prevents the client from being cared for in a family setting.

Whenever foster care placement terminates, **DHR-FSD-1968**, Notice of Reduction/Termination of Services, is to be completed and a copy sent to the client and foster care provider and place a copy into filed folder and scan into file cabinet on FACTS (See Roadmap in FACTS/Exit a Paid Placement). The amount of payment for the last month of service should be added on **DHR-FSD-1968**.

[299] APS Letter 2016-19
November 2016

H. Death of a Person in Foster Care

The service worker will want to be particularly sensitive to the needs of the foster family should death of a foster client occur. This could be a very upsetting experience for the foster family, and the service worker should offer them help and support for some time after the person has died. Before any foster care placement is made, the service worker should prepare the foster care provider for the possibility of the client's death and give the foster care provider some guidelines to follow should a client die.

SDHR APS notification should be made as soon as the service worker learns of the death of a foster care client. Clients in foster care are encouraged to have insurance to pay expenses. The client should inform some member of the foster family where the burial policy is kept. If a member of the client's family has a policy, the foster family will need to know how to get in touch with that person. Identifying information regarding the policy and the name of the person who has the policy will be recorded by the service worker on **DHR-ASD-500**, Emergency Information, and Adult Day Care/Adult Foster Care. [300]

If a client does not have insurance to cover burial expenses, it would be desirable for this to be obtained before placement in a foster home. Even though the service worker cannot tell the client how to spend his or her money, the client should be advised of the need for an insurance that will pay burial expenses. Many times, however, due to the age or previous health problems, the client may not be able to obtain insurance or may find that the premium costs are higher that he or she can afford to pay. Each County Department will need to be familiar with the county commission's procedure for the burial of a person without insurance or other source of funds. There should also be a definite procedure to be followed by the foster family in notifying the County Office in the event of death of the client on weekends or at night when the County Office is closed. This information should be provided on **DHR-ASD-500,** Emergency Information, and Adult Day Care/Adult Foster Care.

If a terminally ill client is placed in a foster home, the worker should seek resources that will help the provider and client deal with the situation.
Organizations such as Hospice may be of assistance.

[300] APS Letter 2016-19
November 2016

III. Foster Care Providers and Homes

A. Recruiting Foster Homes

A large part of establishing a program to provide foster care for adults will consist of informing the community about the program and recruiting homes of families and individuals who are interested in providing foster care. Counties having a large adult caseload will find that the varied characteristics of those needing foster care will necessitate homes of widely varying types. Consequently, campaigns to recruit homes will need to reach different segments of the community.

Agency workers, who have lived or worked in the community for an extended period of time, often have intimate knowledge of neighborhoods and individual families who could be first contacts for recruitment. Others who might have valuable suggestions would include ministers, operators of rural stores, neighborhood doctors, extension service workers, and leaders of civic groups. Personal contacts with such individuals can serve to develop the community's interest and understanding of the foster care program and locate potential foster homes. In addition, APS staff may coordinate recruitment activities with Family and Children's Services staff. [301]

If these informal efforts do not lead to establishment of enough foster homes to fill the needs, appeals should be directed to other social agencies, church and synagogue congregations and civic organizations. Various communication methods include: Newspaper feature articles, news articles, classified advertising, and letters to the editor; radio spot announcements, interviews on public service shows; television spot announcements; public speaking; church and club bulletins, etc. Most applicants are exposed to more than one recruitment method. Primary recruitment sources are important but other methods that give support and depth are also needed.

Families already providing foster care for adults offer excellent resources for recruiting. Their experience enables them to provide help in locating homes and to interpret the program to the community. Also, families who are giving consideration to moving from foster care of children to foster care of adults will need help in understanding the differences in expectations, anticipated problems, rewards, fees, etc.

Recruitment materials, including pamphlets prepared by the SDHR Adult Protective Services to be used in recruiting foster homes are available upon request from General Services. Assistance with news releases for recruiting purposes can be obtained from Office of Communications.

[301] APS Letter 2016-19
November 2016

Initial discussion with persons interested in adult foster care should focus on the need of the foster family home to meet the emotional and physical needs of the client in a way that will protect and promote his health, safety, well-being, and comfort. It should be clarified that the family and home must meet certain requirements and that the foster family must demonstrate the ability to render necessary personal service. Minimum Standards for Foster Homes for Adults should be used in helping applicants understand the program and its requirements.
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B. Requirements for the Foster Family

1. Age and Literacy

   Foster care provider shall be of the age of majority (nineteen). The foster care provider shall be able to read and write.

2. Marital Status

   An applicant may be single or married. Two otherwise related or unrelated adults heading the household may also make a joint application to provide foster care.[302]

3. Finances

   The income level of the foster care provider is considered to ensure that the family has sufficient income to meet its own needs and that the room and board payments made by the client will be used to meet the client's needs. Families receiving SSI or Food Assistance may be considered. Care must be taken to see that the client's needs can be met adequately. DHR service fee made to the provider for providing care may be considered when determining whether the foster care family has sufficient income to meet its own needs. When the prospective provider's only income will come from providing foster care, the home should not be approved until all other requirements are met, and the worker and supervisor have determined that there is a particular client or clients whose needs can be met in the home of the prospective provider.

   Adult foster care providers whose family income includes any form of public assistance or other benefits must be advised that these benefits such as SSI or Food Assistance may be affected by their receipt of the service fee or the room and board payment made to them by the client.
   In determining Food Assistance eligibility, both the service fee and the payment for room and board are considered income to the foster care

[302]APS Letter 2016-19
November 2016

provider. Adults in foster care are considered boarders for Food Assistance purposes and must be included in the Food Assistance budget with the host (i.e. foster care provider) household if they receive Food Assistance benefits. If the host household wishes to exclude the adult foster care client in determining the household composition for Food Assistance purposes, the income of the foster care recipient is not counted in the food assistance budget.

Adult foster care room and board payments and the service fee are considered income to the foster care provider and must be considered in determining eligibility and the payment amount for the TANF Program.

Foster care families will need to consult the appropriate agency, (e.g. Social Security Administration) to determine the effect receipt of these payments would have upon their own eligibility for other benefits and programs.

For income tax purposes, it is recommended that each provider of foster care for adults discuss with their accountant or the Internal Revenue Service (IRS) whether the service fee and any part or the entire amount paid by the client will be considered taxable income. Current IRS regulations require that the Department report its payments to foster care providers. For this purpose, W-9, Request for Taxpayers Identification Number, must be completed on each foster care provider and entered on the Tax/Pmnt info screen for the Provider on FACTS. The county DHR should retain the W-9 for providers whose payments are authorized on FACTS. [303]

4. Employment

Adult foster care providers may work outside the home if the caseworker determines that such employment would not jeopardize the clients' health or safety and would not have a detrimental effect upon the provision of foster care. If the client is in day care or training and the provider's hours of employment extend beyond the hours the client is out of the home, the plan for substitute care must be approved by the County Department. See "Use of Other Services in Conjunction with Foster Care" earlier in this chapter.) If the client is not in a day care or training program, substitute care necessary for the provider's employment should not exceed 10 hours per week. Plans for any substitute care must be approved by the County Department. When foster care is provided by a two-adult family, one of them may be employed outside of the home full-time.

Per Advisory Opinion No. 2005-27, no DHR employee can be approved as

[303] APS Letter 2023-01
February 2023

a new adult foster care provider for their county of employment. An employee can be approved as a new adult foster care provider in their county of employment only if the placement is approved by and overseen by another County DHR Office. Advisory Opinion No. 2005-27 is located on iDHR under Online Documents-Adult Protective Services-Appendices, Forms and Template.

5. Health

All members of the household must be in such physical and mental health as not to be harmful to the client. Since health problems of the provider or household members could pose a threat to a particular client, a licensed practicing medical doctor's or a physician assistant's (as defined in Section 34-24-290(4), Code of Alabama 1975) statement, indicating whether each member of the household is free of communicable and infectious disease and provide the dates of the latest test. When there is indication of possible disease, the members of the family must have tests necessary to clear any questions as to the health of the individual(s) concerned and to determine whether an illness or disease would interfere with the ability to provide care. A new medical must be obtained every four years on providers and household members under 62 years of age or every two years on providers over 62 years of age.[304]

If there is a question about the health of the foster provider, additional medical examinations may be required. The foster family applicant should not be encouraged to proceed through steps in obtaining a medical statement until it appears that the application to provide foster care will be approved.

6. Family Composition

There are no requirements about the size of family that is to provide foster care for adults. All members of the family, however, must be willing to accept the client into the home as a family member. The client shall not be a member of the foster family. Providers who become legally responsible for a client through court ordered guardianship will no longer be eligible to provide foster care for that person. The foster care provider must be prepared to make accountings as required by the Courts.

If the family includes one or more persons who need considerable care and attention (small children or an incapacitated adult), the situation should be evaluated carefully to determine whether the needs of all members of the household could be met adequately while providing foster care for one or more persons. It is important to remember that the primary focus is on

[304] AS Letter 2016-19
November 2016

meeting the needs of the person in foster care rather than those persons providing foster care.

The foster family must not borrow, solicit, accept, or receive gifts of value or money from the foster care client or from his or her friends or relatives. Excluded is payment to the provider for room and board, service fee or additional services and supplies. The client's name must not be used to purchase services, to qualify for utility services, establish credit, or otherwise create indebtedness for the client. The foster family must not sign any credit or legal documents for or with the client, with the exception of applying to become the Social Security representative payee when such application is a part of the foster client's case plan.

7. Character and Suitability

All providers of adult foster care, their household members, and their designated substitute care providers must have had a criminal history background check. If any time the household composition changes, the provider must notify the County staff (See Section V Application Approval/Denial and Revocation of Approval – A. Approval to Provide Foster Care, this Chapter). If a new household member has been added, the worker must assess the character and suitability of that person to ensure that the home continues to be an appropriate placement for foster care. For new adults in the home, this would include completing the mandatory criminal history background check on the new member as in the following sections, checking references, having a medical examination completed, and making all other appropriate assessments (This information is documented on the Resource Licensing Checklist Screen on FACTS). [305]

A. Applicants

To be considered as providers of adult foster care, all applicants, their household members, and their designated substitutes must meet character and suitability requirements of the agency. The initial screening requires verification that there is no history of indicated abuse or neglect of children or abuse, neglect, or exploitation of elderly or disabled adults in the State of Alabama.

Currently Fieldprint Inc, provides criminal history background checks through online applications and live scans of fingerprints. The cost will be $49.20 per application. DHR pays for background checks for adult foster care applicants, adult household members

[305] APS Letter 2016-19
November 2016

and substitute care applicants, adult household members, and substitute care providers. In order to submit an application, applicants must visit http://fieldprintalabama.com or a website otherwise designated by the vendor and click on the DHR link or visit DHR's website at http://dhr.alabama.gov/ and click on the Quick Links and Criminal History links.[306]

All DHR-Fee Paid Applicants must pre-register with county office or state office staff before accessing the vendor's website to submit an application for a criminal history background check. Applicants are responsible for their own registration. Information incorrectly entered during registration and submitted during fingerprinting cannot be corrected and is the responsibility of the applicants. After submitting a completed application, all applicants must visit a Fieldprint Inc. fingerprint location in Alabama in order to be fingerprinted. Print locations and hours are listed on Fieldprint Inc's Website. All applicants must bring valid identification to the fingerprint location in order to be fingerprinted. Valid forms of identification are listed at www.fieldprintalabama.com. This fingerprint site does not have the means to provide applicants the status of their background check. The Alabama Department of Human Resources State Office of Criminal History (ADHR/SOCH) worker will check the Fieldprint Inc website for results on a daily basis to determine if results are received or rejected. Results received will be one of five categories; Hit Without Disqualification, Hits with Disqualifies, Hits Unable to Determine, No Hits, and RAP Backs. Inquiries about the DHR Criminal History Check process including, but not limited to, the status of application, should be made to the ADHR/SOCH at (334) 353-5400. If an applicant has questions about specific fingerprint sites, he or she should submit them via email to www.Fieldprintalabama.com.

Additionally, references must be provided to verify knowledge of all family members and their good character, reliability, and appropriateness to meet the needs of adults in need of protection.

The character and suitability of an applicant or provider and household members may also be assessed by a review of the past history of the individual regarding their truthfulness and their ability

[306] APS Letter 2016-19
November 2016

to care for clients. False or misleading statements made to the Department or other government personnel regarding incidents or events occurring while providing foster care or surrounding part of any adult or child abuse or neglect investigation conducted by the Department, law enforcement or other government officials are considered as evidence of unsuitable character. Additional factors relevant to assessing character and suitability are community reputation, work history, personal history, interpersonal skills, emotional and physical limitations, and psychological problems. Following the initial approval of the adult foster care provider, reviews of character and suitability will be conducted at least annually but may also be done at any time at the discretion of the Department. [307]

1.) At the point at which a potential provider indicates a wish to proceed with the application process, the County Department will check its local files for any record in that individual's name or any other record known to contain information related to that person. In addition SDHR/APS will conduct a statewide FACTS search and Registry Clearance to determine whether there has been an adult or neglect, or exploitation report involving any adult listed in the potential applicant's home. If an "Indicated" report is found on an adult member of the potential applicant's household or other information is located that would prevent the inquirer from being a resource for adult foster care, the County Department should send a letter to the inquirer stating that their home will not be considered. ***(See sample denial letter at the end of this chapter, Attachment B)***.

2.) Following the initial screening, the Department can proceed with an orientation to the foster care program and the application process. At the time of the initial application, each applicant for approval including substitute provider and adult household members shall complete the following to DHR prior to approval:

a. Register at Alabama Applicant Fingerprinting Online Services at www.fieldprintalabama.com. Applicants should read and confirm Affidavit for Release of Information and Mandatory Criminal History Check Notice by checking the box stating

[307] APS Letter 2016-19
November 2016

that she or he has read and accepted these terms and signing using an electronic signature. Enter information on all required fields and verify all information is correct. All entered registration information will be retrieved by Livescan using the registration ID. Applicant registration is valid for 90 days. If it is not used within 90 days, it will be automatically cancelled and the fee refunded (if applicable).

b. Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any government agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the verification documentation shall be maintained in the provider applicant's file. If no copy of the verification document is available, a signed written statement that the verification document is available, a signed written statement that the verification document has been seen and the individual's identity confirmed shall be maintained in the applicant's file.[308]

3. No home shall be approved with an adult household member or substitute provider who refuses or fails to fully answer and complete a criminal history background check through online services.

Temporary approval of an Adult Foster Care Home will be done only in emergency situations for homes that have met **all** requirements except the return of a completed criminal history background check and the subsequent suitability letter. Temporary approvals will not be made if there is any reason to suspect that a satisfactory check will not be received. Temporary approvals will only be granted when great care has been given to the review of information from references and other sources that indicate suitability of the provider and household members ensuring to the extent possible the safety of each individual. Temporary approval of Adult

[308]APS Letter 2016-19
November 2016

Foster Care Homes may be granted only with concurrence of SDHR APS. [309]

No home may be approved with an individual who is employed as a staff member (paid or unpaid) or allowed to work as a volunteer if on the Mandatory Criminal History Notice form he or she reveals a disqualifying conviction and the suitability determination is not reversed at reconsideration.

B. Employees and Volunteers

All foster home employees who have unsupervised access or direct care of the foster care recipient, and volunteers working in the home of an adult foster care applicant are required to complete criminal history checks. The term "volunteer" does *not* include a client's parent, family member, legal guardian by court order or legal custodian by court order. The term "volunteer" *does* include any individual providing unpaid supervision of or care to an adult in care. The focus is on the adult under the care of supervision of the volunteer, not the adult who supervises the volunteer.

1.) Prior to employment or volunteer work or services, each individual should complete a criminal history background information check online at www.fieldprintalabama.com accompanied by the following:

a.) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any government agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the verification documentation shall be maintained in the provider applicant's file. If no copy of the verification document is available, a signed written statement that the verification document has been seen and the individual's identity confirmed shall be maintained in the file.

b. No one who fails or refuses to give written consent or submit Fingerprints necessary to obtain criminal history background information may be employed, allowed to perform volunteer or work by the Department of Human Resources.

[309] APS Letter 2016-19
November 2016

2.) Within 5 days after starting work, individuals should complete a background criminal history check through online application and live scan of fingerprints at www.fieldprintalabama.com. Results of the background check will be reported to Alabama Department of Human Resources State Office Criminal History usually within 48 hours of initial processing. Individuals are not to contact Fieldprint Inc or the fingerprint sites with questions regarding background check results. All inquiries regarding the results of the background check should be addressed to ADHR/SOCH. If an individual has questions regarding his or her fingerprint status, the individual is to contact ADHR/SOCH at (334) 353-5400. [310]

The cost for all Non-DHR Fee Paid applicants is $49.20. Applicants may pay at the fingerprint site with money order or cashier check. Payments must be made out to Fieldprint Inc. This applies to employees and non-DHR volunteers only. The fee for volunteers registered with DHR will be paid by DHR.

3.) No home may be approved with an individual who is employed or allowed to work as a volunteer in the home if on the Mandatory Criminal History Notice form, he or she reveals a disqualifying conviction and the suitability determination is not reversed at reconsideration.

C. Criminal History Checks Procedures

1.) Fingerprints may be collected live through the use of ink-less "live scan" fingerprinting devices to electronically transmit the fingerprints to the Department of Public Safety. Individuals should register online at Fieldprint Inc. Applicant Fingerprint Services at www.fieldprintalabama.com. If an individual has completed an Alabama Bureau of Investigation (FBI) criminal history background check through the ADHR/SOCH and his or her fingerprint results are on file, the individual may not be required to complete a new criminal history background check. If the individual already has been through the Criminal History Background Check process with DHR, contact the ADHR/SOCH at 334-353-5400. If an update is available, they will let the individual know, if not they will instruct the individual to begin the process through

[310] APS Letter 2016-19
November 2016

Fieldprint, Inc.

2.) Fingerprints shall not be required when a disability prevents a person from being fingerprinted. Disabilities preventing fingerprinting include the loss of hands; severe scarring of all fingers closed paralytic hands, and similar disabilities. In cases involving disability, written consent to obtain available criminal history background information by name only shall be obtained. Individuals who are confined to a wheelchair or bed are not exempt from this requirement. The Department of Public Safety shall conduct a criminal history background information check by name and Social Security number only in such cases. Documentation or verification that the disability prevents fingerprinting obtained from law enforcement or from an individual trained in fingerprinting techniques are required to be submitted to the Department of Public Safety and DHR. [311]

3.) Criminal history background information checks shall be performed by the Alabama Department of Public Safety. National criminal history checks shall be requested by the Department of Public Safety from the Federal Bureau of Investigation

4.) The Department of Public Safety shall send to ADHR/SOCH a criminal history background information report listing all arrests, convictions, punishment, and sentences, etc, on individuals being checked.

5.) ADHR/SOCH shall review the criminal history background information report and determine whether the applicant or another person meets the suitability requirement based on the presence of any disqualifying conviction listed on the criminal history background information report. This unit is part of SDHR Legal Office.

6.) A conviction for any of the crimes listed below disqualifies an individual for adult foster care provider approval, employment, or volunteer work at a home. The term *conviction** includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere.

*Note Youthful offender adjudication status is not a "conviction" under Alabama law. Therefore, crimes committed by an individual who was adjudicated as a youthful

[311]APS Letter 2016-19
November 2016

offender do not have to be revealed in answer to the question, "have you ever been convicted of a misdemeanor or felony crime?" on an employment, foster care or day care or any other application. Adjudication as a youthful offender is **not** a conviction and does not disqualify a person from being licensed, approved, or employed as a child or adult care provider. [312]

1 Murder, manslaughter, or criminally negligent homicide.

2. A crime committed against a child.

3. A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.

4. A crime involving the sale or distribution of a controlled substance.

5. A sex crime.

   A sex crime includes the following:

   a. Enticing a child to enter a vehicle, room, house, office, or any other space for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Alabama 1975.

   b. Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Alabama 1975.

   c. Kidnapping of a minor, except by a parent, in the first or second degree, as prescribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Alabama 1975.

   d. Promoting prostitution in the first or second degree, as proscribed by Section 13A-6-62 of the Code of Alabama 1975.

   e. Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama 1975.

   f. Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.

   g. Sexual torture, as proscribed by Section 13A-6-65.1 of the Code of Alabama 1975.

   h. Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Alabama 1975.

   i. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Alabama 1975.30 2-2-2016.

   j. Soliciting a child by computer for the purposes of committing a sexual act and transmittal of obscene material to a child by computer as proscribed by

[312] APS Letter 2016-19
November 2016

Section 13A-6-110 and 13A-6-111 of the Code of Alabama 1975.

k. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Alabama 1975. [313]

l. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to k., inclusive. A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Alabama 1975.6. Conviction for crime listed in the federal Adoption and Safe Families Act as prohibiting a person from being a foster parent or adoptive parent shall be deemed to make the convicted person unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent. An unsuitability determination must be made for an applicant that has conviction(s) for any crime listed in the Adoption and Safe Families Act, 42 U.S.C.§ 671(a) (20) (A), shall disqualify a person from being approved or continuing to be approved as a foster parent or adoptive parent and a convicted person shall be deemed unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent if a criminal history check record reveals the following:
(i) a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and (ii) a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; DHR Administrative Code 660-5-46-.03 defines a "crime involving violence" as "crimes of murder, manslaughter, kidnapping, aggravated assault, forcible sex

[313]APS Letter 2016-19
November 2016

offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included as "crime involving violence" if (A) the offense has as element the use, attempted use or threatened use of physical force against the person of another, or (B) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another. "Crime involving violence" also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses." Conviction for a violation or attempted violation of an offense committed outside the State of Alabama or under federal law is sex crime or any other crime listed in this notice if the offenses would be a crime listed in this notice in Alabama. Crimes of murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion extension of credit, and burglary of a dwelling. Other offenses are included as "crime involving violence" (a) the offense has an element the use, attempted use of threatened use of physical force against the person of another, or (b) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another. "Crime involving violence" also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses. (See, DHR Alabama Administrative Code, 660-5-46-03). [314]

6.) ADHR/SOCH shall issue a suitability determination letter to the County DHR for the home and maintain a confidential file on individuals for whom a criminal history background information report or report updates have been received. The letter shall state only whether the person is suitable for employment, volunteer work, licensure or approval. It will not list

[314]APS Letter 2016-19
November 2016

any convictions or other criminal history information.

7. No right to employment or approval is created by the issuance of a letter stating that the individual is suitable for employment. [315]

8. ADHR/SOCH shall send the individual on whom a criminal history background information check has been requested and the current applicant or provider for household members, and substitute providers and employees or volunteers a copy of the letter determining suitability status that is sent to the County DHR. The individual has thirty (30) days from the date of notification to request in writing to the county DHR a reversal of the determination of suitability. **No request for a reversal shall be made for a sex crime or a crime involving a child, an elderly individual, or an individual with disabilities.** A request may not be made unless five (5) years have passed for misdemeanors and ten (10) year for felonies from the end of the sentence or probation or parole, whichever is the latest. The individual with the disqualifying criminal conviction shall affirmatively show clear and convincing evidence of successful rehabilitation. All of the following shall be considered:

a.) Nature and responsibility of the position which the convicted person would hold or has held.
b.) Nature and seriousness of the offense committed.
c.) Circumstances under which the offense occurred.
d.) Date of the offense.
e.) Age of the person when the offense was committed.
f.) Whether the offense was an isolated or repeated incident.
g.) Social conditions which may have contributed to the offense.
h.) An available probation or parole record, report, or recommendation.
i.) Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling,

[315]APS Letter 2016-19
November 2016

successful business or employment history, and the recommendation of his or her supervisors.

9. ADHR/SOCH shall send a copy of the criminal history background information report received from the Department of Public Safety to the individual on whom a criminal history background information check has been requested. The affected individual shall also have the opportunity to challenge the accuracy and completeness of the Alabama criminal history criminal background check pertaining to him or her with the Department of Public Safety according to procedures established by that agency. The person or his legal counsel may review at DHR a copy of the report from the Department of Public Safety. If, upon review by the Department of Public Safety, the information is determined to be incorrect or incomplete, the information shall be corrected appropriately, and the DHR will be provided with the corrected information. [316]

10. ADHR/SOCH may forward a copy of any criminal history background information report received from the Department of Public Safety to any appropriate DHR approving office or other DHR office with a need to know.

11. Upon receipt of a determination of unsuitability, the individual with the disqualifying criminal conviction shall be terminated from employment or volunteer work at the home.

12. DHR shall suspend or revoke the approval or deny the initial application or the application for renewal if the applicant for approval received a determination of unsuitability and the unsuitability determination is not overturned at reconsideration.

13. The applicant or provider shall notify the county of any individual determined to have submitted false information on a Mandatory Criminal History Check Notice form attaching any available supporting documentation. The County will notify ADHR/SOCH who shall forward the information to the appropriate law enforcement agency if it is determined that sufficient documentation supports such action.

[316]APS Letter 2016-19
November 2016

14. Only one complete criminal history background information check (ABI & FBI) shall be required per individual. If the individual certifies on the Mandatory Criminal History Check Notice statement that a criminal history check has been performed by DHR, ADHR/SOCH shall issue a determination of suitability based on the criminal history report and automated updates received from the Department of Public Safety. If the previous report cannot be obtained or located, ADHR/SOCH shall require a new criminal history check. [317]

15. The individual convicted shall inform the county office of any criminal conviction which occurs. Oral reports by telephone or in person to the county office shall be made within twenty-four (24) hours and followed by a written report within five (5) days. This information shall be forwarded to ADHR/SOCH and kept on file by ADHR/SOCH and the county or the recruiting entity. ADHR/SOCH shall require the individual to provide detailed information about the conviction and submit fingerprints and completed forms for a criminal history background information check, if a check has not already been performed. DHR shall use the information gathered to make a suitability determination regarding the conviction. (Refer to ADHR/SOCH Guideline, 2-2-2016).

8. Training or Experience

The foster care provider may satisfy the requirement of training or experience in <u>any one</u> of the following ways:

a. The foster care provider has had experience that would indicate that they can provide the necessary services. For example, a provider who has had experience with an intellectually disabled family member could meet the experience requirement to provide care for an intellectually disabled client. A provider who has cared for an aged disabled parent could meet the requirement to provide specialized care for an aged adult who requires that care.

b. The home study reveals a professional or other background that attests to the qualification of the foster care provider in an area of special training.

c. The foster care provider has completed a course of training approved

[317] APS Letter 2016-19
November 2016

by the County Department.

2. If the provider meets the requirements through training rather than experience, the case record must include:

a. The date the training was provided.

b. The place the training was conducted.

c. The person(s) or agency that conducted the training and can verify that the foster family received the training if it was not arranged through this Department.

d. A brief description of the training.

When an approved foster home is considered as the most appropriate placement for a particular adult client, additional training may be needed in order to insure that the individual's specific needs can be met within the foster home. [318]

9. Transportation

A primary concern is to provide for the client a living arrangement that will encourage activity outside and inside the home. Proximity to churches, doctors, medical facilities, stores, movie theaters, clubs, etc. is desirable. If this is not the case, a plan should be developed to secure access to necessary transportation. The worker will assist the client and foster care provider in developing the transportation plan.

The foster care provider or his or her substitute care provider who assumes responsibility for the client's transportation must have a valid Alabama Driver's License and vehicle liability insurance. In addition, a valid driver's license is required in order for foster care provider to be covered by the State's Automobile Liability Insurance.

Adult Foster Care providers may receive SDHR reimbursement for approved travel expenses. This includes per diem and mileage to approved training meetings and for transporting clients in situations that eliminate the necessity of worker travel. Some examples are transporting a client to the doctor's office, to court hearings or to day care or vocational training. For reimbursement DHR-FD-1147, In-State Travel Expense Voucher, should be completed and submitted by the County Department in the same manner as other travel forms. The worker should assist the foster care provider in completing the form as needed. Information needed to complete the form follows. The provider's official station/base is his or her city of residence.

[318] APS Letter 2016-19
November 2016

In the Program or cost center block, fill in the county name and the words: "Non-Employee/Adult Foster Care. The following codes are appropriate: Organization – 0255; SUB-ORG – county location number; RPT-CTG – 0084; Object code – codes are the same as used by workers. [319]

10. Substitute Care

The foster care provider shall select someone who can assume the ongoing care responsibility as the backup to the provider. That person must be able to meet the emotional and physical needs of the client in a way that will protect and promote his or her health, safety, well being, and comfort. The County Department will contact references for each individual named by the provider as a primary substitute. When substitute care is going to be used for periods of time longer than 6 hours, the county office must be notified in advance. Substitute caregivers are also subject to the medical and criminal history and background checks required of the approved provider. The substitute provider must agree to provide care in the absence of the provider in a manner that is in compliance with the policies and procedures governing the foster care program. The worker will meet with the potential substitute provider and discuss the foster care standards that must be met. Substitute care must be provided in the home of the approved provider unless the substitute caregiver's home has also been approved as an Adult Foster Care Home. Substitute care provider may be approved to act as backup to more than one foster care provider if that person is willing and able to do so. Substitute care may also be provided by another approved foster care provider as needed. The foster care provider is responsible for making financial arrangements with the substitute provider.

C. Requirements of the Foster Home

To safeguard the health, comfort, and well being of the adults placed in foster care, the homes selected must meet certain requirements and the ability of the foster family to give the necessary personal services must be considered. In deciding upon approval or disapproval of an application, primary emphasis should be placed on the comfort and safety of the person to be placed in that home. The services and facilities of the foster home should be such that the client is not exploited and his emotional, physical, and spiritual needs are met in a way that will protect and promote his health, safety, comfort, and well being.

1. Number of Persons in Foster Care

The number of clients placed in any one foster home will be limited to three individuals.

[319] APS Letter 2016-19
November 2016

In some cases a young adult in the temporary or permanent legal custody of the Department will reach the age of 21 while in foster care and because of intellectual disability or a serious physical disability be unable to achieve independent living. It may be important that ties with the home not be broken and that the living arrangement be continued. It is possible for that home to be approved to provide foster care for that one adult while continuing to be approved as a foster home for child welfare. (See "Homes Providing Foster Care for Children and Foster Care for Adults" in this section.)

2. Housing

A private room for each client is desirable but not required. The client should not share a room with a member of the foster family, but can share a room with another client of the same sex if both clients agree to that arrangement. Spouses[320] can share the same room. A comfortable bed, sufficient drawer and closet space for clothing and a reasonable amount of room for other possessions (keepsakes, etc.), a comfortable chair, and table or desk must be provided. Rooms must be well lighted, adequately ventilated and comfortably heated and cooled. The furnishings must provide for safety and comfort. For some clients a room on the ground floor with a bathroom nearby would be essential. Necessary safety features are: non-skid rugs, banisters on stairs, screens around fireplaces and open flame heaters, good lighting throughout the house, readily accessible exits, and safety bars in the bathroom if required by the client in care.

All windows and doors in the home must be screened against insects unless the house is air-conditioned. The home shall be maintained in clean condition.

Every foster home shall have access to a telephone. If there is no telephone in the home, the foster family shall arrange for the use of the telephone in at least two neighboring homes. The arrangement must allow for immediate access to a telephone at all times.

The house shall conform to regulations regarding sanitation, fire protection, and building safety of the city or county in which it is located. All manufactured homes shall conform to the Manufactured Housing Improvement Act of 2000. In addition, manufactured homes built after 1994 and currently in Baldwin and Mobile Counties must display a Wind Zone II Certification Label on the home. [321]

[320]APS Letter 2016-19
November 2016
[321]APS Letter 2016-19
November 2016

The foster family home and grounds shall be free of anything which constitutes a danger such as abandoned automobiles and household appliances, uncovered wells and cisterns, stacked lumber with exposed nails, and explosives. Safeguards must be provided against potential hazards such as guns, poisons, drugs, open fires, heaters, and floor furnaces. Guns and drugs must be kept locked.

If the foster home has a private pool, inspections by the state or local health department shall, as determined necessary, be requested by the department or foster care provider. Individuals who have completed a basic water safety course and have received training in Cardiovascular Pulmonary Resuscitation (CPR) must supervise swimming pool use by foster clients. Otherwise, the swimming pool shall be made inaccessible through the use of gates, fencing, locks, etc.

All heaters in bedrooms and bathrooms shall be vented. Gas space heaters equipped with oxygen depletion devices are permitted except in bedrooms and bathrooms. No stove or combustion heater is to be located where it blocks escape in case of fire arising from the malfunctioning of the stove or heater. Kerosene heaters are also permitted.

A smoke detector shall be installed and maintained in operating condition within ten feet of each bedroom and no more than thirty feet apart in hallways. In a two-story house (upstairs or basement) a smoke detector shall be installed and maintained in operating condition at the head of the stairway. It is the responsibility of the foster care provider to maintain the smoke detector in operating condition in accordance with the manufacturer's directions.

A 2A-10BC dry chemical fire extinguisher no less than five pounds in weight shall be installed and maintained in operating condition in an accessible place, in plain view near room exits which provide an escape route. All fire extinguishers purchased by the foster care provider must meet the requirements of the Minimum Standards.
Inspections by the state or local fire department and by the state or local health department shall be requested as determined necessary by the Department.

A certificate of rabies vaccination shall be on file in the home for any animal on the premises required by law to be vaccinated. Animals posing a threat to the health or safety of an adult in foster care shall be kept in an area inaccessible to the adult, such as a separate fenced area.

The foster care provider shall have a plan for handling emergency situations with the needs of the clients in mind. This shall include the planned source of emergency medical care, who would assume immediate responsibility

for the foster care client in the event of the sudden incapacity of the caregiver, escape routes in the case of fire, etc. All household members, including foster care clients, shall know the emergency plan. [322]

3. Food

At a minimum, three well-balanced meals per day that are wholesome and varied shall be offered each day. Some attention to personal food preferences will help the client to feel like a member of the family and facilitate the adjustment process. The foster family should be prepared for the fact that some clients may require a special diet and that some may desire and need between meal snacks.

Adequate and appropriate facilities for storage, protection, and preparation of food shall be provided in the home.

4. Health Care

The foster care provider is responsible for assisting the client to make and keep necessary medical appointments and then to help him or her to follow the day-to-day instructions provided by the client's physician(s). At no time is it acceptable for the provider to sign medical procedures, surgery, or admission forms. The need to supervise or monitor the medications of foster care clients will depend on his or her level of ability and awareness. The provider and the client's social worker will discuss and agree upon the level of supervision or monitoring of any medications. Because of the risk of interaction between different medications, no medication, over the counter or prescription, should be provided to a client unless approved by his or her physician.

a. Prescription Medications – (1) Medications should be dispensed as directed by the client's physician. (2) Any medication should be provided only to the person for whom it was prescribed. (3) Medications that exceed their "Discard by" date must be destroyed. (4) If the client has a negative reaction to a medication, the client's physician must be contacted immediately, and the worker should be notified as soon as possible.

b. Over-the-Counter Medications – Before providing over-the-counter medication, the adult foster care provider must: (1) Read product information carefully, noting and following all warnings of conditions that make the use of the product inadvisable or dangerous. (2) Contact the physician's office if there are any

[322] APS Letter 2016-19
November 2016

questions. (3) Follow manufacturer's instructions unless client's physician has instructed otherwise. (4) Provide only those medications for which the expiration date has not been reached.

5. Release of Information for U. S. Census

The U.S. Census requires information on household composition, including Adult Foster Care clients who are members of the providers' household. Adult Foster Care providers may release requested information to U.S. Census officials for census and survey purposes as required by law. The U.S. Census will ask the name, sex, age and date of birth, relationship to the person who owns or rents the residence, whether the person is of Hispanic origin, race, and if the person sometimes lives or stays elsewhere. [323]

IV. The Home Study

A. Interviews and Training

The process to determine whether the applicant meets the agency's foster care provider requirements begins at the time of the applicant's initial inquiry. A general overview of foster care should be presented to aid the prospective foster care provider in deciding whether to continue with the application to become a provider. A copy of the Minimum Standards for Foster Homes for Adults should be given to the applicant(s) to read. Those wishing to pursue approval should complete DHR-ASD-663, Application to Provide Foster Care for Adults, and submit it to the DHR in the county where their home is located. This application should be recorded in the Provider Module in FACTS.

An effective way to respond timely to persons who have either inquired or returned a completed application is to hold a group meeting. This meeting can be used to educate those persons about the program so that a more informed decision can be made about offering their home as a foster care resource. The group meeting should be informal and may later serve as a basis for a support group. It may be held with as few as 2-3 persons or neighboring counties may want to hold a joint group meeting.

During the initial interview or group meeting, the purpose of foster care should be explained to the applicant(s). The purpose of foster care is to provide homes for those elderly or disabled people who are unable to continue living in their own homes or with relatives, but whose needs can safely be met outside of an institution. It is also used to provide a home for those who have received maximum benefits from institutional care and who are ready to return to the community.

[323] APS Letter 2016-19
November 2016

The worker should determine the applicant's reason for applying to provide foster care. Various factors may be in operation when a family offers to share its home with an outsider—money, need for companionship, need to be needed, etc. Many different motives can be acceptable. The need to increase the family income will play an important part in such a decision by most families, but should not be the only motive. The client's emotional and physical needs should be met in such a way that will protect and promote his or her health, safety, comfort, and well being. The worker will need to determine whether members of the family under consideration can meet the needs of the client while achieving the family's own purpose(s).

Confidentiality of information regarding the client and his family should be discussed. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its relevant regulations should be discussed with the applicant. The need to safeguard protected health information (PHI) of the client must be explained, as well as the need for providers to sign Business Associate Agreements (BAA). The BAA (see Attachment G at the end of this chapter) must be signed prior to the application approval and will be in effect as long as the individual is approved to provide Adult Foster Care.

The number of interviews to be held will vary with each prospective family, however at least one home visit is required. Interviews should be held with individual members of the family and at least one visit with the family group as a whole. The home study should be recorded in the Provider Module in FACTS.

B. Minimum Standards

Applicants shall have read the Minimum Standards for Foster Homes for Adults and all of the standards and regulations shall be addressed by the worker during the home study. This includes the number of people in the family and the care they require, finances, employment, health, character, suitability, training, and experience. The physical requirements of the home should be noted and the responsibilities in all aspects of the client's care (food, transportation, substitute care, etc.) must be reviewed. Workers are to check fire extinguishers and smoke detectors that are required by Minimum Standards for Foster Homes for Adults in order to ascertain that they are in working order. Fire extinguishers and smoke detectors are to be checked at initial approval, six-month evaluation and at re-approval. This should be documented in the foster care resource record. Workers are to discuss with the foster parent the necessity of checking fire extinguishers and smoke detectors in their homes regularly to determine that they are functional; workers are to document in the foster family's resource record that this was discussed with them. If the provider and/or a household member will be providing transportation for the client, the worker must verify possession of a valid Alabama drivers' license and of liability insurance. Payment procedures for room and board,

service fee and additional services and supplies for the client should be thoroughly discussed during the foster home study. [324]

C. References

At least three references unrelated to applicant(s) shall be contacted. The name of the reference person, the date of contact and the information obtained must be recorded on FACTS (See FACTS Roadmap/Resource Contact Screen). References should be able to verify household members and shall be asked to share knowledge of any physical or emotional problem that may be harmful to the client. Questions which could be asked are: How long has reference known applicant and in what capacity? Does reference have knowledge of alcohol or drug abuse, extreme or bizarre behavior of any member of the household? Within the scope of the reference's ability to know, does the family have adequate financial resources? Whether or not the reference would place his or her relative in the prospective foster home may be posed to give a true reflection of the reference's opinion of the family. References should also be asked to provide specific strengths and weaknesses of members of the foster family.

Any concerns raised should be discussed with the foster family. The worker may offer suggestions and make recommendations to the applicant(s) in a manner that will encourage him or her to try to meet the standards of the Program. Information gathered during the home study must be recorded on DHR-ASD-1472, Adult Foster Home Study and scanned in FACTS into the file Cabinet and completed in the Home Study section of the Provider tab in FACTS. Attachment D, "Initial Adult FC Provider Approval Check List" is included at the end of this section. This is an optional checklist for the convenience of the worker and the supervisor. The worker should document information on the checklist screen in FACTS such as medical reports, ABI/FBI, CAN/AANE Clearances, and etc. Worker should also document information on the Provider Contacts/Narratives Screen such as narrative regarding the home environment and it meeting minimum standards, semi-annual update visit, licensing review and etc. Additional narrative regarding the application and approval process may be entered in FACTS (See FACTS Roadmap/Checklist Screen & Provider Contacts/Narrative Screen). It is important to record information regarding attitudes and feelings along with factual information. [325]

D. Evaluating the Foster Home

In evaluating the potential foster home, the worker should observe the general atmosphere, how individual household members relate to each other, the division of responsibilities, the flexibility of attitudes, tolerance for individual differences

[324] APS Letter 2016-19
November 2016

[325] APS Letter 2016-19
November 2016

and ability to cope with interference in established routines. In addition, an assessment should be made by the worker of the family's understanding of the problems of elderly and disabled persons. Interviews with individual members of the family and at least one visit with the family group as a whole are required to help the worker evaluate those factors. Successful foster families are those who have flexibility and naturalness in their relationships. These families seem to be better able to cope with the clients who present personality problems and adjustment difficulties. All members of the foster household must be responsible people of good character and reputation as verified by references, and all of them must be willing to accept the client into the home as a member of the family. They must be willing to share the use of the living room, television, telephone, and radio, celebration of holidays, and the entertainment in the home. The family will be encouraged to share chores with the client, to the extent that the client's mental and physical condition will permit. Many clients will have relatives and friends with whom they need to maintain contact. The foster family is expected to encourage the client to have them visit in the foster home at appropriate and convenient times and if desired, to provide privacy for such visits. The opportunity to welcome friends into the home will aid toward feelings of self-respect and acceptance of the foster care placement.

V. Application Approval/Denial and Revocation of Approval

A. Approval to Provide Foster Care

If the application is approved, the family is to be notified in writing, using DHR-ASD-665, Approval to Provide Foster Care for Adults. The approval is to be signed by the County Director or authorized designee. Approvals are effective on the date of issuance and expire one year from that date unless revoked or terminated earlier for cause.

The County DHR must complete the Adult Protective Services Approval Certification for Adult Foster Care Home when the provider is approved. The APS Approval Certification documents that the Adult Foster Care Home case record has been reviewed by a superior in the chain of command for APS policy approval compliance, and all documentation required for approval is contained in the file pursuant to the Minimum Standards for Adult Foster Care Homes. The letter is to be signed by both the worker and supervisor and scanned into the FACTS File Cabinet.

Foster care providers must be covered under the General Liability Fund. Coverage may be tracked through authorization on FACTS. Therefore, it is essential that the Foster Care Provider Screen on FACTS is kept up to date.

Approval to provide foster care for adults applies to the provider's residence and household composition at the time of approval. If a change in either occurs, the foster family must notify the County staff and complete a new DHR-ASD-663,

Application to Provide Foster Care for Adults. The worker must determine if standards and regulations continue to be met considering the change(s) made. If the home is approved, DHR-ASD-665, Approval to Provide Foster Care for Adults, shall be issued for the remainder of the current approval year. [326]

Experience in foster care programs for adults has shown that some homes are lost before they can be used. It takes time to find the right combination of home and client. The worker should reassure the provider that he or she has not been forgotten. Group meetings of those providing foster care, newly approved providers, and those who have applied to do so have been found helpful in maintaining interest until at least one client enters the home. Such meetings are educational and also offer the opportunity to discuss mutual questions and problems. Realization of the importance of the job they are doing and its value to the community sustains foster families in their continuing efforts. Many foster families actively recruit among their acquaintances and friends.

When an approved foster home is not filled to capacity, the family may be interested in providing emergency shelter care in addition to foster care as a substitute for another approved provider. (See "Emergency Shelter Care", Chapter II, Section F, Adult Services Manual).

B. Denial of Application to Provide Foster Care

During the home study, it is possible that problem areas will be noted. As a worker assesses and evaluates the prospective foster family home as to whether or not a client's emotional and health needs can be met there, it may become apparent that these problems would prohibit approval of the application. The reasons for this must be discussed with the applicant in a way that minimizes the damage to the family and gives recognition of the strengths. The applicant should have the opportunity to withdraw voluntarily. The discussion should be confirmed by letter to the applicant. If the client does not withdraw the application, the application may be denied. Please see Attachment B: Sample Denial Letter at the end of this chapter. This letter may be used as a guide to confirm the denial.

C. Semi-Annual Update Visit

The foster care provider home study must be updated semi-annually (at least every six months) and more frequently when there are significant changes in the foster provider's family situation. The semi-annual visit must take place in the foster provider's home. This visit should address any changes which may have occurred in the home or within the family's composition. The smoke detectors and fire

[326] APS Letter 2016-19
November 2016

extinguisher should be checked semi-annually for operational purposes. The home should be checked semi-annually for operational purposes. The home should be checked to ensure continued compliance with the Minimum Standards for Foster Homes for Adults. The semi-annual visit must be documented under the Provider contact Screen in FACTS. The semi-annual visit provides an opportunity to discuss any foster care concerns with the approving worker and to be supported by the Department. [327]

D. Re-Approval to Provide Foster Care

All approvals for foster care for adults must be reviewed annually by the County Department of Human Resources. Homes may be approved again if there is continued conformity to standards.

The foster care provider should complete and submit to the County Department DHR-ASD-663, Application to Provide Foster Care for Adults, thirty days prior to the expiration date on the current approval. The worker must assess whether the home continues to conform to foster care policy and meets the Minimum Standards for Foster Homes for Adults. This must be documented in the resource record. References for the provider and primary substitute caregiver(s) shall be contacted.

The DHR-ASD-1473 may be used as an optional form by the worker for field work or other work that will facilitate entry on the Adult Foster Home Re-approval on FACTS. The Reapproval visit must be documented under the Provider Contact Screen using the heading, "Licensing Review" in FACTS. Additional narrative documentation can be entered in FACTS under the Provider Contact Screen (See FACTS Roadmaps). The renewal process must be completed prior to the expiration date of the current approval, and a DHR-ASD-665, Approval to Provide Foster Care for Adults, issued.

E. Approval to Provide Both Foster Care and Day Care for Adults

Homes are not usually approved to provide both foster care and day care for adults. Such arrangements must be made very cautiously, considering the welfare of all involved clients and the foster family. The following conditions must be met:

1. The total number of foster care and day care clients combined must be no more than four.

2. In an adult foster family, the back-up person required by day care policies must be available.

[327] APS Letter 2016-19
November 2016

3. There must be assurance that no one client will require so much attention that the foster family cannot provide the attention needed by each client in care.

A home that is to provide both foster care and day care must meet the standards of both programs. County staff must document that the standards have been met, and the home must be approved to provide foster care and day care.

F. Homes Providing Foster Care for Children and Foster Care for Adults

In instances where foster care continues for a client who reached the age of 21 years and the child welfare provider will become an Adult Foster Home provider the home study for foster care for children will provide much of the information usually obtained during an adult foster home study. However, the provider must complete DHR-ASD-663, Application to Provide Foster Care for Adults, and the Minimum Standards for Foster Homes for Adults, must be reviewed. A DHR-ASD-665, Approval to Provide Foster Care for Adults, should be issued only after the worker's assessment and evaluation reveals that the home conforms to adult foster home standards and regulations. Should the foster home continue to be approved by Family and Children's Services, the approval for adult foster care shall be limited to the one adult client who has reached age 21.

Any other circumstance where dual approval is being considered requires concurrence by SDHR Adult Protective Services and SDHR Children's Services.

G. Revocation/Relinquishment of Foster Care Approval

After a home has been approved to provide foster care, problems which impact on the family's ability to protect and promote the client's health, safety, comfort, and well being may be observed or reported. The home may cease to meet minimum standards or the agency may receive reports of inadequate or improper treatment of the client. When problems arise, the worker, in an interview with the foster care provider(s), shall clearly state the problems and, if appropriate, offer solutions. The foster home approval shall be revoked if the provider is unable or unwilling to make recommended corrective action or if the worker's assessment is that a safe and caring environment is not being provided. The decision, along with the reason(s) for revocation, shall be confirmed by certified mail to the provider(s). (See Attachment D, Sample Letter at the end of this chapter.) Policy and procedures regarding investigative hearings apply to situations where approval is to be revoked. [328]

[328] APS Letter 2016-19
November 2016

If a foster care provider wishes for any reason to voluntarily relinquish the foster care approval, a two-week notice shall be given to the County Department.

VI. Resource Case Record for the Foster Family

When an individual has requested an Application to Provide Foster Care for Adults, a resource case record is to be established for the foster family and a case number assigned (if there is not already a service record). (see FACTS Roadmap for completing a potential foster care provider). As development of the resource progresses, the following will be filed in the resource record.

1. **DHR-ASD-663**, Application to Provide Foster Care for Adults, which can serve as the face sheet in a new record.

2 **DHR-ASD-665**, Approval to Provide Foster Care for Adults, or a letter advising that the application cannot be approved and why.

3. Physician's statement regarding health of the household members of the foster family. This statement or other verification must include the date and whether the household member is free of communicable and infectious disease.

4. **DHR-ASD-1472**, Adult Foster Home Study.

5. **DHR-ASD-1473**, Adult Foster Home Re-approval, completed for each renewal year.

6 A copy of **DHR-ASD-1332**, Adult Foster Care Payment Agreement Transportation Authorization, for each client placed in the home.

7. A copy of **DHR-ASD-500**, Emergency Information, Adult Day Care/Adult Foster Care. The original is given the day care/foster care provider and a copy is also in the client's file.

8. APS Approval Certification Letter

The resource case record of the foster family will be kept open as long as the family provides foster care for adults. When provision of foster care is discontinued, the decision regarding closing the record of the foster family will be made in accordance with standard procedures regarding closing service records. [329]

Note: Scan all Adult Foster Care Home forms into the FACTS File Cabinet to include: Medicals, ABI/FBI, Certificate Letter, CAN/AANE forms, & etc.

[329] APS Letter 2016-19
November 2016

VII. ATTACHMENT A: SAMPLE MEDICAL STATEMENT[330]

Dear Dr._____ :

The individuals listed below are part of a household that has applied to become an approved DHR Adult Foster Care Home. DHR foster homes provide residential care in a family setting for elderly and disabled adults who are no longer able to live alone but have no family able or willing to provide the care needed. Our policy requires that all members of the foster home be free of communicable and infectious disease and whether the applicant/provider is able to provide care for an elderly or disabled person.

Medical Statement

Household Members

1. _____, applicant/provider
2. _____
3. _____
4. _____

These individuals have been found to be free of communicable and infectious diseases and have been found to be able to provide care for an elderly or disabled adult. If not, please explain below and indicate if there are any particular groups or clients which should/should not be served in this family home.

Physician's Name

Date of Signature

Other Comments:

[330]APS Letter 2016-19
November 2016

VIII. ATTACHMENT B: SAMPLE DENIAL LETTER[331]

_____
(Date)

_____
(Applicant Name)

_____
(Street)

_____
(City, State, Zip Code

Dear _____

Thank you for your recent interest in becoming an Adult Foster Care Provider. Your concern for others and your desire to help some of our vulnerable clients is truly appreciated. However, because of other factors that we have discussed, we are not able to approve your home as a foster home at this time. If your situation changes in the future, please feel free to contact us again.

Sincerely,

_____
Social Worker

Approved:

_____
Supervisor

[331]APS Letter 2016-19
November 2016

IX. Attachment D: Initial Adult FC Provider Approval Checklist [332]

Prospective Provider Name: _____ County_____
Case Number_____

Dates

Inquiry
Received by: SDHR_____ County _____

Application
Provided to Prospective Applicant: ____Yes ____No _____
Completed application received: ____Yes ____No _____

Orientation for Applicant and Substitute Caregiver
Arranged by phone or mail: ____Yes ____No _____
Completed: ____Yes ____No _____
Place: _____ _____

Initial Training for Applicant and Substitute Caregiver
Arranged: ____Yes ____No _____
Completed: ____Yes ____No _____
Place: _____ _____
Booklet-Minimum Standards for Adult Foster Homes for Adults
Issued and Reviewed with Applicant: ____Yes ____No _____

Criminal History/Background Check
Applicant: ____Yes ____No _____
Applicant's adult household members: ____Yes ____No _____
Substitute Caregiver: ____Yes ____No _____

Fingerprinting completed:
Applicant**:** ____Yes ____No _____
Applicant's adult household members: ____Yes ____No _____
Substitute Caregiver ____Yes ____No _____

Results received:
Applicant: ____Yes ____No _____
Applicant's adult household members: ____Yes ____No _____
Substitute Caregiver: ____Yes ____No _____

AAN/E and CAN Central Registry Clearance from State and/or County
Applicant: ____Yes ____No _____
Applicant's Adult Household Members: ____Yes ____No _____
Substitute Caregiver: ____Yes ____No _____

Secure Medicals
Medical forms given to:
Applicant: _____Yes _____No _____
Applicant's Household Members: _____Yes _____No _____
Substitute Caregiver: _____Yes _____No _____
Completed medical forms received from:

[332]APS Letter 2016-19
November 2016

Applicant: _____Yes _____No _____
Applicant's household members: _____Yes _____No _____
Substitute Caregiver: _____Yes _____No _____

Secure Verification of Rabies Vaccinations for all pets
Pet No. 1: _____Yes _____No _____
Pet No. 2: _____Yes _____No _____

References Contacted (3 required)
Applicant: _____Yes _____No _____
Substitute Caregiver: _____Yes _____No _____

Home Study
Home study completed: _____Yes _____No _____

Home Meets Standards and Regulations: _____Yes _____No
If no, has denial letter been sent: _____Yes _____No _____
Reason for denial: _____

Temporary Approval Granted: Applicants that have met all requirements except the return of a completed criminal history background check and the subsequent suitability determination. SDHR APS approval given:
_____Yes _____No
Date of Temporary Approval: _____

Application Approved: _____Yes _____No
Date Approved: _____
Approval Mailed to Applicant: _____Yes _____No
Certification Form _____Yes _____No
Caseworker's Signature _____Date _____[333]

[333]APS Letter 2016-19
November 2016

X. ATTACHMENT E: SAMPLE LETTER FOR SUSPENSION OF APPROVAL[334]

Date

BY CERTIFIED MAIL AND REGULAR MAIL

Name of Foster Care Provider
Address

RE: SUSPENSION AND REVOCATION OF APPROVAL TO OPERATE ADULT FOSTER CARE at (Address) _____

Dear _____:

This letter is to inform you that the Department of Human Resources has sufficient reason to believe that the approval issued to you effective (date) to (date) for the operation of adult foster care at (address) should be REVOKED. The statutory authority for this REVOCATION is found in the Code of Alabama 1975, Section 38-2-6 (18) and 41-22-19 (c)(d).

The basis (bases) for this REVOCATION is that a safe and caring environment has not been provided because:
Example: On (date) you failed to follow doctor's instructions to take Mr. _____ to the Emergency Room of _____ Hospital. In addition, you accepted Mr. _____, an unrelated individual, into your home without a placement by the County Department.

In accordance with the Code of Alabama 1975, Section 38-2-6(18) and Section 41-22-19, you are entitled to a hearing. In addition, you may voluntarily relinquish your approval. You must notify us in writing within ten (10) departmental working days of the date of the receipt of this letter at the address shown at the top of this letter if you wish to have a hearing in this matter. Your written request must be received by the Department by the 10th day. You will be notified of the date, time, and place of the hearing by the Administrative Hearing Officer by separate letter.

If you have any questions, please contact (social worker) at (telephone #).

Sincerely,

_____
(Social Worker's Signature)

_____
Approved: (County Supervisor's signature)

ATTACHMENTS (if any)

Copies to:
Deputy Commissioner for
Children and Family Services
Director, Adult Protective Services
Chief Legal Counsel
Administrative Hearing Officer
_____County Director of
Department of Human Resources

[334]APS Letter 2016-19
November 2016

XI. ATTACHMENT F: PAYMENT TO THE FOSTER CARE PROVIDER[335]

CATEGORIES	SERVICE DESCRIPTION	ROOM & BOARD	SERVICE FEE
Adult Foster Care	Requires supervision and assistance with most activities of daily living.	Client pays an amount equal to at least 75% of SSI maximum. Client would have at least 25% of SSI payment for personal use after paying Service Fee.	DHR pays $135

[335]APS Letter 2016-19
November 2016

XII. ATTACHENT G: HIPAA BUSINESS ASSOCIATE AGREEMENT[336]

This HIPAA BUSINESS ASSOCIATE AGREEMENT is made the _____ day of _____, 20_____,by and between the _____

(hereinafter referred to as the "COVERED ENTITY") and

_____ (hereinafter referred to as the "BUSINESS ASSOCIATE").

WHEREAS, COVERED ENTITY maintains and operates offices in the State of Alabama and has an obligation under the Privacy Rule of the Health Insurance Portability and Accountability Act, Public Law 104-191, to protect the privacy of health information on the clients it serves; and

WHEREAS, BUSINESS ASSOCIATE provides ancillary services which assist or complement COVERED ENTITY in the carrying out of its mission of providing **individual and family assistance and services, including child welfare, child support, child care, adult foster/day care, adult services, food stamps, and public assistance benefits to its clients** and thus may from time to time have access to confidential health information of those clients;

NOW THEREFORE, the parties agree, in consideration of the above and other valuable considerations, as follows:

1. Definitions

Catchall definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. Sections 160.103 and 164.501.

Examples of specific definitions:

(a) *Business Associate*. "Business Associate" shall mean the same person or entity listed above as Business Associate.

(b) *Covered Entity*. "Covered Entity" shall mean the same person or entity listed above as Covered Entity.

(c) *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. Section 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).

(d) *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

(e) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. Section 164.501.

(g) *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available in a timely manner to the Covered Entity, or to the Secretary, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(g) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528.

[336]APS Letter 2016-19
November 2016

(h) Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with this Agreement to permit Covered Entity to respond in a timely manner to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528.

3. Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

4. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Term and Termination

(a) *Term*. The Term of this Agreement shall be effective as of the day first written above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible or illegal to return or destroy Protected Health Information or, if for any other reason the business associate decides not to destroy or return PHI to the Covered Entity, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause*. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) *Effect of Termination*.

(1) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity unless unfeasible or illegal to do so or the business associate for any other reason decides not to return or destroy the PHI. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. [337]

(2) Business Associate shall extend the protections of this Agreement to such Protected Health Information for so long as Business Associate maintains such Protected Health Information.[338]

[337] APS Letter 2016-19
November 2016

[338] APS Letter 2016-19
November 2016

7. Miscellaneous

(a) *Regulatory References*. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) *Amendment*. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) *Survival*. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.

(d) *Interpretation*. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

EACH PARTY has caused this agreement to be properly executed on its behalf as of the date first written above.

FOR:	_____	FOR:	_____
	_____		_____
	(BUSINESS ASSOCIATE)		(COVERED ENTITY)
BY:	_____	BY	_____
	(Printed Name and Title)		(Printed Name and Title)
	_____		_____
	(Signature)		(Signature)

Chapter 3 Fraud

Introduction

When applicants and recipients obtain services through fraudulent means, the Department of Human Resources will determine whether action is necessary to secure reimbursement and, when indicated, to prosecute instances of suspected fraud through provisions of Alabama law.[339]

The Office of Fraud and Abuse will refer to the Attorney General's Office suspected cases of fraud in social services in the amount of $300 or more as reported by County Departments. In instances where one or more fraud cases have been established against a client after June 1, 1979, the second and subsequent cases will be referred when the amount of the last one is $35 or more.

Definition

Fraud in social services, as defined by the Department of Human Resources, is the act by which a person has deliberately and with full knowledge of what he or she was doing obtained service(s) for which he or she was not eligible, or helped another person obtain service(s) for which that person was not eligible, or obtained service funds to which he or she was not entitled. Fraud in social services is punishable by law.

Fraud committed by a client, contractor, vendor provider, foster care, or family day car provider must be reported to the Office of Fraud and Abuse.

Legal Basis

Prosecution is obtained under various Alabama laws, including but not limited to, Section 13A-8-2 of the Criminal Code of Alabama.

Elements Constituting Fraud

Fraud exists when an applicant, recipient or provider of services knowingly withheld information or knowingly gave misinformation about his situation and that person:

j. Obtained services for which he or she was not eligible; or

k. Obtained services in a greater amount than he or she was entitled; or

l. Obtained service funds to which he or she was not entitled; or

[339] Revision No.110
March 1993

m. Aided another person in obtaining services for which that person was not entitled, or a greater amount of services than that person was entitled to receive.

Fraud does not exist, even though a misstatement is made or information is withheld, when the undisclosed or erroneous facts did not result in an individual obtaining services for which he or she was not eligible.

Prevention of Fraud[340]

The state and county departments are responsible for preventing fraud whenever possible and minimizing the opportunity to commit fraud.

The service worker is responsible for:

a. Establishing relationships in which clients will not be fearful of discussing their situations fully.

b. Assisting service applicants and recipients in: providing complete and accurate information about all points of eligibility; being alert for inconsistencies and possible omissions in information provided by clients; and, if there appears to be inconsistencies or omissions, helping the client to correct or clarify them.

c. Explaining in detail to applicants and recipients the program requirements and their responsibility for providing accurate and complete information. Applicants and recipients should be encouraged to promptly report all changes in their circumstances that may affect their eligibility or amount of services.

d. Following up promptly on changes anticipated in the recipient's circumstances between scheduled re-determination of eligibility.

e. Explaining the Department's policies concerning the fact that the information the client provides to establish eligibility may be selected for verification, and also that there are penalties provided by law for those committing fraud.

f. Being alert to client's limitations or circumstances which may reduce his or her ability either to fully understand or to fulfill his or her obligation to provide complete and accurate information about his or her situation; and taking appropriate steps to assist him or her in providing this information.

g. Sharing with appropriate unit of the county department information about the client that will affect his or her eligibility for food assistance, money payment, social services, etc., provided by the Department of Human Resources after informing the client of the worker's responsibility to do so. EXCEPTION: Information contained in the Child Abuse or Neglect (CAN) file cannot be provided to other units unless it is for the purpose

[340] Revision No. 110
March 1993

of preventing or discovering child abuse or neglect. (Refer to Family and Children's Service Manual, Chapter VII, Protective Services, Item III, B, 3, Rules and Regulations Concerning Use of Registry Reports and Records-Confidentiality.)

Determination of Suspected Fraud[341]

When it is discovered that a person has obtained services to which he or she was not entitled, the worker, with the concurrence of the supervisor, must determine whether it was due to"

(1) administrative error on the part of any department representative;

(2) lack of understanding on the part of the client or his or her designated representative;

(3) deliberate and willful withholding or misrepresentation of information on the part of the client or his or her designated representative. The reason may not always clearly be one of these three but may be a combination of recipient and Department error.

An administrative error, for the purposes of these policies, is a mistake on the part of the county department or the state department in the following prescribed policies and procedures related to authorization for services. This definition does not include receipt of services to which the client is not entitled solely because the review of eligibility is delinquent. Prompt action should be taken to correctly reflect the client's current situation when an administrative error has occurred.

Lack of understanding on the part of the client may be seen as a reason for the client obtaining unentitled services. Such reason will be considered to exist if the client or responsible person state that: he or she did not understand his or her responsibility to provide complete and accurate information or to report changes in circumstances or he or she did not understand the eligibility requirements. Any one of these reasons may be valid if the record does not show that that particular requirement was explained. Lack of understanding may also have been caused when it is determined that the client was incapable of giving accurate information because of mental disability or because of illness at the time of the application or re-determination, and when the worker did not solicit the cooperation of a relative or responsible person to report changes, or to secure information from other sources.

Deliberate and willful withholding or misrepresentation of information. There would be a strong presumption that an act was willful and deliberate on the part of the client if the case record documents at the time of application or last re-determination of eligibility, an explanation was made to the client of his or her responsibilities to give complete and accurate information about his or her circumstances and to report immediately any changes that affect his or her eligibility. On the other hand, there would not be such a presumption if:

[341] Revision No. 110
March 1993

There had been a family emergency at the time of change in circumstances, and the information had been reported to the office as soon as the emergency period was over;

or

There has been a marked change in the recipient's ability to give reliable information or to report changes promptly (due to such things as neurodegenerative disease, mental illness, etc.);[342]

or

The recipient had informed the worker about a possible change in his or her circumstances that might affect his or her eligibility for services and the worker failed to advise him or her to report the change to the County Department if it did occur.

In making a determination whether or not suspected fraud exists, the worker must have reason to believe that an individual has committed at lease one of the acts listed under "Elements Constituting Fraud", and did so knowingly, willfully, and with deceitful intent. In addition, such Factor as the following must be evaluated: (1) the behavior of the client, (2) the reasons he or she gave for his actions or failure to act, (3) his ability or lack of ability to understand, and (4) evidence that the worked has explained the necessity for the client to provide complete and accurate information.

Examples of Fraud

Given below are examples of some of the cases of suspected fraud that should be reported:

The client was receiving full-time adult day care services. Based on the information given to the worker, the client met the criteria used to show appropriateness for day care. After services were initiated, the worker discovered that the client was employed part-time when eligibility was determined. Client intentionally failed to provide worked with this information.

An IE family was authorized for childcare to enable the mother to retain her employment. At the time of re-determination of eligibility in November, the worker learned that the mother quit her job in May and had not reported this to the Department even though she knew payment for her child's day care was made because of her employment. The family was not in need of day care for any other reason. The child received day care to which the family was not entitled.

In August, an IE mother was re-determined eligible for services for her two children and her niece. In October, the worker learned that the niece had returned to her mother's home is St. Louis over six months before. The mother had falsified information at the

[342] AS Letter 2018-04
May 2018

time of review about the niece being in the home. The family (mother and two children) was not eligible based on the Income Scale for the family of three. The family received services to which they were not entitled.

Reporting the State Department[343]

If the County Department concludes that there is sufficient evidence of fraud in a service case PSD-359, "Suspected Fraud Form" must be sent to the Office of Fraud and Abuse.

The following outline should be used as a guide in preparing the summary portion of the PSD-357.

1. A statement as to why fraud is suspected and the client's reason for not reporting complete and accurate information, or for withholding information which affected eligibility.

2. The worker's evaluation of the client's understanding of agency policies in terms of any mental or physical condition which would affect his ability to understand policies or to assume responsibility for providing to the Department needed information about eligibility.

3. Cite any extenuating circumstances regarding the client such as age, disaster situation, chronic illness, etc. which might affect the decision to prosecute.

4. Any other facts which appear pertinent to the suspected fraud case.

The County Department must keep the Office of Fraud and Abuse informed of any new information that becomes available after PSD-359, "Suspected Fraud Form" has been submitted. The County Department should continue to provide services while a suspected fraud case is being reviewed by the Office of Fraud and Abuse or the Office of Attorney General unless notified otherwise and provided the individual or family is still eligible for service.

When a report of suspected fraud is being prepared or has been sent to the State Department, if the client initiates a contact to negotiate or repay some amount of money, that information should be given to the Office of Fraud and Abuse.

State Department Responsibilities

All reports of suspected fraud in services will be screened by the Office of Fraud and Abuse. In some cases, additional information may be requested from County Departments.

Appropriate referrals will be made to the Attorney General's Office: (1) on cases involving $300 or more; and (2) where one or more suspected fraud cases have been established against

[343] Revision No. 110
March 1993

a client after June 1, 1979. The second and subsequent cases will be reference when the amount of the last one is $35 or more.

Action of Attorney General[344]

If fraud appears to be present, the Attorney General's Office may institute criminal prosecution or civil suit or seek voluntary restitution.

Cases Referred to the Attorney General's Office

If the case is referred by the Office of Fraud and Abuse to the Attorney General's Office for investigation or prosecution, the County Department will receive a copy of the PSD-359, "Suspected Fraud Form", to replace suspense copy which has been maintained in the case record. Action taken by the Office of Fraud and Abuse will be indicated on the reverse side of PSD-359.

Immediately upon receiving notice that the suspected fraud case has been referred to the Attorney General's Office, the County Department must not conduct any negotiations with or accept any repayment from any person(s) on the suspected fraud case without obtaining prior approval from the Office of Fraud and Abuse.

Upon request of the Office of Fraud and Abuse handling the referral to the Attorney General's Office, the County Department is to furnish copies of various parts of the case record. (Refer in this chapter to page 2, Item (9) for restricted use of CAN files.)

Should a case result in court action, it may also be necessary for the Attorney General's staff to obtain the original documents in the case record directly from the County Department. The County Department should require identification of investigators seeking original records and obtain a signed receipt listing the documents taken by name and date of origin of document. The County Department should be sure to keep a copy of all original documents released to investigators.

When the Attorney General's Office has secured action in a case, Form AG-WF-001, giving disposition, the amount of repayment, whether by court order or by agreement and the method or repayment will be completed. One copy will be forwarded to the Office of Fraud and Abuse and one copy to the County Department. No response from the County is necessary.

A worker in the County Department may be requested to appear in court regarding a suspected fraud case. If this situation should occur, the worker may be asked while under oath to testify that the information on the application is exactly what the client provided to the County Department. It is for this reason that a worker must not fail to ask a client about his current circumstances when taking an application or at the time re-determination of eligibility is being made.

[344] Revision No. 110
March 1993

Cases Involving Non-Fraud Unentitled Services and Administrative Error[345]

When a client receives services that he or she was not entitled to receive due to administrative error or lack of understanding on the part of the client, the following procedures should be followed:

1. AFDC-FC

Recovery of all overpayments in AFDC-FC, regardless of the amount, must be sought through repayment. The eligibility worker has responsibility for recovery efforts. Copies of all correspondence to the foster care provider will be sent to service worker for inclusion in the provider's service case record. The eligibility worker may obtain to the extend possible or needed, assistance from the service staff in explaining the action required and will keep service staff apprised of actions taken. If no agreement can be reached or the agreement is not being upheld, the eligibility unit will contact the Office of County Assistance for further advice.

2. ACFC

Recovery of all overpayments in ACFC, regardless of the amount, must be sought through repayment. The service worker has responsibility for recovery efforts in these cases.

The service worker is to secure and execute a monthly or other scheduled repayment agreement with the foster care provider. Send him or her a letter by certified mail to advise of:

a. The amount of the overpayment due to be reimbursed

b. The fact that it must be reimbursed in full within six months in any installments which he or she informs the agency in writing he or she has chosen

c. The fact that he or she may make repayment using cash, cashier's check, or money orders made payable to the County Department of Human Resources. (Personal checks not accepted.)

If no agreement can be reached or the agreement is not being upheld, contact the Office of County Assistance for further advice.

The PSD-359, Suspected Fraud Form, should be completed in triplicate. Maintain the original in the provider's case record and send one copy to the Office of County Assistance. The remaining copy is sent to Finance Division as needed when repayment is transmitted. Strike through the title of the form "Suspected Fraud Form" and insert to the right of the words, "Non-Fraud Unentitled Services". Include in the summary section of

[345] Revision No. 110
March 1993

the form information pertaining to the client's/family's ability to repay immediately or over an extended period of time. The summary must also include a statement of the circumstances that led to administrative error or lack of understand on the part of the client.

When reimbursement is received from the foster care provider, such funds should be transmitted to the Finance Division accompanied by PSD-BFA-368, Claims Report. When repayment has been made in full, notify the Office of County Assistance.

3. All Other Cases of Non-Fraud Unentitled Services

The service worker is to seek repayment for all other cases of non-fraud unentitled services only when the total is $100 or more. These cases are to be recorded on PSD-359, Suspected Fraud Form. Records on such cases are maintained in the County Department and not forwarded to the State Office. The records may be reviewed by County Operations.

The County Department should strike through the title of the form "Suspected Fraud Form" and insert to the right the words, "Non-Fraud Unentitled Services". Include in the summary section of the form information pertaining to the client's current financial situation (income and resources) and any other information pertaining to the client's or family's ability to repay immediately or over an extended period of time. The summary must also include a statement of the circumstances that led to administrative error or lack of understanding on the part of the client.

The County Department must determine if attempts should be made to secure voluntary restitution and document the basis for that decision on PSD-359. If restitution is attempted, the County Department should contact the client in writing or orally, followed by a letter of confirmation. When reimbursement is received from the client or day care home provider: such funds should be transmitted to the Finance Division accompanied by DHR-BFA-368, Claims report.

If the County Department believes that purchase of service contractor or vendor day care center provider has received payment to which he or she was not entitled due to administrative error or lack of understanding, complete PSD-359 as described above and forward to Office of Social Service Contracts. Office of Social Service Contracts will determine if attempts should be made to secure voluntary restitution. The County Department will not attempt to secure voluntary restitution from such service providers.[346]

Computation of the Case Value of Services Received Fraudulently

When it appears that a person has received services to which he or she was not entitled, the case value of the services will need to be computed and reported on the PSD-359, "Suspected Fraud Form".

[346] Revision No. 110
March 1993

The amount considered as received fraudulently is the difference between the amount actually received and the amount to which the client was entitled if all pertinent facts have been correctly and properly reported and considered.

The following units of service are to be used in determining the cost of services:

Chore Services	1 hour
Counseling	15 minutes
Day Care (adults or children) part-time	½ day
full-time	1 day
Foster Care (adults and children)	1 day + 1 night
Residential care of any kind	1 day + 1 night
Service for unmarried parents	1 hour
Transportation	1 one-way trip

Cash Value of Units of Service[347]

Service Provided Directly by DHR

County Departments will not have exact records of the amount of time the worker spends on any one case. The worker can estimate the amount of time spent in providing the service, but must have documentation to substantiate the time that is claimed.

Determining eligibility and types of services needed, interviews with client and collateral contacts, recording information and completing forms, should not be used in determining the case value of services provided directly to DHR. Time spent in direct services would be counted, such as, time spent in transporting clients plus mileage allowance, either by the worker or volunteer.

The Finance Division should be contacted by letter regarding the cost per hour of services provided directly. The letter should indicate separately services provided by the caseworker or volunteer.

Service Provided Through Vendor Payment

The case value of a service provided through vendor payment can be determined by multiplying the amount of the vendor payment by the number of months the service received.

Service Provided under Purchase of Service Contract

The office of Social Services Contracts should be contacted by letter regarding the contract cost of the service, (except Day Care Home and Foster Home Care cases), if it has been determined by the County Department of Human Resources that a client has received a service fraudulently.

[347] Revision No. 110
March 1993

Collections[348]

The County Department must keep an accounting of repayments in connection with each fraud case. This information should be compiled on the completed DHR-BFA-368, "Claims Report", with 4a (Collections) checked. Deposit all payments in the local funds account. Transmit payment to the Finance Division in one check drawn on the local funds account with the original typed DHR-BFA-368, "Claims Report". Each transmittal must cover the collections received from the previous month and must reach the Finance Division by the 10the of the month.

County Department must inform the Office of Fraud and Abuse when payments are delinquent three months. Upon receiving a brief letter from the County Department regarding the delinquent accounts, the Office of Fraud and Abuse will determine the appropriate action and advise the County Department.

Payments ordered to be made to the County Department of Human Resources must be in the form of cash, cashier's check or money order made to the order of the County Department of Human Resources.

The employee assigned to collect payments must give or mail a receipt of payment to the client, showing amount of payment and balance due. Retain a copy of the receipt for the County Office records.

Maintain a central file on records of court ordered amounts and other amounts due the Department of Human Resources. Records should be reviewed on a regular basis to assure that timely payments are being made directly by the client or from the Circuit Clerk's office when it has been ordered that the Circuit Clerk would forward payments to the County Department. The Office of Fraud and Abuse will notify the Attorney General's Office of delinquent accounts based on information from the County Department which informs the Office of Fraud and Abuse that a client's payments are delinquent for three months.

[348] Revision No. 110
March 1993

Chapter 4 Hearings

Introduction[349]

The policies contained in this chapter are in accordance with the rules provided in the Alabama Administrative Procedure Act (Act No. 81-855). Under the Administrative Procedure Act (APA), the Department of Human Resources is required to provide notice and opportunity for a hearing to any aggrieved person entitled by law to be given an opportunity for a hearing.

Aggrieved person (claimant) includes applicants and recipients of Title XX services, both Family and Children's Services and Adult Services, provided by the Department. This includes the following individuals:

(1) TANF Recipients

(2) SSI Recipients

(3) State Supplementation Recipients

(4) Income Eligible Recipients (IE)

(5) Recipients of services Without Regard to Income (WRTI)

Procedures and requirements for hearings in this chapter also apply to all Family and Children's Services programs funded under Title IV-E (FCMP) and IV-B of Social Security Act.

Dissatisfactions pertaining to the applicant's or recipient's claim for public assistance or food assistance will continue to be handled under the hearing procedures outlined in the appropriate division's manual. Procedures for hearings on denials and revocations of licenses for child day care centers, group day care homes and family day care homes can be found in Chapter X, "Day Care for Children", Family and Children's Services Manual. Volume I.

A written statement concerning the service applicant's or recipient's right to appeal and the methods by which these rights may be exercised is outlined on DHR-761, Notice of Action Taken on Services, and is to be given when an application is approved or disapproved, when a service is reduced, and when a service is terminated. Information regarding appeals is also given on DHR-757, Fact Sheet, which is given to the client at the time of initial application, when eligibility is re-determined, and upon request.

[349] Revision No. 89
May 1989

Usually advance notification of the agency's intended action to reduce or terminate any service or to terminate all services is to be provided the recipient by giving him or her written notice at least 10 days before the effective day of the action. Situations not requiring advance notice are discussed in Chapter I, Item III, I., reduction of termination of Services, Family and Children's Services Manual, and in Chapter I, Section A, Policies and Procedures Applicable to all Services, Adult Services Manual.

Choice of Action[350]

Upon notification by the applicant or recipient of his or her dissatisfaction with the action taken, the worker has the responsibility to explain to the person the methods by which his complaint can be handled.

Each person requesting review of his or her case has choice of whether such review shall be handled through an informal county conference, and informal review and conference by the State Department, or a hearing.

1. Informal County Conference

   At the request of the aggrieved person or his or her representative, either before or after the hearing request, an opportunity must be provided for a conference with the County Department to discuss his or her situation with agency staff, obtain an explanation of the action, proposed action or action not taken, and to present information to show that the action in question is incorrect. During this conference, the aggrieved person may speak for himself or herself or be represented by legal counsel or by another spokesman of his or her choice, documentation of this conference must be made in the claimants case record. This conference does not alter the person's right to a fair hearing. After a hearing has been requested, any informal resolution of a case as a result of the county conference must be in writing.

2. State Department Review and Conference

   At the request of the aggrieved person or his or her representative, either before or after a hearing request, an opportunity must be provided for an informal review and a conference with the State Department. Under this procedure, the Division of Family and Children's Services or Adult Services Division (whichever is appropriate) requests the service record from the Department. After the case record is reviewed by the appropriate Division, the State Department will notify the aggrieved person or his or her representative and the County Department of the day, time, and place of the conference. The review and conference will be conducted by a member of the staff of the Division of Family and Children's Services or the Adult Services Division, as appropriate, and will be a person other than the hearing officer. At this conference the aggrieved person will be provided the opportunity to discuss his or her situation, obtain an explanation of the action, and to present information to show that the action in

[350] Revision No. 89
May 1989

question is incorrect. During this conference, the aggrieved person may speak for himself or herself or be represented by legal counsel or by another spokesman of his or her choice. A copy of the results of the State Department review and conference will be sent to the County Department and must be filed in the client's case record. This informal review and conference does not alter the person's right to a fair hearing, provided the request for a hearing is filed within the specified period of time from the date of the action in question. After a hearing has been requested, any informal resolution of a case as a result of the State Department review and conference must be confirmed in writing to the aggrieved person or his or her representative and the County Department.

3. Hearing

An aggrieved person or his or her representative may still choose to request a hearing, although a conference is held or his or her case is reviewed either by the County or State Department. The initiation of an informal county conference or state review and conference has no effect on the time period for taking an appeal or requesting a hearing. All appeals or requests for a hearing must comply with applicable time periods to be considered.

Request for a Hearing[351]

1. Format for Request

A request for a hearing may be made by an aggrieved person or his or her representative or legal counsel. A hearing request is any clear written statement to the State Department or the County Department that the aggrieved person wants the opportunity to present his or her case to a higher authority. The hearing request must be postmarked within 60 days following the action or inaction with which the aggrieved person is dissatisfied. In the absence of a legible postmark, the State or County Department will assume the request was mailed three days prior to its receipt. If the aggrieved person or his or her representative presents a written statement to the State or County Department, the date the statement is presented will be considered the filing date.

The request must provide specific information about the basis for the appeal and the date of the dissatisfaction.

If the appeal is filed by someone other than the aggrieved person; i.e., his or her legal guardian or legal representative; in TANF, the grantee relative, or a lawyer of his or her choice, there must be a definite statement by the person making this appeal that it is being made upon authorization of the aggrieved person. A hearing request is to be accepted even though it is not accompanied by an authorization. The representative should be requested to provide the authorization statement within a reasonable time after the hearing request is made.

[351] Revision No 89
May 1989

2. Basis for Request

A request for a hearing may be made by an applicant or recipient or his or her representative when:

(a) His or her application is not acted upon within the agency's standard of promptness;

(b) His or her application is denied;

(c) A service is reduced or terminated;

(d) He or she is adversely affected by an action or inaction of the Department.

Items "e" through "i" refer specifically to Family and Children's Services when:

(e) The Department fails to offer or provide appropriate pre-placement preventive services or reunification services;

(f) Parents were not informed of their rights to participate in periodic administrative reviews;

(g) The Department fails to provide services agreed to in case plan;

(h) A request for a specific service is denied or not acted upon; or

(i) The Department fails to carry out terms of adoption assistance agreement.

Procedures to be Followed After Receipt of Request for Hearing[352]

1. County Department

Any appeal made to the County Department will be reported to the Division of Family and Children's Services or Adult Services Division (whichever is appropriate), by telephone the day it is received.

The County Director or other designated staff member in the County will review the case with the service worker and make any further investigation necessary. The aggrieved person may be asked to furnish necessary information which he or she can readily secure. If the total findings in the case show that the County Department should take further action, such action must be taken at once.

[352] Revision No. 89
May 1989

Within ten days following receipt of the request for a hearing, the County Department is to forward to the Division of Family and Children's Services or Adult Services Division the following information:

(a) The original written statement of the aggrieved person or his or her representative regarding the appeal.

(b) A letter of confirmation giving the following information:

(1) Name and address of the aggrieved person;

(2) Name and address of person making the appeal (if not the aggrieved person);

(3) The date the appeal was received (postmarked or date otherwise received by appropriate county staff);

(4) Statement that the case record has been reviewed by appropriate county staff and action taken, if any; and whether or not there is concurrence with the action that has been proposed or taken;

(5) Basis and point(s) at issue in the appeal; and

(6) Whether or not all other points of eligibility were cleared.

2. State Department[353]

The State Department will telephone the County Department the day a request for a hearing is received from the aggrieved person or his or her representative. A copy of the request will be forwarded to the County Department. The County Department will then follow "Procedures to be Followed After Receipt of Request for Hearing: (County Department.

After receiving notice of the request for a hearing, the hearing officer will notify the aggrieved person or his or her representative whether or not the request is accepted and, if not, why.

3. Acknowledgement of Hearing Request

If the hearing request is accepted, the aggrieved person will be mailed the following information:

a. The hearing procedure;

[353] Revision No 89
May 1989

b. The aggrieved person's right to present the case or be represented by legal counsel or any other person;

c. The aggrieved person's right to present written evidence and oral testimony and to bring to the hearing members of his or her family and other persons to serve as witnesses;

d. The aggrieved person's or his or her representative's right to review in the County Department, at reasonable times prior to or during the hearing, the case file and written material which will be placed on exhibit or in evidence by the Department at the hearing (certain confidential information may remain privileged and not subject to disclosure or review);

e. The fact that the hearing will be held at a convenient location and that he or she will be notified in advance of the time, date, and place of hearing;

f. The right to request issuance of subpoenas to witness and the fact that the request must be received no later than 10 days prior to the hearing; and

g. The fact that possible further investigation may be made by the County Department.

A copy of this information will be sent to his representative, if he or she has one, County Department, and the Office of Assistance in the Division of Family and Children's Services or Adult Services Division (whichever is appropriate).[354]

4. Rejection of Hearing Request

The hearing officer may deny a hearing request in writing in the following situations:

a. If the request is not filed within the applicable time period;

b. If a request has been withdrawn (See Section 5);

c. If a person applies for a service which is not in the Title XX plan or provided by the Department;

d. If a person is not entitled by law to be given an opportunity for a hearing;

e. When protective services are provided as required by law or by court order;

f. When the matter involves custody or support of a child;

[354] Revision No. 89
May 1989

g. If the request is submitted by or on behalf of a provider of foster care for adults and children, an adult day care provider, or potential provider of such services; or

h. When benefits or services are reduced or terminated to a class of recipients due to changes in state or federal laws or regulations or the Title XX State Plan or changes in funding.

i. When the issue is moot or where the Department has cancelled the adverse action against the person requesting the hearing.

5. Withdrawal or Settlement or Request for Hearing[355]

a. Withdrawal

When the original reason for the hearing has been removed by action taken by the County Department, the State Department is to be notified. The State Department will then write the claimant a letter, stating this to be the case and asking if he or she wishes to withdraw his or her request for a hearing. This shall not prohibit him or her continuing with the hearing, if he or she so desires. Any decision to withdraw must be his or her own.

The withdrawal must be in writing and should state the reason for withdrawal. A letter of withdrawal by the claimant, a duly appointed legal representative or legal guardian, legal counsel of his or her choice, or in TANF, a grantee relative will be accepted. No other person can withdraw an appeal. The letter of withdrawal may be sent or given to either the State or County Department. The one getting it will notify the other by telephone on the day it is received and provide confirmation in writing (sending a copy of the withdrawal letter) within ten days. An appeal will be considered to have been withdrawn as of the postmark date or the date the client or his or her representative brings a withdrawal statement to the State or County office.

A verbal request to withdraw a hearing request can be accepted if a claimant withdraws but refuses to write a letter of withdrawal. The Department receiving the verbal request must inform the other Department. The State Department will then write a letter to the claimant acknowledging the acceptance of the request to withdraw the hearing. The request will be considered withdrawn as of the date that the claimant stated that he or she wanted the appeal to be withdrawn.

b. Settlement

A hearing request may be resolved by agreement between the Department and the aggrieved person, or his or her representative. The agreement may be in the form of

[355] Revision No. 89
May 1989

a stipulation, settlement, consent, default or other agreement in writing. The agreement must be filed with the hearing officer.

Notice of Hearing

The hearing officer sets the date, time, and place for the hearing. A written notice will be mailed by the State Department to the claimant, his or her representative, if he or she has one, the County Department, and the appropriate Office of County Assistance at least 14 days before the hearing.

1. Content of Notice

   The notice of the hearing must include:

   a. The date, time, place, and nature of the hearing;

   b. A statement of the legal authority and jurisdiction;

   c. References to particular sections of the statutes and rules involved; and

   d. A short, plain statement of the matters asserted, or issues involved.

   In addition, the notice will advise the claimant to notify the County Director in the event he or she cannot attend the hearing on that date. The agency's address and telephone number will be supplied to the claimant for this purpose. The notice will also point out that if the claimant or his or her representative fails to attend the hearing on the scheduled date without good cause, the hearing officer may proceed with the hearing and make a decision in his or her absence. The claimant will be advised in the written notice that the hearing officer will determine whether the reason is acceptable. Where the advanced notice (DHR-761) is involved, the claimant will be advised that the intended action of the County Department will be carried out if the reason for failure to attend the hearing is considered unacceptable.[356]

2. Service of Notice

   Service of notice of the hearing may be:

   a. By certified mail, return receipt requested;

   b. By any sheriff, constable, or other officer authorized to make service of process in civil court proceedings in this state;

   c. By an employee, agent, or representative of the County or State Department of Human Resources;

[356] Revision No. 89
May 1989

d. By mailing by first-class mail, postage prepaid, to the person to be served together with an acknowledgment of service form on a postcard, or in a letter form with a return envelope, postage prepaid, addressed to the sender; or

e. By mailing by first-class mail, postage prepaid.

Issuance of Subpoenas

The County or State Department, an aggrieved person or their representative have the right to request the issuance of subpoenas to witnesses and compel their attendance and the production of papers and writings. The claimant or his or her representative is notified at the time of acknowledgment of hearing request of his or her right to subpoena witnesses.

1. Definitions

   a. A subpoena is a legal document used to require the attendance of a person to give oral testimony at an appeal hearing.

   b. A subpoena duces tecum is a legal document used to require a person to bring written documents or other material with him or her to be used in evidence at an appeal hearing.

2. Procedures to Follow

   The request for a subpoena can be made orally and must be confirmed in writing. The request must be received no later than 10 days prior to the hearing and must be accompanied by the name and address of the person to be subpoenaed.

   It is not necessary to subpoena county workers who are involved in the agency's action unless it is specifically requested by the claimant or his or her representative. When the County Department or the claimant or his or her representative decides that a witness or evidence needs to be subpoenaed, the County Department should notify the Hearing Officer immediately and submit the written request. The Hearing Officer will prepare and issue the subpoenas.

3. Serving Subpoenas

   The subpoena may be served by any of the means specified for service of the notice of hearing. (Refer to "Service of Notice".) However, it is not recommended that first class mail service be used except as a list resort or where County Department personnel or other persons likely to receive the subpoena and appear at the hearing are to be served.[357]

   Payments for expenses incidental to the serving of subpoenas by the Sheriff's

[357] Revision No. 89
May 1989

Department are allowable as an administrative expense. To assure prompt payment of the sheriff's fee, the County Department must promptly submit the client's name, category and case number along with the address of the Sheriff's Office to the Legal Office for approval. The Legal Office will then forward the necessary information to the Finance Division.

Organization of Hearings

1. The Hearing Officer

The hearing officer is an employee or panel of employees or designee, including designee by contract or agreement, of the State Department of Human Resources. If a panel is used, one member of the panel will be designated as chairperson. The hearing officer (or panel) cannot conduct a hearing of any case in which he or she has taken part or assisted in the Department's action. The hearing officer exercises full control over the conduct of the hearing and is the hearing authority entitled to make the final administrative decision for the Department.

The duties of the hearing officer include, but are not limited to, the following:[358]

a. To direct the hearing;

b. To explain the conduct of the hearing;

c. To hear testimony;

d. To administer oaths, to examine witnesses, to limit the number of witnesses when their testimony would be repetitious or cumulative, and otherwise receive evidence having a bearing on the point(s) of issue. In examining witnesses and in the general conduct of the hearing, the hearing officer must maintain an attitude of impartiality. The only objective in examining witnesses shall be to attempt to arrive at the truth concerning the issues involved. The hearing officer may call and examine witnesses on his or her own. Both parties to the hearing may cross-examine witnesses.

e. To order, where relevant, necessary, and useful, an independent medical assessment or professional evaluation at agency expense (cost to the agency should not exceed the current maximum payment for other medical examinations paid for by the agency as an administrative expense);

f. To exclude from the hearing material unrelated to the point(s) at issue and otherwise decide on the admissibility of evidence;

[358] Revision No. 89
May 1989

g. To decide on the kind of record to be made of the hearing;

h. To render a final decision,

i. To sign and issue subpoenas to witnesses or for the production of papers and writings;

j. To grant or deny and set time and place for continuances, postponements or further submission of evidence, arguments or briefs;

k. To grant or deny petitions or motions to amend, intervene or apply for rehearings, and

l. To reprimand, exclude, or limit the presence of witnesses or other persons at the hearing because of improper conduct, space limitations, or a sequestration of witnesses request by a part of on the hearing officer's own motion.

2. The Claimant[359]

The claimant may present his or her case himself or herself at the hearing or may be represented by one of the following persons:

a. His or her duly appoint legal guardian or legal representative;

b. In TANF, the grantee relative;

c. A lawyer of his or her choice, or

d. A relative or other person designated by the claimant.

The claimant, except when he or she is represented by his or her legal guardian, must be present at the hearing unless the hearing officer excuses him or her for a specific reason. A written request from the claimant to be excused from the hearing may be either written or oral and confirmed in writing. The request should be received in the State Office at least three days prior to the hearing and must state the reason for the request and specify the person designated by the claimant to represent him or her. An oral request may be justified when last-minute emergencies prohibit the claimant from attending a hearing. In any appeal where the claimant is not present, his or her designated representative must appear on his or her behalf.

3. Witnesses

[359] Revision No. 89
May 1989

The claimant may have members of his or her family and other persons present at the hearing who may serve as witnesses. Staff or board members of either Department may attend and may serve as witnesses. The hearing officer, however, will consider a person qualified to be a witness only when the person has actual knowledge about the point(s) at issue.

4. Hearing Exhibits

a. Types of Exhibits

Any information in a client's case record which is labeled "Confidential" cannot be used in an appeal without written permission of the provider of the information.

Hearing exhibits include but are not confined to:

(1) The service case record;

(2) The current Family and Children's Services Manual or the Adult Services Manual;

(3) The agency forms used in the Title XX program;

(4) The Administrative Code; and

(5) Provision of state or federal law or regulations contained in official or unofficial reports.

b. Claimant's Right to Review Exhibits Prior to the Hearing[360]

The claimant or his or her representative may, upon request, review in the County Department, at reasonable times prior to or during the hearing, the exhibits which will be introduced by the agency at the time of the hearing. Upon request, provide the claimant or his or her representative a duplicate copy of any document, agency form, or other material (including the narrative) which is a part of the hearing exhibit. The duplication of hearing exhibit material is confined to specific pages, documents, etc., which directly relate to the issue.

Procedures When Claimant Fails to Attend the Hearing

If the claimant or his or her representative fails to appear at the hearing after proper notice, the hearing officer may, if no adjournment or postponement is granted, proceed with the hearing and make a decision in the absence of such parties. The hearing officer will

[360] Revision No.89
May 1989

immediately send a letter by certified mail, return receipt requested, to the claimant or his or her representative giving the decision. A copy of the letter will be sent to the County Department and the appropriate Office of County Assistance. The claimant will be advised in the letter that he or she may apply for a rehearing within 15 days of the decision if he or she can show good cause for failure to attend the scheduled hearing. The hearing officer may require verification of the reasons given by the claimant for failure to attend the hearing.

Adjournment, continuance, postponement, rescheduling or reopening of the hearing may be granted by the hearing officer for good cause. The following factors will be considered in determining good cause.

1. Death in the family;

2. Personal injury or illness which reasonably prohibited the client from attending the hearing; and

3. Sudden and unexpected emergencies.

Conduct of Hearings

1. County Department's Preparation for and Presentation of Information at a Hearing

After being notified of a hearing request, the County Department should begin as soon as possible to prepare the County's case for presentation. A case summary in a chronological sequence of the events relative to the specific hearing issue(s) should be prepared. The summary itself may or may not be admissible into evidence depending on objections made at the hearing. However, the case summary is a good case preparation and presentation tool. The case summary should include the following information:[361]

a. Minimal "background" information such as when service began, the related eligibility factor(s), etc.

b. The action taken or proposed, and the reason for it.

c. All relevant dates.

d. The form number, date, and explanation of any forms used.

e. Indication related to any client contact(s) or lack of contacts(s) related to the action.

f. For actions based on changes in income, the specific figures involved, how and when obtained, and other factors that were considered.

[361] Revision No. 89
May 1989

Familiarize yourself with the relevant manual policies and rules in the Administrative Code used as a basic for the action. (Each County Department has been provided a copy of the Administrative Code.) Copy relevant sections for admission into evidence at the hearing. In coordination with the relevant policy sections, identify and organize the facts necessary to prove the Department's position on the hearing issue.

Identify the witnesses, documents, and other evidence needed to prove the facts. Firsthand testimony is preferred. Any witness not employed by the Department should be issued a subpoena. Original documents in the possession of these witnesses, such as payroll records or personnel records, should also be subpoenaed. Unless he or she has direct knowledge relevant to the case, it is not necessary to subpoena the company or agency head. A company or agency employee with custodial control or responsibility over the records will be a competent witness. The purpose of issuing subpoenas to persons outside the Department is to provide sufficient justification for a continuance or postponement of the hearing in case they do not appear. Witnesses employed by the Department should also be notified of the hearing so that they may review their files. Copies of all pertinent documents contained in the case file should be made and admitted into evidence. It is sometimes necessary to admit original documents into evidence because of either the quality of the reproduction or objections made at the hearing. After the case is resolved, an attempt may be made to substitute a copy for the original document in the hearing record.

Prepare a checklist of the facts, policy, witnesses, and documents you need to establish your case. Prepare a checklist of questions or points you wish to have answered by witnesses. Make sure that the list includes any documents you wish to have admitted into evidence. Do not close your case or release the witnesses until the checklists have been completed.[362]

2. Statement of Issue(s)

The hearing officer will place in the record the names of the persons present at the hearing. The hearing officer will state and define the issue(s). When the request for a hearing is based on a decision as to eligibility, the hearing officer will make a statement for the record of the hearing with respect to points of eligibility which have previously been satisfactorily established. The claimant or the person who represents him or her will be asked whether he or her accepts the statement of the issue(s). If not, the claimant or the person who represents him or her may correct or modify the statement. The issue(s), however, must have a bearing upon the action by the Department with which the applicant or recipient is not in agreement. The hearing officer may allow a reasonable time for an opening statement by the applicant or recipient or Department or their representatives. Any preliminary legal motions or arguments shall be presented in writing to the hearing officer before or immediately after the opening of the hearing.

3. Period of Testimony

[362] Revision No. 89
May 1989

The hearing officer will administer oaths and will hear testimony about the defined issue(s) from the parties, their representatives, and qualified witnesses. All persons giving testimony must confine their remarks to factual information relating to the defined issues in the particular case. The hearing officer, the applicant or recipient or his or her representative, or Department staff having responsibility for the action being appealed, or attorney for the Department may direct questions to witnesses, as indicated, provided the questions relate to the defined issues. Oral, documentary and other evidence may be admitted as allowed by law. Parties or their representatives may object to the admission of oral, documentary or other evidence. The hearing officer shall timely rule on all objections to the admissibility of evidence. Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Department. The rules of evidence as applied in the circuit courts of this state shall be followed and effect shall be given to the rules of privilege.

4. Failure of a Subpoenaed Witness to Appear

The hearing officer will administer oaths and will hear testimony about the defined issue(s) from the parties, their representatives, and qualified witnesses. All persons giving testimony must confine their remarks to factual information relating to the defined issues in the particular case. The hearing officer, the applicant or recipient or his or her representative, or Department staff having responsibility for the action being appealed, or attorney for the Department may direct questions to witnesses, as indicated, provided the questions relate to the defined issues. Oral, documentary and other evidence may be admitted as allowed by law. Parties or their representatives may object to the admission of oral, documentary or other evidence. The hearing officer shall timely rule on all objections to the admissibility of evidence. Official notice may be taken of all facts of which judicial notice may be taken and of other scientific and technical facts within the specialized knowledge of the Department. The rules of evidence as applied in the circuit courts of this state shall be followed and effect shall be given to the rules of privilege.[363]

5. Period of Arguments

The hearing officer will allow a reasonable time for the applicant or recipient or his or her representative to summarize their factual data and to present any arguments and complaints they wish about the points under consideration in the particular case. This may include refuting oral or written testimony or evidence. Department staff, or the attorney for the Department, may also be allowed a reasonable time to summarize their factual data, testimony, or evidence about the points under consideration. A written memorandum of proposed findings of fact and conclusions of law may be presented before the close of the hearing or within the time specified by the hearing officer.

6. Conclusion of Hearing

[363] Revision No. 89
May 1989

The hearing may be adjourned from day to day or to a designated date, at the discretion of the hearing officer, when reasonably necessary to give full opportunity to obtain and present all evidence concerning the points at issue in the particular case. The hearing may be concluded when the hearing officer is satisfied that all pertinent information bearing upon the issue(s) has been introduced and examined.

7. The Hearing Record

The hearing record includes: all pleadings, motions, and intermediate rulings, all evidence received or considered, a statement of all matters officially noticed, all questions and offer of proof, all objections and rulings, all proposed findings and exceptions, any decision, opinion, or report by the hearing officer, any staff memorandum or data submitted, and any stenographic notes, reporter or machine recording of the oral proceedings or transcription.

The original recording and transcription of the hearing will be maintained at the State Department. A copy will be sent to the County Department for inclusion in the claimant's case record. The hearing record shall be made available to the claimant or his or her representative for inspection and copying. A reasonable charge may be made for copying, transcription, and other services provided.

The hearing record shall be maintained by the Department for at least five (5) years after the hearing decision has been rendered.

The Group Hearing

A group hearing on two or more appeals will be held under the following conditions:[364]

1. The issue(s) involved are confined solely to State or Federal laws or regulation or changes in State or Federal laws or regulation, and

2. Each claimant is permitted to present his or her own case or have his or her case presented by his or her designate representative.

In any group hearing, each claimant will be given an individual decision on his or her appeal in writing. All other policies governing hearings will apply. The State Department will limit the number of claimants to be heard in a single group hearing to ensure an orderly process and provide adequate opportunity for each claimant to be heard.

The hearing officer may, at his or her discretion, grant a request by an aggrieved person, or his or her representative, for an individual hearing rather than participate in a group hearing.

Decision on Appeals

[364] Revision No. 89
May 1989

1. Notice of Decision

The final administrative action on a hearing request must be made within 90 days of the effective date of the request and within 30 days of the hearing date unless waived by the aggrieved person and the County Department of their representatives.

The final decision shall be in writing, signed by the hearing officer, made a part of the hearing record, and shall set forth the issue(s), the principal and relevant facts brought out at the hearing, the pertinent provisions in agency policy, and findings of fact and conclusions of law separately stated.

The hearing decision shall be served by certified mail, return receipt requested, unless waived by the aggrieved person, County Department, or their representatives. A copy shall be sent to the County Department and the appropriate Office of County Assistance.

The decision if final and binding upon the aggrieved person and the Department and is not invalidated by the County action, so long as the conditions under which the decision was made remain the same. However, this does not preclude the County Department from modifying the provision of services to meet changes in law, policy, or the claimant's situation.

Upon receiving a copy of the decision, the County Department shall take immediate steps to see that any necessary action is taken. If the decision requires action by the County Department, the County Department shall send a written report to the hearing officer stating what action has been taken.

2. Retroactive Service Program

If the hearing decision states that services have been improperly withheld, reduced, denied, or terminated by incorrect agency action, the State Department will instruct the County Department to take appropriate corrective or compensatory action as soon as possible.[365]

Application for Rehearing

An aggrieved person, the County Department, or their representatives may file an application for a rehearing within fifteen (15) days of the final decision. The application shall specify in detail the grounds for the relief sought and give the supporting authority. The filing of such an application shall not extend, modify, suspend or delay the effective date of the decision unless or until said decision shall be superseded, modified, or set aside. Copies are to be serviced on all parties who may file replies thereto within 10 days. Service may be made by any of the means as specified for service of the notice of hearing. (Refer to "Notice of Service".)

The application for rehearing may be granted only if the final decision is:

[365] Revision No. 89
May 1989

1. In violation of State or Federal law;

2. In excess of the statutory authority of the Department;

3. In violation of a rule of the Department included in the Department's Administrative Code;

4. Made upon unlawful procedure;

5. Affected by other error of law;

6. Based upon clearly insufficient or unreliable evidence in the record; or

7. Unreasonable, arbitrary, capricious or inconsistent with prior decisions or based clearly or insufficient justification.

Within 30 days after the filing of an application for a rehearing, the hearing officer may in his or her discretion:

A. Make a decision setting a hearing on the application;

B. Make a decision on the application without a hearing; or

C. Grant or deny the application.

If a decision is not rendered within 30 days after the filing of the application, the application shall be considered denied.

Judicial Review

An aggrieved person, who is still dissatisfied after the final decision has been made, shall be entitled to file a notice of appear or review of the decision with the circuit court of competent jurisdiction. The notice must be filed within 30 days after receipt of the final decision or within 30 days after the decision on a request for rehearing and must comply with all statutory requirements. The filing of such notice will not delay enforcement of the final decision unless a court of competent jurisdiction shall enter an order to the contrary.

In the event a notice of appeal or review is filed, the County Director should contact the Legal Office in the State Department immediately and send a copy of the document filed.

Copies of the hearing record and transcript of the hearing must be filed with the court within 30 days unless the time is extended by the court. The Legal Office will handle these cases in circuit court.[366]

[366] Revision No. 89
May 1989

HEARING PROCEDURES FOR SERVICES

The hearing officer represents the Alabama Department of Human Resources and has full control over a hearing, although other State staff members may be present. The duties of the hearing officer are as follows: (1) to direct the hearing; (2) to explain the conduct of the hearing, the type record which will be made of it, the claimant's right to review it in the county office at any reasonable time, and the manner in which the decision will be made and given to the claimant; (3) to hear testimony; (4) to examine witnesses and otherwise receive evidence having a direct bearing on the point or point at issue; and (5) to exclude from the hearing material unrelated to the point(s) at issue. Questions directed to the hearing officer must be those concerned with the explanation of the hearing procedure.[367]

The claimant must be present at the hearing unless the Commissioner or Committee on Hearings excuses him or her for a specific reason. He or she may present his or her case himself or herself at the hearing or may designate one person as his or her official representative. He or she may also have members of his or her family and other persons present, who may serve as witnesses. Staff and Board members of the State and county departments may attend and may also serve as witnesses. (The hearing officer will consider a person qualified to be a witness only when the person has factual data about the point(s) at issue.)

In general, the hearing consists of the following procedure.

Statement of Issue – The hearing officer will state the issue(s) as set forth in the claimant's appeal. When the request for a hearing is based on a decision as to eligibility for services, the hearing officer will make a statement for the record of the hearing with respect to points of eligibility which have previously been satisfactorily established. The hearing officer will then define the issue(s) under consideration in the hearing. The claimant or his or her representative will be asked whether he or she accepts the statement of the issue(s). If not, the claimant or his or her representative may correct or modify the statement. The issue(s), however, must have a bearing upon the claimant's denial of or exclusion from a service or the failure of the department to take into consideration his or her right of choice in respect to specific services.

Period of Testimony – The hearing officer will hear testimony about the defined issue(s) from the claimant, his or her designated representative, and qualified witnesses. All persons giving testimony must confine their remarks to factual information relating to the defined issues in the particular case. The hearing officer, the claimant, or his or her designated representative may direct questions to witnesses, as indicated, provided the questions relate to the defined issues. Written statements of evidence from all sources and other exhibits may also be presented and examined.

During the period of testimony, the hearing officer will not hear complaints or arguments about Federal and State laws or policies.

Period of Arguments – The hearing officer will allow a reasonable time (usually not more than 30 minutes) for the claimant or his or her representative to summarize their factual data and to present

[367] Revision No. 89
May 1989

any arguments and complaints they wish about the point(s) under consideration in the particular case. This may include refuting oral and written testimony or registering complaints about Federal and State laws or policies.

Conclusion of Hearing – The hearing officer will close the hearing when satisfied that all available facts relating to the issues involved in the hearing have been given.[368]

[368] Revision No. 89
May 1989

Minimum Standards for Foster Care Homes

I. INTRODUCTION

The Alabama Department of Human Resources has established policies and procedures for a program of foster care for adults which prescribes minimum standards to be met by the homes to provide such care. Authority for the Department to approve foster homes for adults is given in Section 38-2-6 (18) Code of Alabama, 1975.

As designated agents of the Alabama Department of Human Resources, each County Department of Human Resources is authorized to approve and re-approve homes within its borders that meet the standards prescribed here. Only homes that have received such approval are to provide foster care for adults referred by the County Department. Families and individuals wishing to provide such foster care may apply directly to the appropriate County Department.

The programs of the Department of Human Resources are available to all persons regardless of race, color, sex, national origin, or handicap, in accordance with the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

II. MINIMUM STANDARDS FOR FOSTER HOMES FOR ADULTS

A. Adults in Foster Care

Foster care for adults is a service provided in private homes for persons who are in need of residential care in a family setting. This service must be provided in the permanent personal residence of the individual(s) approved to provide this level of care. It serves eligible adults who are in need of protective services and are unable to live in their own homes and cannot live with their families because of the family's inability or unwillingness to provide adequate care.

Foster care placement may be arranged after a protective service investigation reveals the client cannot protect himself or herself from abuse, neglect, or exploitation. It may be the best plan for the adult of any age who has received maximum benefit from institutional care and can return to the community with appropriate support services. It may also be used to prevent inappropriate institutional care.

B. Application and Procedures

Application is made to the local County Department of Human Resources to operate a foster home. Forms to be used for that purpose may be secured at the county office.

1) Upon receipt of the completed application, an examination of the foster family home and an investigation of the foster family shall be made by a representative of the Department.

2) Upon completion of the examination and investigation, a decision to approve or to deny the application will be made by the County Department based upon the findings. If the decision is to approve the application, the "Approval to Provide Foster Care for Adults" will be issued to the applicant.

3) All approvals are dated from date of issuance and expire one year from that date unless terminated by either party. Homes may be re-approved based upon the re-examination and evaluation by the Department if they continue to conform to standards and regulations.

4) Approval to provide foster care for adults applies to the residence occupied by the applicant at the time approval is given. If change of residence is made, the foster family must notify the County Department, which must determine if approval is to be continued. The decision of the County Department will be furnished to the foster family in writing.

5) The number of clients for which a foster home may be approved to provide adult foster care is limited to a maximum of three. Factors to be considered are space in the home, the number of persons making up the foster family and the care they require, the ability of the foster family to care for the number of persons being considered for foster care, etc. Based on these factors, a home may be approved to care for less than three adult foster care clients.

6) Applicants conducting a rooming or boarding house will not be approved to provide foster care for adults.

7) The foster home shall accept no unrelated individuals into the home except those persons placed by the County Department of Human Resources.

8) Approval to provide foster care for adults may be revoked by the County Department of Human Resources when the home fails to meet standards prescribed and regulations set forth here. In such cases, the County Department will furnish a written notice to the home stating the reason(s) for revocation.

C. Foster Family Home Requirements

1) The house shall meet regulations regarding sanitation, fire protection and building safety of the city or county in which it is located. The foster family home and grounds shall be free from anything which constitutes a danger such as: abandoned automobiles and household appliances, uncovered wells and cisterns, stacked lumber with exposed nails, and explosives. Safeguards must be provided against potential hazards such as: guns, poisons, medications, open fires, and heaters. Guns and medications must be kept locked. Inspections by the state or local fire department and by the state or local health department shall be requested as determined necessary by the Department.

2) A smoke detector shall be installed and maintained in operating condition within ten feet of each bedroom and no more than 30 feet apart in hallways. In a two-story house (upstairs or basement) a smoke detector shall be installed and maintained in operating condition at the head of the stairway. It is the responsibility of the foster care provider to maintain the smoke detector in operating condition.

3) A 2A-10BC dry chemical fire extinguisher no less than 5 pounds in weight, shall be installed and maintained in operating condition, in an accessible place, in plain view near room exits which provide an escape route. It is the responsibility of the foster care provider to maintain the fire extinguisher in operating condition.

4) All windows and doors shall be screened against insects unless the home is air-conditioned and be free from burglar bars or shudders that block access to the windows.

5) Each bedroom shall have a window through which an adult can exit in the event of a fire that blocks exit through the door. If the bedroom is on an upper floor, a ladder that can be used for exit through the window shall be supplied in the bedroom.

6) Electrical service.

7) A continuous supply of safe drinking water. Drinking water may include water from a municipal source, a private well or other sources.

8) A properly operating kitchen with a sink, refrigertor, stove, and oven.

9) Gas (if used for cooking/heating/hot water).

10) Proper trash disposal.

11) Property water heater temperature of no more than 120 degrees Fahrenheit.

12) The foster family home shall be maintained in clean condition.

13) The foster family home should be located near churches, doctors and medical facilities, stores, places of recreation, etc. If this is not the case, a plan should be developed to secure access to necessary transportation.

14) If the foster family home has a private swimming pool, inspections by the state or local health department shall be requested as determined necessary by the Department or foster family. The foster care provider shall make the swimming pool inaccessible to the adult in foster care except when supervised by individuals who have completed a basic water safety course and have received in Cardiovascular Pulmonary Resuscitation (CPR). The pool shall be equipped with a ring buoy, rescue tube, or other appropriate flotation device with an attached rope of sufficient length to cover the pool. The pool shall have depth markers, lifelines, and ladders or steps in the deep and shallow ends.

15) Hot tubs and spas that are not emptied after each use shall have a safety cover that is locked when not in use. Hot tubs and spas used by foster adults shall be operated at a water temperature that does not exceed 104 degrees Fahrenheit. The maximum continuous time in a hot tub or spa is 15 minutes, to be monitored by clocks or times. Persons who suffer from medical conditions that may be adversely affected by use of a hot tub or spa, including, but not limited to heart conditions, diabetes, or high blood pressure, shall not use the spa without a doctor's written consent.

16) All manufactured (mobile or modular) homes shall conform to the National Manufactured Housing Construction and Safety Standard Act of 1974. An HUD red data place, permanently attached to the mobile home, will indicate conformity with the 1974 Act. Manufactured homes shall comply with anchoring and tie-down requirements as specified in Code of Alabama 1975, Section 24-5-30 through Section 24-5-34. Such homes built after 1994 and currently in Baldwin and Mobile Counties must also display a Wind Zone II Certification Label on the home.

17) Every foster family home shall have access to a telephone. Arrangements must be made for 24-hour access if there is no telephone in the foster home.

18) Unvented natural gas heaters are prohibited in all bedrooms and bathrooms. Unvented propane gas space heaters equipped with oxygen depletion devices are permitted in foster homes (except in bedrooms and bathrooms) which are one- or two-bedroom dwellings if the heaters are installed in accordance with local and national gas codes as verified to the Department by a written statement from a qualified professional. This type of heater is not allowed in foster care into the home as a member of the family. (See Character and Suitability Requirements.)

D. The Foster Family

1) The foster care provider shall be of the age of majority (nineteen). For placements made on or after September 15, 1991, the foster care provider shall be able to read and write.

2) The foster family must be qualified to provide foster care by virtue of training and experience. Specific training may be required to meet the needs of particular recipients.

3) The foster family will be required to provide names of people to serve as references. The County Department may contact additional references that have not been provided by the foster family.

4) All members of the foster household must be responsible people of good character and reputation (as verified by references), and all of them must be willing to accept the person in foster care into the home as a member of the family. (See Character and Suitability Requirements.)

5) The foster family must agree to maintain personal, intimate information concerning the foster adult(s) in their care and their families' confidentiality in accordance with the Code of Alabama. The foster family will only use or disclose confidential information concerning the adult placed in their home with authorization by the adult and the Department. The foster family shall not post photographs of the adult in their care or their family members to social networking websites such as Facebook, Twitter, Instagram, Snapchat and Pinterest unless the family has obtained written authorization from the client, if that client has the capacity to give informed consent, or, if not, from the client's legally authorized representative.

6) All members of the household must be in such physical and mental health as will not be harmful to the client. Since the health of the providers or household members could pose a risk to some portion of the client population to be served, a licensed practicing medical doctor's or a physician assistant's (as defined in Section 34-24-290(4), Code of Alabama 1975) statement, indicating whether each member of the household is free of communicable and infectious disease and physically fit to provide care, is required. A new medical must be obtained every four years for providers and household members under 62 years of age or every two years for providers over 62 years of age. If there is question about the health of the provider or a household member, additional medicals may be requested.

7) There is no restriction on the size of the family that is to provide foster care for adults. A principal requirement is that the home is able to meet the needs of the person in foster care. The County Department must be immediately informed of any changes in the composition of the household.

8) The foster family members must be flexible in their attitudes and expectations towards the adult in foster care. The foster family must be willing to show understanding and patience. The family shall have the capacity and willingness to give time and attention to the needs of the adult in foster care. The foster family must be able to communicate with the adult(s) in care, the Department, health care providers and other service providers. Additionally, they

must provide opportunities for the physical, mental, emotional, and social well-being of adults in care.

9) If an adult is in care and the foster family desires that other plans be made for the adult, the family plans to move to another dwelling, or the family desires to relinquish the approval, the family shall give a two-week notice to the County Department prior to taking desired action.

10) The foster family must have prior approval from the County Department before taking an adult in foster care out of the county or state.

11) The foster family home must have sufficient income to meet its own needs. The room and board payment made by the person in foster care will be used to meet the participant's needs. DHR service fee payments made to the provider may be considered when determining whether the foster family has sufficient income to meet its own needs.

12) The foster family must not borrow money from the foster care participant or from the participant's friends or relatives. The client's name must not be used to purchase services, to qualify for utility services, establish credit or create indebtedness for the client.

13) The foster family must not solicit, accept or receive gifts or money from the foster care participant or from the participant's friends or relatives. Excluded is payment to the foster care provider for room and board, service fee and additional services and supplies.

14) The foster provider may be employed outside the home if the County Department determines that such employment would not have a detrimental effect upon client's health or safety. A suitable substitute care plan must be submitted to the Department for approval. The County Department must concur that the substitute care plan provides for uninterrupted care and supervision. However, under no circumstances is the caregiver for a client receiving Adult Foster Care Model Waiver Services payment permitted to work outside the home as these individuals have been determined to require a higher level of care. There are no new admissions to this program.

15) If substitute care is needed, care may be provided by an approved day health, day care, or day treatment program or by an individual approved by the County Department as a substitute provider. Substitute care which is provided in the foster care home may be provided by an unrelated person who is a registered volunteer with the Department and is providing care on a volunteer basis, or by a relative. The substitute provider must agree to provide care in the absence of the provider in a manner that is in compliance with the policies and procedures governing the foster care program. The Department will meet with the potential substitute provider and discuss the foster care standards, contact references that are not related to the candidate for substitute provider, and complete medical information and criminal records checks. The foster care provider is responsible for making financial arrangements with the substitute provider. The foster care provider must notify the County Department of the use of a substitute care plan, regardless of the reason, for an absence of six or more hours.

16) The foster family shall:

a) Accept supervision by the Department of Human Resources so far as the welfare of the person in foster care is concerned.

b) Notify the agency about any unusual illness, accident or disturbing behavior of the person in foster care.

c) If necessary, help the person in foster care carry out prescribed medical plans.

d) If necessary, provide personal services such as help with shaving, dressing, etc.

e) Provide or arrange for necessary transportation to the doctor, mental health center, clinic, etc. The provider must have a valid Alabama Driver License and vehicle liability insurance if responsible for transporting a client.

17) Emergency preparedness:

Each home shall develop a fire safety evacuation plan and a plan to be implemented in the threat of a natural disaster (such as a tornado warning). The foster family shall assure that, consistent with their ability to comprehend, adults in the foster home understand the plan. The plan will include, but is not limited to, instructions about the following.

- When to call 911.
- A description of two or more means of exit from each floor level used for sleeping.
- When to open the door into a hall and when to exit through a window.
- The designation of a central meeting place outside the home.
- A means of evacuating adults who need assistance.
- Leaving personal belongings behind in a situation that is a threat to safety.
- Other emergency procedures:
    a. The license shall maintain a comprehensive list of names and telephone numbers, posted by the telephone for emergency situations. The list shall include the name and telephone number of each adult's doctor, law enforcement, fire department, hospital poison control, Department of Human Resources, caregivers and substitutes…
    b. A written emergency evacuation plan to be reviewed with the adult and posted in a prominent place in the home. The plan should contain the evacuation and care of the adult in case of fire, tornado, serious accident or injury, or power failure shall be posted in a conspicuous place in the home. The license shall inform substitutes and all caregiver(s) of his or her duties and responsibilities in case of an emergency. A written statement, signed by each substitute and caregiver, verifying that he or she has been informed of emergency procedures shall be on file in the home.
    c. The licensee shall post the poison control center's toll-free number on or near the telephone. **The toll-free number is 1 800-222-1222**. When an adult is suspected to have swallowed a toxic substance, the

licensee shall immediately contact the poison control center. Documentation of the poison control center's instruction shall be placed in the adult's file with the date, time, and details of the incident.

d. The foster home must maintain first aid supplies. Examples of items to be kept include: assorted bandages, gloves, alcohol, peroxide, gauze pads, antiseptic cream, cotton balls or Q-tips, etc…

18) Adults with Disabilities

The general requirements which pertain to the care of adults prescribed under other sections of this document shall be followed in all applicable respects and, in addition, there shall be compliance with the following special regulations pertaining to the care of medically fragile adults.

B. Provider Requirements

i. Basic instruction in "infection control" (for HIV providers primarily and others as appropriate)

ii. Receipt of "disease or condition specific" instructions when an adult is scheduled for placement in the home

iii. For home serving adults with special mobility needs (walkers, wheelchairs, etc…), the home will be free of barriers that would prevent the adult(s) from using their mobility and self-care skills to their maximum potential (i.e., halls and doorways of adequate width, accommodating toilet and bathing facilities, ramps etc…).

E. Character and Suitability Requirements

1) No home can be approved where any adult (or individual tried as an adult) in the household has been convicted of a crime (felony or misdemeanor) in this or another state at any time involving:

a) a sex-related crime. Such crimes include, but are not limited to, sexual abuse, sexual exploitation, molestation, rape, child pornography, sale or exhibition of obscene materials, sodomy, sexual mischief, incest, enticement for immoral purposes, kidnapping of a child, prostitution and obscenity; or

b) the serious intentional, reckless or negligent physical injury, danger or death of any person. Such crimes include, but are not limited to, murder, homicide, manslaughter, assault with a weapon, reckless endangerment, kidnapping, unlawful imprisonment; or

c) a crime against a child. In addition to those crimes listed above, such crimes include, but are not limited to, abandonment, endangerment, nonsupport, assault; or

d) a crime against an adult in need of protective services as defined in Section 38-9-2, Code of Alabama 1975. Such crimes as defined in section 38-9-7, Code of Alabama 1975, include: intentional or reckless abuse or neglect causing physical or serious physical injury, emotional abuse, exploitation; or

e) major intrusion upon property or use of weapon to secure property. Such crimes include, but are not limited to, burglary and robbery; or

f) arson; or

g) manufacture, sale, distribution or possession of controlled substances, opiates, illegal, addictive, or narcotic drugs. Such crimes include but are not limited to, convictions for the sale, distribution or possession of cocaine, heroin, LSD, marijuana, or alcohol.

2) Mandatory Criminal History Check

a) At the time of application, each applicant including substitute provider and adult household members must submit a Mandatory Criminal History Check Notice form disclosing all convictions, two complete sets of fingerprints, a completed Criminal History Information Consent and Release form giving consent for release of criminal history background information to DHR, identification verification of name, date of birth, race, sex, and Social Security number.

b) No home shall be approved with an adult household member or substitute provider who refuses to fully answer and complete a Mandatory Criminal History Notice form, or to provide identification verification.

3) Request for Reversal of Suitability Determination

a) The applicant has thirty (30) days from the date of notification by DHR of being determined unsuitable for DHR approval to request a reversal of the determination. **No request for a reversal shall be made for a sex crime or a crime involving a child, an elderly individual, or an individual with disabilities.**

b) Such a request shall not be made unless five (5) years have passed for misdemeanors and ten (10) years for felonies from the end of the sentence or probation or parole, whichever is the latest.

c) Reversals will be based on the individual showing clear and convincing evidence of successful rehabilitation as well as other supportive information required.

4) The character and suitability of an individual foster care applicant or provider will also be assessed by a review of the past history of the individual regarding their truthfulness and their ability to care for clients. False or misleading statements made by the individual to the Department or other government personnel regarding incidents or events occurring

while providing foster care or surrounding part of any adult or child abuse or neglect investigation conducted by the Department, law enforcement or other government officials are considered as evidence of unsuitable character.

5) At the time of the initial application, a completed Request for clearance of State Central Registry on Child Abuse/Neglect (DHR-DFC-1598) shall be submitted by the applicant and each adult household member. A check must be completed of any adult abuse and neglect registry in each state the prospective foster family member has resided in the preceding five years.

F. Responsibilities of the Department of Human Resources

1) Recruit, inspect and approve foster family homes conforming to standards and regulations.

2) Provide to the foster family adequate information concerning each adult in foster care placement to assure understanding of the care to be given the adult.

3) Supervise the care to be given in the placement.

4) Assist the foster family in making suitable plans for the adults such as family visits, recreational activities, etc.

5) Provide the foster family specific information regarding how to contact a Department or agency representative at all times.

6) Maintain confidentiality of foster family home records by keeping resource cases in locked files when unattended and by restricting any disclosures about the foster family or client to persons or agencies providing authorized services or otherwise authorized by Administrative Rules.

7) Visit the foster family home whenever indicated to examine or to investigate and offer guidance.

8) Assist client and provider with payment negotiation for room and board.

9) Assist the foster family in locating training, e.g. CPR, First Aid, diabetes, nutrition, mental illness, intellectual disability or neurodegenerative disease[369].

10) Re-approve the foster home at least once a year if the home continues to conform to standards and regulations.

G. Responsibilities of the Foster Family

[369] APS Letter 2018-04
May 2018

1) Uphold standards and regulations as written in the Minimum Standards for Foster Homes for Adults.

2) Carry out recommended daily care of the adult in the foster family home in cooperation with the Department and other service providers authorized by the Department.

3) Adhere to all aspects of the Foster Home Agreement.

H. Adult Foster Care Service Fee

A service fee will be paid by the Department or by the client based on the client's financial situation as determined by the Department's regulations.

MINIMUM STANDARDS FOR DAY CARE HOMES FOR ADULTS

INTRODUCTION

The Alabama Department of Human Resources has established policies and procedures for a program of day care for adults, which prescribes minimum standards to be met by the homes to provide such care. Authority for the Department to approve day care homes for adults is given in Section 38-2-6 (19) Code of Alabama, 1975.[370]

As designated agents of the Alabama Department of Human Resources, each County Department of Human Resources is authorized to approve and reapprove homes within its borders, which meet the standards prescribed here. Only homes that have received such approval are to provide day care for adults referred by the County Department. Families and individuals wishing to provide such day care may apply directly to the appropriate County Department.

The programs of the Department of Human Resources are available to all persons regardless of race, color, sex, national origin or handicap, in accordance with the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

[370] Revised APS Letter 2007-25
November 2007

MINIMUM STANDARDS FOR DAY CARE HOMES FOR ADULTS

Adults in Day Care

Home day care for adults is a service provided in private homes for elderly and individuals with disabilities (age 18 and over) who are in need of residential care in a family setting other than their own for a part of the twenty-four hour day. It serves those eligible adult recipients of DHR services who are:[371]

1. At risk of abuse, neglect, or exploitation
2. At risk of inappropriate institutionalization

Application and Procedures

Application is made to the local County Department of Human Resources to operate a day care home for adults. Forms to be used for that purpose may be secured at the county office.

1. Upon receipt of the completed application, an examination of the day care family home and an investigation of the day care family shall be made by a representative of the Department. This investigation will include criminal background checks and securing health statements for providers, household members, and substitute providers.

2. Upon completion of the examination and investigation, a decision to approve or to deny the application will be made by the County Department based upon the findings. If the decision is to approve the application, the "Approval to Provide Day Care for Adults" will be issued to the applicant. If the application is not approved, the family will be notified by letter stating the reason(s) for denial.

3. All approvals are dated from date of issuance and expire one year from that date unless terminated by either party. Homes may be reapproved based upon the re-examination and reevaluation by the Department if they continue to conform to standards and regulations.

4. Approval to provide day care for adults applies to the household members and the residence occupied by the applicant at the time approval is given. If a change of residence is made or household members change, the day care family must notify the County Department, who must determine if approval is to be continued. The decision of the County Department will be furnished to the day care family in writing.

5. The number of participants for which a day care home may be approved to provide adult day care is limited to a maximum of four. Factors to be considered are: space in the home, the number of persons making up the day care family and the care they

[371] Revised APS Letter 2007-25
November 2007

require, the ability of the day care family to care for the number of persons being considered for day care, etc.

6. The County Department of Human Resources may revoke the approval to provide day care for adults when the home fails to meet standards prescribed and regulations set forth here. In such cases, the County Department will furnish a written notice to the home stating the reason(s) for revocation.[372]

Day Care Home Requirements

1. The house shall meet regulations regarding sanitation, fire protection and building safety of the city or county in which it is located. The day care family home and grounds shall be free from anything which constitutes a danger such as: abandoned automobiles and household appliances, uncovered wells and cisterns, stacked lumber with exposed nails, and explosives. Safeguards must be provided against potential hazards such as open fires, heaters, and floor furnaces. Guns, poisons, and medications must be locked in a secure location. The Department shall request inspections by state or local fire departments and by the state or local health department as determined necessary.

2. A smoke detector shall be installed and maintained in operating condition within ten feet of each bedroom and no more than 30 feet apart in hallways. In a multi-level home (upstairs and basement) a smoke detector shall be installed and maintained in operating condition at the head of the stairway(s). It is the responsibility of the day care provider to purchase and maintain the smoke detector(s) in operating condition.

3. A 2A-10BC dry chemical fire extinguisher, no less than 5 pounds in weight, shall be installed and maintained in operating condition, in an accessible place, in plain view near room exits which provide an escape route. Multi-level homes shall have a fire extinguisher on each level. It is the responsibility of the day care provider to purchase and maintain the fire extinguishers in operating condition.

4. All windows and doors shall be screened against insects if these are used for ventilation.

5. The day care family home shall be maintained in clean condition. It shall remain sanitary and in good repair at all times.

6. If the day care family home has a private swimming pool, the Department or day care family shall request inspections by the state or local health department as determined necessary. The day care provider shall make the swimming pool inaccessible to the participants in day care except when supervised by individuals

[372] Revised APS Letter 2007-25
November 2007

who have completed a basic water safety course and have received training in Cardiovascular Pulmonary Resuscitation (CPR).

7. All manufactured (mobile or modular) homes shall conform to the National Mobile Home Construction and Safety Standard Act of 1974. An aluminum plate, permanently attached to the mobile home, will indicate conformity with this Act. Mobile homes, will indicate conformity with this Act. Mobile homes shall comply with anchoring and tie-down requirements as specified in Code of Alabama 1975, Section 24-5-30 through 24-5-34.[373]

8. Every day care family home must have a working telephone.

9. Every day care family home must have all standard utilities (indoor running water, gas and electricity) in working order during hours of operation. Exceptions may occur during inclement weather, such as thunderstorms, tornadoes, hurricanes or snow.

10. Unvented natural gas heaters are prohibited in all bedrooms and bathrooms. Unvented propane gas space heaters equipped with oxygen depletion devices are permitted in day care homes (including bedrooms and bathrooms) if the heaters are installed in accordance with the local and national gas codes as verified to the Department by a written statement from the qualified professional. This type of heater is not allowed in manufactured homes (mobile homes) or modular homes. No stove or combustion heater shall be so located as to block escape in case of fire arising from malfunctioning of the stove or heater. All heating and cooling equipment must be adequately protected so the participants cannot come in direct contact with them.

11. A certificate of rabies vaccination shall be on file in the home for any animal on the premises required by law to be vaccinated. No animals posing a threat to the health or safety of a participant in day care shall be kept.

12. Ground or first floor space must be used to care for participants. If entrances to that space require the use of any steps, there must be safety rails for use of participants. Location and arrangements of entrances and exits must be such that day care participants (who may have limitations of vision and moving about) may readily enter and leave the home.

13. Each participant in day care must be provided a comfortable area to rest throughout the day or take a nap. The area provided for the participant must be well lighted, comfortably heated and cooled and adequately ventilated. If the participant in day care has physical limitations, the safeguards necessary for safety (for instance, rails on steps) must be provided. A separate area must be provided in order to isolate

[373] Revised APS Letter 2007-25
November 2007

participants who may become ill and are suspected to have a contagious disease or illness.

14. The day care family home must have adequate and appropriate facilities for the storage, protection and preparation of food.

15. The day care family must provide the participants in day care with wholesome, well-balanced meals including meats or meat substitutes, vegetables, milk, fruits, cereal, bread and desert. Special diets, where prescribed or recommended by a physician, shall be provided. If participants are in day care for more than four hours, the meal must be supplemented by one or more snacks, including a beverage. Special diets may have to be prepared for participants with special nutritional requirements as a result of their medical conditions, such as diabetes or hypertension. Arrangements should be made prior to placement to assure that these special needs can be met.[374]

16. The day care family shall encourage the participants to be active both physically and mentally. It is not necessary to have a formal program of planned activities, but participants should be encouraged to visit with each other, to get some physical exercise and to make use of their mental abilities within their capabilities. Household tasks and chores are not to be required of participants. For instance, there could be picnics where the noon meal is eaten outdoors. In addition, the opportunity to sing together or to play not too strenuous games, such as dominoes, checkers, card games, etc., could be enjoyed by those interested.

17. The services and facilities of the day care home shall be such that the participant in day care is not taken advantage of and the emotional and physical needs of the participant in day care are met in a way that will protect and promote his or her health, safety, comfort, and well-being.

18. The day care home provider must be familiar with the use of Standard Precautions for Health Care workers as issued by the Center for Disease Control (CDC) in order to prevent the spread of contagious and infectious diseases among the adult day care participants. According to CDC, clean hands are the single most important factor in preventing the spread of germs in health care settings. A summary of CDC's recommended ways to clean hands properly are located as Attachment A.

Day Care Family

1. The day care provider shall be the age of majority and be able to read and write.

[374] Revised APS Letter 2007-25
November 2007

2. The day care provider must be qualified to provide day care by virtue of training and experience. Specific training may be required to meet the needs of particular participants.

3. The day care provider will be required to provide names of three people to serve as references for the family. The County Department may contact additional references that have not been provided by the day care family.

4. All members of the day care household must be responsible people of good character and reputation (as verified by references), and all of them must be willing to accept the person(s) in day care. (See "Character and Suitability Requirements".)

5. All adult household members (age 19 and over) of the day care family, substitute provider, employees and volunteers shall submit to a mandatory criminal history check that includes fingerprinting. The County Department has detailed instructions regarding this process. (See "Character and Suitability Requirements".)

6. All members of the household must be in such physical and mental health as not to be harmful to the participant. Since the health of providers, household members, substitute provider, employees, and volunteers could pose a risk to some portion of the participant population to be served, a licensed practicing medical doctor's or physician assistant's (as defined in Section 34-24-290(4), Code of Alabama, 1975) statement indicating whether each of these persons is free of communicable and infectious disease and physically fit to provide care is required. A new medical must be obtained every four years on providers, household members, substitute providers, employees and volunteers under 62 years of age and every two years on those over 62 years of age. If there is a question about the health of the provider, household member, substitute provider, employee or volunteer, additional medicals may be requested.[375]

7. An applicant may be single or married. Two otherwise unrelated adults heading the household may make a joint application to provide day care. There is no restriction on the size of the family that is to provide day care for adults. The County Department must be immediately informed of any changes in the composition of the household.

8. The day care family must be flexible in their attitudes and expectations towards the participants in day care. The day care family must be willing to show understanding and patience. The family shall have the capacity and willingness to give time and attention to the needs of participants in day care.

[375] APS Letter 2016-01
March 2016

9. If the day care family desires that other plans be made for a participant, the family plans to move to another dwelling, or the family desires to relinquish the approval, the family shall give a two-week notice to the County Department prior to taking desired action. This will give the Department time to develop a new case plan with the participant.

10. The day care family must not take a participant in day care out of the county or State.

11. The day care home must have sufficient income to meet its own needs. A regular income sufficient to meet the needs of the permanent members of the household is needed.

12. The day care family or any one providing care in the day care home must not borrow money from the day care participant or from the participant's friends or relatives.

13. The day care family or any one providing care in the day care home must not solicit, accept or receive gifts or money from the day care participant or from the participant's friends or relatives. Excluded are the day care fee and fees for additional services and supplies.

14. In a two-adult household (spouses[376] or two other heads of household applicants), one adult may be employed outside of the home if it is determined by the County Department that such employment would not have a detrimental effect upon the client's health or safety.

15. Substitute care may be used in case of an emergency. However, a suitable substitute care plan must be submitted to the County Department for approval prior to implementation. The County Department must concur that the substitute care plan provides for uninterrupted care and supervision. If substitute care is needed, care must be provided in the provider's home or another DHR approved day care home for adults. Substitute care which is provided in the day care home may be provided by a DHR approved substitute caregiver, an unrelated person who is a registered volunteer with the Department and is providing care on a volunteer basis, or by an employee of the day care home. All substitute caregivers must meet all character and suitability requirements, including a criminal history background check. The substitute provider must agree to provide care in the absence of the provider in a manner that is in compliance with the policies and procedures governing the day care program. The Department will meet with the potential substitute provider and discuss the day care standards, contact references that are not related to the candidate for substitute provider, and complete medical information. The day care provider is responsible for making financial arrangements with the substitute provider. The day care provider must notify the

[376] Revised APS Letter 2015-04
March 2015

County Department of the use of a substitute care plan, regardless of the reason, for an absence of four or more hours.

16. The day care family must:

    a. Provide day care for the adults referred to them by the Department of Human Resources according to the standards outlined.

    b. Accept supervision by the Department of Human Resources so far as the welfare of the participants in day care is concerned.

    c. Notify the proper persons about illness, accident, or disturbing behavior that occurs while the client is in day care. Persons to be notified will be identified on the PSD-ASD-500, "Emergency Information, Adult Day Care/Adult Foster Care". The County Department needs to be notified also.

    d. If necessary, help the participant in day care follow medical procedures prescribed for him or her and which need to be carried out while in day care.

    e. Provide assistance with activities of daily living.

    f. Provide transportation for the participant in day care when necessary and agreed upon using the DHR-APS-779, "Adult Day Care Transportation Agreement". Drivers must have a valid Alabama Driver's License, as well as uninsured motorist and vehicle liability insurance, if transporting participants.

Character and Suitability Requirements

A. Applicants

To be considered as providers of adult day care, all applicants, their household members, and their designated substitutes must meet character and suitability requirements of the agency. The initial screening requires verification that there is no history of indicated abuse or neglect of children or adults in the State of Alabama, and the successful completion of a mandatory criminal history check, i.e., no conviction for specified crimes.[377]

The term *conviction* includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere. Convictions for any of the following crimes by the applicant, his or her household members, or any substitute care provider shall make an individual unsuitable for approval to provide adult day care:

1. Murder, manslaughter, or criminally negligent homicide; or

[377] Revised APS Letter 2007-25
November 2007

2. A sex crime, including but not limited to the following: sexual abuse, sexual exploitation, molestation, rape, child pornography, sale or exhibition of obscene materials, sodomy, incest, enticement for immoral purposes, kidnapping of a child, prostitution, and obscenity.

3. A crime against a child or

4. Sale and distribution of a controlled substance or

5. Robbery or

6. Other convictions disqualifying the person under other federal or state laws.

Information provided on the completed criminal history that indicates a conviction for any of the above type convictions will result in immediate notification to the applicant that their home will not be approved to provide adult day care.

Additionally, references must be provided to verify knowledge of all family members and their good character, reliability, and appropriateness to meet the needs of adults in need of protection or supervision.

The character and suitability of an applicant or provider, household members, and substitute provider may also be assessed by a review of the past history of the individual regarding their truthfulness and their ability to care for participants. False or misleading statements made to the Department or other government personnel regarding incidents or events occurring while providing day care or surrounding part of any adult or child abuse or neglect investigation conducted by the Department, law enforcement or other government officials are considered as evidence of unsuitable character. Additional factors relevant to assessing character and suitability are community reputation, work history, personal history, interpersonal skills, emotional and physical limitations, and psychological problems. Following the initial approval of the adult day care provider, reviews of character and suitability will be conducted at least annually but may also be done at any time at the discretion of the Department. [378]

B. Mandatory Criminal History Background Check

1. At the time of application, each applicant including substitute provider and adult household members must submit a Mandatory Criminal History Check Notice form disclosing all convictions, two sets of fingerprints, a completed Criminal History Information Consent and Release form giving consent for release of criminal history background information to DHR. In addition each of the above must supply identification verification of name, date of birth, race, sex, and Social Security number.

[378] Revised APS Letter 2007-25
November 2007

2. No home shall be approved with an adult household member or substitute provider who refuses to fully answer and complete a Mandatory Criminal History Notice form or refuses to provide identification verification.

3. The DHR Office of Criminal History Checks shall issue a suitability determination letter to the home and maintain a confidential file on individuals for whom a criminal history background information report or report updates have been received. The letter will state only whether the person is suitable for employment or approval. It will not list any convictions or other criminal history information. *No right to employment or approval is created by the issuance of a letter stating that the individual is suitable for employment.*

4. The applicant has thirty (30) days from the date of notification by DHR of being determined unsuitable for DHR approval to request a reversal of that determination. *No request for reversal will be accepted for a sex crime involving a child, an elderly individual, or an individual with disabilities.*

Such a request shall not be made unless five (5) years have passed for misdemeanors and ten (10) years for felonies from the end of the sentence or probation or parole, whichever is the latest. Reversals will be based on the individual showing clear and convincing evidence of successful rehabilitation as well as other supportive information required.[379]

Absences

Payment for day care for adults is based on enrollment, not days in attendance.
When a participant in family day care is absent and the day care family receives no explanation for that absence, the person to be notified in event of an emergency (as listed on the PSD-ASD-500) is to be contacted. If the participant in day care is absent seven (7) consecutive days, the day care family must report that information by telephone to the County Department of Human Resources staff, who is responsible for investigating the situation, for determining whether the participant's place in day care is to be retained for him or her, and for informing the day care family whether day care is to be continued or terminated.

Payment for Adult Day Care

Continued payment by DHR for providing adult day care is dependent on the provider meeting the standards included in this Manual and as determined by DHR staff.

[379] Revised APS Letter 2007-25
November 2007

Full-time day care for adults is defined as care averaging more than twenty-five (25) hours per week. Part-time day care for adults is defined as care averaging twenty-five hours or less per week.

The current amount of payment will be explained by County DHR staff based on whether the care is for part-time or full-time. County staff is also responsible for providing the forms to be used in requesting payment and helping the appropriate person in the home understand how and when the forms are to be prepared and submitted.

Records and Reports

Information that is provided to any adult day care family by the DHR staff about participants in day care is confidential. The family members must not, without the client's or client legal guardian's written permission, discuss that information with persons other than the client and DHR staff. It must be filed where it is available only to the person in charge of the day care home and any other family members the participant and the DHR service worker have agreed need to have that information.[380]

It is essential that The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its relevant regulations be discussed and the Business Associate Agreement (BAA) must be signed prior to the application approval and will be in effect as long as the individual is approved to provide Adult Day Care. The HIPAA BAA form is located at the end of these Minimum Standards.

Each day care home is responsible for maintaining adequate records on participants and submitting reports to the Department of Human Resources.

1. For each participant, the home must have a folder, properly identified with the participant's name and containing:
    a. DHR-ASD-500, "Emergency Information Adult Day Care/Adult Foster Care".

    b. copy of the summary given at the time of the initial adult family day care referral.

    c. Other information that will be of value in working with the participant. This might include notes regarding attendance, changes in the client; such as improvements in health or eating habits, more interest on the part of the client in what others are doing. etc.

    d. Copy of all HIPAA forms and any release of information forms signed by the participant and/or his legal guardian.

    e. PSD-BSA-781, "Authorization of Adult Day Care Transportation.

[380] Revised APS Letter 2007-25
November 2007

2. Attendance is to be recorded daily on the PSD-BSA-726, "Adult Day Care Daily Attendance Record." The DHR staff will issue copies of this form to the provider. The original is to be submitted to the County Department by the 10th day of the month following the month covered by the report. A copy is to be retained by the day care family provider.

Evaluations of Day Care for the Participant[381]

The day care family will need to share with the service worker their observations of the client while in day care and their opinions regarding the participant's progress or lack of progress. This information is to be used by the DHR service worker in reevaluating the effects of day care upon the client and determining whether day care for that participant is to be continued or terminated.

Termination of Day Care for the Participant

Day care for the participant may be stopped because the goal for which day care was provided has been accomplished or because the client has improved enough that his needs can be met in other ways or because he needs a different level of care. There can be other reasons, too. When the decision to stop day care has been made, the day care family will be notified in writing.

Responsibilities of the Department of Human Resources

1. Recruit, examine and approve day care family homes conforming to standards and regulations.

2. Provide to the day care family adequate information concerning each adult in a day care placement to assure understanding of the care to be given the adult.

3. Supervise the care to be given in the placement.

4. Provide the day care family specific information regarding how to contact a Department or agency representative at all times.

5. Maintain confidentiality of day care home records by keeping resource cases in locked files when unattended and by restricting any disclosures about the day care family or participant to persons or agencies providing authorized services or otherwise authorized by Administrative Rules.

6. Visit the day are family home whenever indicated to examine and/or to investigate and offer guidance.

7. Assist participant and provider with payment negotiation for the service, including transportation, when provided.

[381] Revised APS Letter 2007-25
November 2007

8. Assist the day care family in locating training, e.g. CPR, First Aid, diabetes, nutrition, mental illness, intellectual disability or dementia.

9. Reapprove the day care home at least once a year if the home continues to conform to standards and regulations.[382]

Responsibilities of the Day Care Family

1. Uphold standards and regulations as written in the Minimum Standards for Day Care Homes for Adults.

2. Carry out recommended daily care of the adult in the day care family home in cooperation with the Department and other service providers authorized by the Department.

3. Adhere to all aspects of the Day Care Home Agreement.

[382] Revised APS Letter 2007-25
November 2007

Attachment A

STANDARD PRECAUTIONS SUMMARY

Standard Precautions (also known as Universal Precautions) is the term for a set of guidelines established by the Centers for Disease Control and Prevention (CDC).

Standard Precautions apply to blood, all body fluids, secretions, and excretions whether or not they contain visible blood. They also apply to skin with sores or cuts and to mucous membranes (nose, mouth, etc). The most important parts of Standard Precautions for adult day care home providers include hand washing and the use of gloves if coming in contact with blood, body fluids and secretions or if the provider has skin cuts or sores. After the use of gloves, the hands must be washed as indicated below. Standard Precautions are designed to protect both the provider and participants from all body fluids and substances through the use of gloves, hand washing, and other ways to avoid spreading germs.[383]

A. HAND HYGIENE

Clean hands are the single most important factor in preventing the spread of germs or viruses and to reduce infections in day care settings.

B. NEED FOR HAND HYGIENE

1. When hands are visibly dirty, contaminated, or soiled: Wash with a regular or an antibacterial soap and water.

2. If hands are not visibly dirty, use an alcohol-based hand-rub (such as Purell) for routinely cleaning hands. Such hand-rubs reduce bacteria on the hands.

C. WHEN HAND HYGIENE IS NECESSARY

1. Before preparing and/or serving client's food, providing any drinks or medicines, before contact with the client's skin, and frequently throughout the day.

2. After contact with a client's skin or contact with body fluids or excretions, skin with cuts or sores, or wound dressings.

3. After removing any gloves that have been used for protection.

D. RECOMMENDED HAND HYGIENE TECHNIQUES

These recommendations will improve hand hygiene practices and reduce the spread of germs and viruses to clients and providers in adult day care homes.

[383] Revised APS Letter 2007-25
November 2007

1. Hand-rubs (Such as Purell)

   Apply to palm on one hand and rub hands together covering all parts of hands and fingers until hands are dry. Long fingernails or artificial nails require extra cleaning to remove germs.

2. Hand washing

   a. Wet hands first with water.
   b. Apply the amount of soap (regular or antibacterial) recommended by the manufacturer
   c. Rub hands together for at least 15 seconds, covering all of the hands and fingers.
   d. Rinse hands with water.
   e. Dry hand thoroughly with a paper towel.
   f. Use this paper towel to turn off the faucet.

DEFINITIONS

Hand hygiene – is a general term that applies to hand washing, use of antiseptic hand washes, use of alcohol-based hand-rubs, or surgical hand hygiene.

Hand washing – refers to washing hands with plain soap and water. Hand washing with soap and water remains a sensible plan for hand hygiene in non-healthcare settings and is recommended by the CDC and other experts.

Antiseptic hand wash – refers to water and soap or other detergents containing an antiseptic agent.

Alcohol-based hand-rub – refers to an alcohol-containing preparation applied to the hands to reduce the number of bacterial or viral germs.[384]

[384] Revised APS Letter 2007-25
November 2007

ATTACHMENT B
HIPAA BUSINESS ASSOCIATE AGREEMENT[385]

This HIPAA BUSINESS ASSOCIATE AGREEMENT is made the _____ day of _____, 20_____,by and between the

_____

(hereinafter referred to as the "COVERED ENTITY") and

_____ (hereinafter referred to as the "BUSINESS ASSOCIATE").

WHEREAS, COVERED ENTITY maintains and operates offices in the State of Alabama and has an obligation under the Privacy Rule of the Health Insurance Portability and Accountability Act, Public Law 104-191, to protect the privacy of health information on the clients it serves; and

WHEREAS, BUSINESS ASSOCIATE provides ancillary services which assist or complement COVERED ENTITY in the carrying out of its mission of providing **individual and family assistance and services, including child welfare, child support, child care, adult foster/day care, adult services, food stamps, and public assistance benefits to its clients** and thus may from time to time have access to confidential health information of those clients;

NOW THEREFORE, the parties agree, in consideration of the above and other valuable considerations, as follows:

1. Definitions

Catchall definition: Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. Sections 160.103 and 164.501.

Examples of specific definitions:

(a) *Business Associate*. "Business Associate" shall mean the same person or entity listed above as Business Associate.

(b) *Covered Entity*. "Covered Entity" shall mean the same person or entity listed above as Covered Entity.

(c) *Individual*. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. Section 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).

(d) *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.

(e) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. Section 164.501.

(g) *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available in a timely manner to the Covered Entity, or to the Secretary, or

[385] Revised APS Letter 2007-25
November 2007

designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(g) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528.

(h) Business Associate agrees to provide to Covered Entity or an Individual information collected in accordance with this Agreement to permit Covered Entity to respond in a timely manner to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. Section 164.528.[386]

3. Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. Section 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

4. Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Term and Termination

(a) *Term*. The Term of this Agreement shall be effective as of the day first written above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible or illegal to return or destroy Protected Health Information or, if for any other reason the business associate decides not to destroy or return PHI to the Covered Entity, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause*. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

(2) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) *Effect of Termination*.

(1) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity unless unfeasible or illegal

[386] Revised APS Letter 2007-25
November 2007

to do so or the business associate for any other reason decides not to return or destroy the PHI. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

(2) Business Associate shall extend the protections of this Agreement to such Protected Health Information for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

(a) *Regulatory References*. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

(b) *Amendment*. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

(c) *Survival*. The respective rights and obligations of Business Associate shall survive the termination of this Agreement.

(d) *Interpretation*. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

EACH PARTY has caused this agreement to be properly executed on its behalf as of the date first written above. [387]

FOR:	_____	FOR:	_____
	_____		_____
	(BUSINESS ASSOCIATE)		(COVERED ENTITY)
BY:	_____	BY	_____
	(Printed Name and Title)		(Printed Name and Title)
	_____		_____
	(Signature)		(Signature)

[387] Revised APS Letter 2007-25
November 2007

MINIMUM STANDARDS FOR ADULT DAY CARE CENTERS

I. LEGAL AUTHORITY

The Alabama Department of Human Resources has established policies and procedures for a program of day care for adults, which prescribes minimum standards to be met by the centers to provide such care. Authority for the Department to approve day care centers for adults is given in Section 38-2-6 (19) Code of Alabama, 1975.[388]

The programs of the Department of Human Resources are available to all persons regardless of race, color, sex, national origin or handicap, in accordance with the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

[388] APS Letter 2007-25
November 2007

II. REGULATIOINS

A. Adults in Day Care

Day care for adults is a service provided in centers for individuals who are elderly or disabled (18 years of age or older) for a part of the twenty-four day. It serves those eligible adult recipients of DHR services who are:[389]

1. At risk of abuse, neglect, or exploitation or
2. At risk of institutionalization.

B. Times of Operation

Centers must be open a minimum of seven hours daily. The number of holidays will not exceed 13 per year. The adults or responsible person will be advised of the holiday schedule at the time of admission to the program and again one week prior to the holiday. Any changes in the schedule that was approved at the time of contract must be approved by the Office of Resource Management.

C. Facility

1. Health and Fire Safety Standards

   The facility must meet all applicable Alabama health and fire safety standards. The State Fire Marshal and the local Health Department must have inspected the facility prior to program occupation. *Inspection results must be posted in a prominent place in the facility*. Recertification is required annually by the State Fire Marshal or local fire department and the local Health Department. Evacuation procedures must be posted and all staff must be familiar with these procedures. The State Fire Marshal's office may be contacted at *(334) 241-4166* for information dealing with code requirements and procedures.

   The local Health Department must approve all food preparation facilities and any resource from which food is delivered. It the center prepares food, the approval must be posted along with the Health Department's Food Permit to serve food. Drinking water must be from a source approved by the Public Health Department and supplied by sanitary means. It must be located in or near the rooms usually occupied by participants. Temperature in the refrigerator(s) must be kept below 50º Fahrenheit. Milk and other perishable foods must be kept in the refrigerator except during the time of preparation and serving.

[389] APS Letter 2007-25
November 2007

Garbage and rubbish must be stored in containers with tight fitting covers. Garbage must be removed from the building daily and the garbage cans must be washed and sanitized frequently.

2. Indoor Area

a. Space

The facility must have at least 35 square feet of activity floor space per day care participant excluding offices and halls. Ground or first floor space must be used for clients' activity and restrooms. At least one area must be large enough to allow all participants to meet comfortably at one time. There must be space available where participants may quietly and have equipment that will adequately serve that purpose.[390]

Any area where steps are located must have safety rails for participants. Office space must be provided for storage of records and to provide privacy for conferences.

Space must be available to isolate a sick or upset participant temporarily. This space will provide privacy for the participant, but will be in an area where staff can readily monitor the isolated individual. It is *not* acceptable to arrange curtains or movable screens to section off part of an activity area for isolation.

b. Temperature

Room temperature must be maintained at a degree comfortable for the clients. An inside room thermometer must be available. All heating and cooling equipment must be adequately protected so that participants cannot come in direct contact with them. Windows and doors must be screened if used for ventilation.

c. Bathrooms

Bathrooms must be located conveniently for participants. At least one toilet and one lavatory must be available for each 15 persons. Regardless of enrollment, a minimum of two restrooms must be available. Every bathroom door must be designed to permit opening of the locked door from the outside in an emergency. The opening device must be readily accessible to the staff. Bathrooms must be furnished with necessary personal supplies (toilet paper, paper

[390] APS Letter 2007-25
November 2007

towels, soap, etc.) Some washcloths and cloth towels must be available for use in emergencies.

d. Hazard Prevention

(1) The center must be free from apparent hazardous conditions.

(2) All flammable, poisonous and other hazardous substances and materials must be locked in a secure place.

(3) All containers must be labeled with the name of the substance or material it contains.

(4) No firearms or ammunition are allowed to be kept or to come into the center with the exception of law enforcement officers.

(5) All medicines and drugs must be kept locked in a secure location away from toxic chemicals and other harmful items.

(6) The facility must not have any barriers which would prevent services to handicapped individuals and must be accessible to the handicapped in the following respects: Elevators must be accessible to individuals in wheelchairs, bathroom doors must be wide enough for accessibility, and ramps must be provided.

(7) Floors must be of nonskid material and free of dampness and odors. All rugs will be nonskid. [391]

e. Cleanliness and Furnishings

(1) Both indoor and outdoor areas, equipment and furnishing must be clean and free of undesirable, hazardous, or unsanitary material and conditions.

(2) The facility must be clean, attractive in appearance, properly ventilated, and well lighted.

(3) Facility furnishings will be of sufficient variety to assure comfort and to meet the physical needs of all day care participants. Seating will be available for each participant.

(4) An adequate number of chairs, tables, dishes, and utensils will be available to accommodate total group mealtimes and

[391] APS Letter 2007-25
November 2007

ongoing planned activities. Upholstered seating must be available as well as table chairs.

(5) Equipment and supplies will include a variety of materials to stimulate individual interest and encourage group activity, such as table games, magazines, books, puzzles, etc.

3. Activities

The program must provide a variety of individual and group activities directed toward providing opportunities for each adult to increase his or her maximum potential, abilities to function in areas of daily living and self-care. The needs and interests of the day care group, as identified through client input and individual needs assessments, should be a part of the planning process. The programs should also provide information about community resources and how to access these. Activities must provide periods for both indoor and outdoor activities. The periods of activities must be sequenced to accommodate the individual needs of the participants being served.[392]

a. Programs will provide a variety of individual and group activities directed to meet the standards stated above. Activities must require some active participation by the participants in day care, not just watching television.

b. A written weekly plan will be completed in advance describing daily activities during operating hours.

c. The weekly plan must provide all adults the opportunity to participate in a minimum of five hours daily of planned activities. This does not include lunch, breaks or free time.

d. The program must provide information and activities related to

1) Nutrition

2) Health

3) Recreational/leisure time activities appropriate for adults

4) Daily living skills applicable to age group, economic situation and existing disabilities.

[392] APS Letter 2007-25
November 2007

5) Physical exercises
6) Education topics such as current events, history, government, etc.

e. The program must provide a variety of opportunities for group socialization

f. The program must involve participants in activities which assist the individual in maintaining, improving, or preventing further deterioration of physical capabilities.

4. Nutrition

Provision of meals and snacks are an opportunity to increase clients' knowledge about proper nutrition, food preparation, and the importance of eating a balanced and medically appropriate diet. In addition to maintaining and increasing physical and mental functioning, the meals also allow for increased social and emotional functioning by providing opportunities for interactions and socialization. [393]

Meaningful interaction during mealtimes between participants but also between participants and staff is an important part of the program. This provides opportunities not only for socialization but also for staff to discuss food, good nutrition, and eating habits for better health.

Each client in full-time care must receive a quantity and quality of food, which meets one-third of adult daily nutritional requirements. If clients are in day care for more than four hours, the meal will be supplemented by one or more snacks each day.

Each client in part-time care must receive the same meal or snack provided clients in full-time care if he or she is in attendance at the center during a regularly scheduled meal or snack time. All part-time participants must have access to at least one meal or snack.

Weekly menus must be prepared one week in advance and posted so that participants and visitors may view them. The meals and snack must be spaced at time intervals to accommodate the needs of the participants. These meals must provide a variety of food served in an attractive manner. Special diets must be accommodated, and medical information must be on file in the client record to document medical instructions for the special diet.

5. Health

[393] APS Letter 2007-25
November 2007

The center must have information on file in each adult's day care record regarding the person to be notified in an emergency situation; the client's physician, address and phone number; client's diagnosis; and other pertinent health problems. A report on the physical status of the participant and a plan of care will be maintained on file at the program. Advance arrangements must be made for action to be taken in medical situations. If there are symptoms of communicable disease, the sick participant must be isolated.

The health and well-being of clients in adult day care is of paramount importance to DHR Adult Protective Services staff. Day care staff must observe each adult daily for indications of new health problems. Any concerns raised by observation related to an adult's mental, physical, or emotional health must be noted in the case record and brought to the immediate attention of the County DHR social worker. Based on these observations DHR must be advised of recommendations concerning continued participation in day care. *All suspected abuse, neglect, or exploitation must be immediately reported to the County Department of Human Resources,* by phone or in person; a written report must follow within five days.

At least monthly, regular health screening shall be provided to each participant and reports maintained in the client's file. A first aid kit and a telephone must be available in the facility. Staff will use Standard (Universal) Precautions and will be trained in procedures. (See the summary attached to the end of the Minimum Standards.)

Program staff *must not* administer medications.

6. Social Services

An important part of day care for DHR clients is the opportunity for ongoing assessments of each client's physical, social, and emotional adjustment in order to identify changing needs. Quarterly assessments must reflect staff observations of each client's participation and adjustment to the program. Staff must document identified special needs and any follow-up action planned or taken. This information must be made available to the county DHR worker who must be recognized as the primary case manager for all clients for whom DHR is purchasing care.[394]

7. Transportation

In order to provide a safe, dependable means of transportation when the need for this service exists, the following standards must be met:

[394] APS Letter 2007-25
November 2007

a. The driver transporting day care clients must have a valid Alabama Driver's license.
b. The vehicle used for transporting clients must be safe and in good working condition.
c. All passengers must use safety belts when the vehicle is in motion.
d. All passengers must enter and leave the vehicle from the curbside.
e. The driver must wait until the client enters the building, the client's home, or the center.
f. The number passengers will be limited to the capacity of the vehicle and the type of license held by the driver.
g. All doors will be locked whenever the vehicle is in motion
h. The driver will ensure that all clients have exited the vehicle prior to parking or storing.

Insurance companies must submit Certificates of Insurance to the DHR Office of Resource Management.

D. Program Requirements

The program must comply with documentation requirements detailed in the Adult Day Care section, Fixed Rate Chapter of the Manual for Purchase of Services. This includes but is not limited to:

1. Completion of daily attendance records.

2. Completion of a written weekly plan which will outline the activities.

3. Completion of a written assessment on each physical, social, and emotional adjustment to be completed within 30 days of enrollment.

4. Completion of quarterly assessments on each client.

5. Completion of six-month summary containing the client name, DHR case number, eligibility status, DHR office authorizing service, progress since last six-month report and recommendations.

Failure to comply with the above requirements may result in an adjustment being made or termination of the contract.

E. Staff Training

Program training must increase adult day care staff knowledge and skills in working the elderly or disabled adults and of the adult process (mental, emotional, and physical) to enable them to meet individual client needs. Staff who have no previous experience or training in adult day care must be provided with an on-site orientation and a designated period of supervised training. At least quarterly, all

staff shall participate in in-service training or other available training related to adult day care. Such training must be documented in writing. This shall include training on how to deal with clients with physical, mental, or emotional impairments. [395]

Volunteers must receive orientation, training, and supervision. If volunteers are to be counted in staff-participant ratio, the following conditions must be met:

1. They must meet all qualification of paid staff.

2. The work must be scheduled so that for each paid worker position to be filled by volunteers, at least one fully qualified volunteer is to be present during each of the hours for which the paid worker would have been scheduled.

F. Staffing Patterns

The program will, at a minimum, maintain the following number of staff who are directly involved with clients during hours of program operation. *This number will be in addition to a program director.*

Program Enrollment	Staff
1 – 10……	1
11 – 25……..	2
26 – 35……..	3
36 – 43……..	4

For each 8 additional participants, add one (1) staff member.

At least two staff must be at the center during periods when clients are present. At least one of the staff present in the center at any time *must be CPR certified and trained in first aid.*

Auxiliary staff (kitchen and maintenance personnel, bookkeepers, etc.) whose primary responsibilities do not require direct involvement with clients must not be counted toward staff ratio requirements unless their job descriptions specify time periods when they have responsibility *only* with clients.

G. Staff

Each employee must have a physical examination completed within three (3) months prior to employment and every two years thereafter. A copy must be filed in the personnel records. This must show all staff to be free of contagious disease and physically capable of meeting the responsibilities of their position. Volunteers

[395] APS Letter 2007-25
November 2007

counted as replacements for hired staff also meet these requirements. A nurse, LPN or RN, must be available to provide clients a monthly health screening.

All staff members must be emotionally and physically fit to care for persons who have physical or mental limitations. They must be understanding, accepting, have an even temperament, use common sense, and have a sense of humor. All staff must have a criminal history background check including fingerprinting.[396] Each staff must complete the Alabama Elder and Adult in Need of Protective Services Abuse Registry Clearance form (DHR-APS-2279). This completed form shall be submitted by the applicant for clearance to apsregistry@dhr.alabama.gov.

H. STANDARD PRECAUTIONS SUMMARY

Standard Precautions (also known as Universal Precautions) is the term for a set of guidelines established by the Centers for Disease Control and Prevention (CDC).

Standard Precautions apply to blood, all body fluids, secretions, and excretions whether or not they contain visible blood. They also apply to skin with sores or cuts and to mucous membranes (nose, mouth, etc). The most important parts of Standard Precautions for adult day care home providers include hand washing and the use of gloves if coming in contact with blood, body fluids, and secretions or if the provider has skin cuts or sores. After the use of gloves, the hands must be washed as indicated below. Standard Precautions are designed to protect both the provider and participants from all body fluids and substances through the use of gloves, hand washing, and other ways to avoid spreading germs.

A. HAND HYGIENE

Clean hands are the single most important factor in preventing the spread of germs or viruses and to reduce infections in day care settings.

B. NEED FOR HAND HYGIENE

1. When hands are visibly dirty, contaminated, or soiled: Wash with a regular or an antibacterial soap and water.

2. If hands are not visibly dirty, use an alcohol-based hand-rub (such as Purell) for routinely cleaning hands. Such hand-rubs reduce bacteria on the hands.

C. WHEN HAND HYGIENE IS NECESSARY

[396] APS Letter 2023-02
February 2023

1. Before preparing and or serving client's food, providing any drinks or medicines, before contact with the client's skin, and frequently throughout the day.

2. After contact with a client's skin and or contact with body fluids or excretions, skin with cuts or sores, or wound dressings.

3. After removing any gloves that have been used for protection.

D. RECOMMENDED HAND HYGIENE TECHNIQUES

These recommendations will improve hand hygiene practices and reduce the spread of germs and viruses to clients and providers in adult day care homes.

1. **Hand-rubs (Such as Purell)**

   Apply to palm on one hand and rub hands together covering all parts of hands and fingers until hands are dry. Long fingernails or artificial nails require extra cleaning to remove germs.

2. **Hand washing**

   a. Wet hands first with water.

   b. Apply the amount of soap (regular or antibacterial) recommended by the manufacturer

   c. Rub hands together for at least 15 seconds, covering all of the hands and fingers.

   d. Rinse hands with water.

   e. Dry hand thoroughly with a paper towel.

   f. Use this paper towel to turn off the faucet.

DEFINITIONS

Hand hygiene – is a general term that applies to hand washing, use of antiseptic hand washes, use of alcohol-based hand-rubs, or surgical hand hygiene.

Hand washing – refers to washing hands with plain soap and water. Hand washing with soap and water remains a sensible plan for hand hygiene in non-healthcare settings and is recommended by the CDC and other experts.

Antiseptic hand wash – refers to water and soap or other detergents containing an antiseptic agent.

Alcohol-based hand-rub – refers to an alcohol-containing preparation applied to the hands to reduce the number of bacterial or viral germs.[397]

[397] AS Letter 2007-25
November 2007

Chapter 5 United States Repatriation Program[398]

The Repatriation program was established in 1935 under Section 1113 of the Social Security Act to provide temporary assistance to U.S. citizens and their dependents who have been identified by the Department of State as having returned, or being brought back from a foreign country, to the U.S. because of destitution, illness, war, threat of war, or a similar crisis, and are without available resources to meet their needs. These citizens are referred to as repatriates. The Repatriation Program is federally funded and managed through the Department of State, Office of Refugee Resettlement (ORR) and International Social Services programs (ISS). Based on an agreement with the Office of Refugee Resettlement (ORR) designating the Alabama Department of Human Resources as responsible for the non-emergency activities of this program we assist with the coordination and provision of temporary services to referred repatriates wanting to return to Alabama.

A. General: The program provides temporary assistance with: cash payments, medical care, temporary shelter, transportation, counseling and other welfare services. Typically, services are provided for no more than 90 days from the day of arrival; however, in some cases services can be provided beyond the 90-day period but such extension must be approved by federal authorities.
B. Financial Obligation: To receive services, repatriates must sign a Health & Human Services repayment agreement form accepting responsibility to repay the cost of all services provided as these expenditures are considered a loan to be repaid to the federal government. Repatriates have the option after arrival to decline services from the State under this program as well.

A. NON-EMERGENCY REPATRIATION PROCEDURES:

1) PRE-ARRIVAL ACTIVITIES

REFERRAL: The assigned ISS Case Manager will submit a referral package by email or fax to the APS State Coordinator. The APS State Coordinator serves as the liaison between the County Office and International Social Services (ISS) Case Manager. The APS State Coordinator will notify the APS Division Director and designated county that a repatriate referral packet has been received. A copy of the referral packet will be submitted to the County Director or their assigned designee for review and coordination of services. The County Office should establish a case plan for the repatriate based on the needs identified and services requested in the referral package in accordance to existing resources in the community. The APS

[398] APS Letter 2019-15
November 2019

Consultant can be contacted for consultation, as needed. The referral should be entered on FACTS as a Prevention. [399]

REIMBURSEMENT GENERAL INFORMATION: The Family Assistance Division will issue a memorandum to the County Director providing general information about the program, allowable expenditures, and how to seek reimbursement of local fund expenditures from State DHR. Reference Expenditures and Reimbursements Policy section.

CASE PLAN: It is the primary responsibility of the County Office to develop a case plan for each repatriate prior to their arrival to Alabama. The developed plan will go into effect once the repatriate arrives and should include services for transportation, shelter, and medical care, if required. Once a plan has been developed for the repatriate's arrival it is to be submitted to the APS State Coordinator and APS Division Director for review and approval. Plans should be submitted within 3 days of receiving the referral packet, unless additional information has been requested from ISS. It is noted that the ISS Case Manager must be in agreement with the plan developed to include all costs and expenses related to the repatriates return to their designated county.

The approved plan will be shared by the APS Division Director and State Coordinator with the ISS Case Manager for concurrence. Once the plan has been agreed upon by the ISS Case Manager, APS Division Director and State Coordinator, information will be provided to the County in regards to the repatriate's plan of arrival (date, time, location) as well as ongoing updates related to the repatriate until their day of arrival. The APS State Coordinator will provide notification to the County Office once the case plan has been approved by both the APS Division Director and the ISS Case Manager. Also, ongoing communication will be provided from the ISS Case Manager to the County Office by the APS State Coordinator.

Once the repatriate's plan of arrival is approved, the County Office should begin initiating and implementing the plan developed for the repatriate's arrival. This includes making all efforts to establish available resources as identified; as well as seeking out relative support systems and financial resources available within the county to assist the repatriate on their initial date of return.

[399] APS Letter 2019-15
November 2019

Additional pre-arrival activities may include the county office contacting the public assistance office for information about eligibility for benefits; contact with shelters available in the community for placement of single persons and families; search for an inexpensive hotel; and contact with any known relatives for emotional support or possible placement.[400]

3) ARRIVAL ACTIVITIES

Upon arrival, the county worker should meet the repatriate and provide them with information about the repatriation temporary assistance program and services available. A determination should be made early if the repatriate meets the criteria of being an adult in need of protective services. If the repatriate is determined to have the capacity needed to make decisions, the repatriate should be asked, whether they agree to receive services; and if they agree to receive services they must sign the repayment agreement. The Privacy and Repayment Agreement form is located in the Welcome Package. (See iDHR forms). The County Office must obtain a signed repayment agreement from the repatriate prior to any expenditure being provided to the repatriate. A copy of the original agreement is provided to the Family Assistance Division and a copy is given to the repatriate. The County Office must retain a copy for their record. The Privacy & Repayment Agreement Form, Refusal of Temporary Assistance Form (if applicable) and the Repatriation Loan Waiver & Deferral Request Form should be completed accurately and presented to the repatriate with the Welcome Package. A sample Welcome Package is located on iDHR for your review.

DECLINATION of SERVICES: If upon arrival the repatriate signs the Decline of Service form, no additional services can be provided through the Repatriation Program. The County Office must make a determination whether the repatriate meets the criteria of being an Adult In Need of Protection based on Code of Alabama 1975. If the client declines services and does not meet the criteria of being an adult in need of protective services then no services should be provided. The repatriate can be made aware of local resources and should develop a plan for themselves.

ACCEPTANCE of SERVICES: If a repatriated citizen requests financial assistance or assistance with identifying services, the County Office must provide case management services to assist the repatriate with becoming self-sufficient within 90 days or less. Program expenditures and services can include transportation, shelter, medical care and direct cash assistance. Cash Assistance is paid from local funds and the amount is based on the TANF payment by family size. As long as the repatriate requests cash,

[400] APS Letter 2019-15
November 2019

these payments can be paid in 30 day increments, counting from the day of arrival in the United States. The repatriate is required to apply for and accept any benefits for which they appear to qualify including SNAP, TANF, SSI, etc.[401]

In addition, the County Office should be prepared to arrange transportation from the airport to the repatriate's final destination which may include arranging transportation (i.e. ambulance, van, car or Taxi) to the repatriate's final destination such as a relative's home, shelter care, hospital, or nursing home. Transportation for the repatriate can be an ongoing activity during the 90 day time frame and may include providing bus passes, etc. The costs associated with bus passes as well as worker travel is an expense that can be reimbursed to the Department from ISS; therefore, it needs to be tracked on each case. The worker should file for their mileage following departmental procedures and guidelines.

The County Office should assist with the coordination of all necessary services for the repatriate. In some instances it may be necessary for two or more counties to work together.

The County Office should also assist the repatriate by providing temporary shelter or transitional housing. The County will determine shelter availability. If the repatriate arrives after hours or during the weekend and the shelters are full, the coordinator should be notified as soon as possible so that arrangements can be made with ISS for them to pay for hotel expenses until temporary shelter or housing can be arranged. In this situation, the county should provide possible options to include the hotel names and prices.

Mental Health Intervention:

There are times when it may become necessary for the County Office to provide assistance with medical care or psychiatric care. If mental health care is required at the time of arrival, the County Office should arrange for a mental health team or a qualified mental health provider to be present at the airport or port of entry when the repatriate arrives. The qualified mental health provider should conduct an evaluation to determine whether the repatriate has the mental capacity or competency to make decisions regarding their care. The determination by the qualified mental health provider should address the repatriate's current mental health care needs. APS policy and local mental health procedures should be followed in these situations. The APS

[401] APS Letter 2019-15
November 2019

Consultant should be consulted on these cases. If care is needed for the repatriate, but not at the time of the arrival, an evaluation may be scheduled at a later time.

4) POST ARRIVAL ACTIVITIES

INITIAL ASSESSMENT: An initial assessment should be conducted as soon as possible to determine the needs of the individual or family. The repatriate should be encouraged to apply for any and all benefits for which they are eligible. The County Office must continue to monitor the case while open to decide the need for assistance and services. Case management services are the primary function during this time period. This includes ongoing communication with the APS State Coordinator.[402]

PROGRAM EXTENSION: The County Office cannot directly request temporary assistance beyond the 90-day period. If it is determined that a request for an extension is needed on behalf of the repatriate, the county should submit a summary detailing why the repatriate's age, lack of vocational preparation, existing mental health or medical problems are impeding their ability to attain self-care or self-support with supporting documentation to the APS State Coordinator at least two weeks before the 90-day period expires. Upon receipt, the APS State Coordinator will contact the ISS Case Manager to request an extension to continue services. The APS State Coordinator will then notify the County Director or their assigned designee of the outcome.

CASE RECORD: Information should be thoroughly documented on FACTS. The County Office should maintain the repatriate's file in an orderly manner and in a secure location. Records should be kept for three years from the date of submission of the final expenditure report.

Expenditures and Reimbursements:

The APS State Coordinator should be kept apprised of all expenditures on behalf of the repatriate. Any use of local funds must receive prior approval from the APS Deputy Director or the APS Division Director. The worker should submit a summary identifying the services needed and indicating the amount of the expected expenditure. For reimbursement of local funds send copies of documents and receipts of expenditures to the Finance Division with a cover letter indicating this is a repatriate case. Original receipts and documents for these expenditures and services must be sent to the Family Assistance Division for use to secure reimbursement from the Federal Government to the Department. Reimbursement of county local funds is not contingent

[402] APS Letter 2019-15
November 2019

on reimbursement to the State Department for these expenditures. The Department (County or State) has no responsibility to seek repayment of the (loan) monies expended on behalf of the repatriate. Program services offered by the repatriate program should end at 90 days unless an extension has been requested and approved as discussed above. [403]

5) CASE CLOSURE

To close a case on or before 90 days, submit a request to the APS State Coordinator along with a summary of the client's benefits, services, and current address. Cases can be closed for the following reasons: The repatriate becomes self-sufficient and has access to benefits, housing and appropriate care. Discovering the repatriate has access to other sources of income. The repatriate dies upon arrival to the United States. Also, a repatriate who was destitute or without available resources in the foreign country, upon arrival, is able to regain access to financial resources. (e.g. The repatriate is receiving SSI and or staying in a VA Hospital).

B) EMERGENCY REPATRIATION PROGRAM

Emergency repatriation allows for the evacuation of 500 or more United States citizens and dependents from overseas to the U. S. due to war, threat of war and other overseas crises (e.g. natural disasters, etc.) Through Office of Refugee Resettlement (ORR) agreements with the states, states designated as ports of entry (POE) will be asked to activate their state emergency repatriation plan during an emergency repatriation. Services are to be provided in accordance with regulations found at 45 CFR 211 & 212 and all manuals and procedures issued by ORR based on applicable Federal regulations.

[403] APS Letter 2019-15
November 2019

Chapter 6

Adult Protective Services

Alabama Elder and Adult in Need of Protective Services Abuse Registry

January 2023

APS Central Registry
Policies and Procedures
Effective January 1, 2023

TABLE OF CONTENTS

I. Introduction……..……...1

II. Definitions for the Purpose of this Central Registry…….……...2 – 5

III. Disclosure of Information and Query……..5 – 7

IV. Notifications from Other Agencies……..7 – 8

V. Due Process……8

VI. Expungement…….8

VII. County Worker……...8

VIII. Clearance of Adult Protective Services Registry…….....9

IX. Registry Clearance Form…….……10

APS Central Registry
Policies and Procedures
Effective January 1, 2023

I. INTRODUCTION

Under Section 38-9G-2, Code of Alabama 1975, the Alabama Department of Human Resources (SDHR) is responsible for establishing and maintaining a statewide registry known as the Alabama Elderly and Adult in Need of Protective Services Abuse Registry (hereafter, "Registry") for adult abuse, neglect, and exploitation reports made pursuant to §38-9-8, Code of Alabama 1975, as well as criminal convictions and protection from abuse orders. The purpose of the Registry is to protect vulnerable adults from abuse, neglect, and exploitation.

The Elder and Adult Abuse Registry shall contain the name of any individual for whom any of the following is true:

- The individual has been convicted of the crime of elder abuse and neglect in the first degree pursuant to Section 13A-6-192, Code of Alabama 1975.
- The individual has been convicted of the crime of elder abuse and neglect in the second degree pursuant to Section 13A-6-193, Code of Alabama 1975.
- The individual has been convicted of the crime of elder abuse and neglect in the third degree pursuant to Section 13A-6-194, Code of Alabama 1975.
- The individual has been convicted of the crime of financial exploitation of an elderly person in the first degree pursuant to Section 13A-6-195, Code of Alabama 1975.
- The individual has been convicted of the crime of financial exploitation of an elderly person in the second degree pursuant to Section 13A-6-196, Code of Alabama 1975.
- The individual has been convicted of the crime of financial exploitation of an elderly person in the third degree pursuant to Section 13A-6-197, Code of Alabama 1975.
- The individual has been convicted of any act of elder abuse as defined in Section 38-9F-3, Code of Alabama 1975.
- An elder abuse protection order has been issued against the individual pursuant to section 38-9F-4, Code of Alabama 1975.
- A protection from abuse order has been issued against the individual pursuant to Chapter 5 of Title 30, Code of Alabama 1975, for the protection of an elderly person or an adult in need of protective services.
- The individual has been convicted of an act of abuse, neglect, or exploitation as described in Section 38-9-7, Code of Alabama 1975.
- The individual has been found by the Department of Human Resources to have committed an act of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services.

II. Definitions for the purposes of this Central Registry

The following terms have the following meanings:

(1) ABUSE. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, as defined as "the infliction of physical pain, injury or the willful deprivation by a caregiver or other person of services necessary to maintain mental and physical health."
(2) ADULT FOSTER HOME. The terms, "foster family home" and "foster home" are used interchangeably to describe the settings of foster care for adults. Foster care for adults is intended to provide the security of a supportive family atmosphere and encouragement toward social interaction. It can be both rehabilitative and preventive.
(3) ADULT IN NEED OF PROTECTIVE SERVICES. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "a person 18 years of age or older whose behavior indicates that he or she is mentally incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others; or who because of physical or mental impairment, is unable to protect himself or herself from abuse, neglect or exploitation; sexual abuse, or emotional abuse by others, and who has no guardian or relative or other appropriate person able, willing, and available to assume the kind and degree of protective supervision required under the circumstances."
(4) DEPARTMENT. The Alabama Department of Human Resources. To the extent other entities are referenced in this section, the following will be used: Alabama Department of Public Health ("ADPH"); Alabama Department of Mental Health ("ADMH"); Administrative Office of Courts ("the AOC").
(5) ELDER ABUSE. The same term as defined in Section 38-9F-3, Code of Alabama 1975, as amended, "the commission of any of the following acts or the intent to commit any of the following acts against an elderly person:
    a. Abuse, as defined in Section 38-9-2, Code of Alabama 1975.
    b. Arson, as defined in Sections 13A-7-40 to 13A-7-43, inclusive, Code of Alabama 1975.
    c. Assault, as defined in Sections 13A-6-20 to 13A-6-22, inclusive, Code of Alabama 1975.
    d. Criminal coercion, as defined in Section 13A-6-25, Code of Alabama 1975.
    e. Criminal trespass as defined in Sections 13A-7-2 to 13A-7-4.1, inclusive, Code of Alabama 1975.
    f. Emotional abuse, as defined in Sections 13A-6-191, Code of Alabama 1975.
    g. Financial abuse, as defined in Sections 13A-6-191 and 8-6-171, Code of Alabama 1975.

h. Harassment, as defined in Section 13A-11-8, Code of Alabama 1975.
i. Kidnapping, as defined in Sections 13A-6-43 and 13A-6-44, Code of Alabama 1975.
j. Menacing, as defined in Sections 13A-6-23, Code of Alabama 1975.
k. Reckless endangerment, as defined in Sections 13A-6-24, Code of Alabama 1975.
l. Sexual abuse, as defined as any of the acts in Sections 13A-6-60 to 13A-6-68, Code of Alabama 1975.
m. Stalking, as defined in Sections 13A-6-90 to 13A-6-91.1, inclusive, Code of Alabama 1975.
n. Theft, as defined in Sections 13A-8-2 to 13A-8-5, inclusive, Code of Alabama 1975.
o. Unlawful imprisonment, as defined in Sections 13A-6-41 and 13A-6-42, Code of Alabama 1975.

(6) ELDERLY PERSON. An individual 60 years of age or older.

(7) EMOTIONAL ABUSE. The intentional 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 elderly person or adult in need of protective services.

(8) EMPLOYEE. An individual who is either:
a. Hired directly or through a contract by a service provider who has duties that involve, or may involve, one-on-one contact with a patient, resident, or client.
b. A volunteer of a service provider who has duties that involve, or may involve, one-on-one contact with a patient, resident, or client.

(9) EXPLOITATION. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, is "the expenditure, diminution, or use of the property, assets or resources of a protected person without the express voluntary consent of that person or his or her legally authorized representative or the admission of or provision of care to a protected person who needs to be in the care of a licensed hospital by an unlicensed hospital after a court order obtained by the State Board of Health has directed closure of the unlicensed hospital."

(10) FINANCIAL EXPLOITATION. Any of the following:
a. The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an elderly person or an adult in need of protective services.
b. The use of deception, intimidation, undue influence, force, or threat of force to obtain or exert unauthorized control over an elderly person's money, assets, or property or the money, assets, or property of an adult in need of protective services with the intent to deprive that individual of his or her money, assets, or property.

c. The breach of a fiduciary duty to an elderly person or an adult in need of protective services under a power of attorney or through a conservatorship or guardianship which results in an unauthorized appropriation, sale, or transfer of the individual's money, assets, or property.

(11) INDICATED. This disposition is used when preponderance of the substantial evidence (e.g., eyewitness account, medical report, professional evaluation) and the professional judgement of the social worker (based on facts gathered during the initial assessment) indicates that abuse, neglect, or exploitation has occurred and that the adult is physically or mentally impaired or aged.

(12) INTIMIDATION. A threat of physical or emotional harm to an elderly person or an adult in need of protective services, or the communication to an elderly person or adult in need of protective services that he or she will be deprived of food and nutrition, shelter, property, prescribed medication, or medical care or treatment.

(13) NEGLECT. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, "the failure of a caregiver to provide food, shelter, clothing, medical services or health care for the person unable to care for himself or herself; or the failure of the person to provide these basic needs for himself or herself; or the failure is the result of the person's mental or physical inability." Lack of supervision may meet the definition of neglect when lack of supervision results in lack of food, shelter, clothing, medical services, or health care.

(14) SERVICE PROVIDER. Any of the following:

a. As defined in Section 38-9G-1(11), Code of Alabama 1975, to include any of the following: (a) Assisted living community centers; (b) Specialty care assisted living communities or centers; (c) Home health agencies; (d) Hospice programs or residential hospice facilities; (e) Hospitals; (f) Long-term care facilities; (g) Skilled nursing facilities; (h) Rehabilitation facilities; (i) Group homes, other residential facilities, and community-based services serving adults in need of protective services, as designed by the rules adopted by the Alabama Department of Human Resources, the Alabama Department of Public Health, and the Alabama Department of Mental Health; (j) Foster homes that serve elderly persons or adults in need of protective services.

b. Adult Day Care Facilities

c. Should a conflict exist between definitions provided by the Department, ADPH, and/or ADMH, the definition used by the regulating, certifying, or licensing agency shall control. If no such agency exists, the DHR definition shall control.

(15) SEXUAL ABUSE. The same term as defined in Section 38-9-2, Code of Alabama 1975, as amended, is "any conduct that constitutes a crime under Article 4 of Chapter 6 of Title 13A." Forms of sexual abuse include rape, incest, sodomy, and indecent exposure.

(16) UNDUE INFLUENCE, Domination, coercion, manipulation, or any other act exercised by another individual to the extent that an elderly person or adult in need of protective services is prevented from exercising free judgement and choice.

III. DISCLOSURE OF INFORMATION AND QUERY

The Department of Human Resources shall establish and enforce reasonable rules governing the custody, use, and preservation of the reports and records of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services. These reports and records and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than the following:

- For investigation by a law enforcement agency.
- For use by a grand jury upon its determination that access to the reports and records is necessary in the conduct of its official business.
- For use by a court that finds the information is necessary for the determination of an issue before the court.
- For use by any guardian ad litem, guardian, or conservator authorized by a court to act as a representative for an elderly person or adult in need of protective services who is the subject of a report.
- For use by a physician who has before hm or her an elderly person or an adult in need of protective services whom the physician reasonably suspects may be abused or neglected.
- For use by federal, state, or local governmental entities, social service agencies of another state, or any agent of these entities, having a need for the information in order to carry out their responsibilities under law to protect individuals from abuse and neglect.
- For public disclosure of the findings or information about the case of abuse or neglect that has resulted in a fatality. Information identifying by name persons other than the victim shall not be disclosed.

- For purposes of employment by a service provider.

    (A) A service provider shall query the registry via the department with regard to an individual who is an employee or prospective employee of the provider to confirm whether any of the following are true:

        1. The individual has been convicted of a crime as previously stated in Section I.

        2. An elder abuse protection order against the individual has been issued pursuant to Section 38-9F-4, Code of Alabama 1975.

        3. A protection from abuse order has been issued against the individual pursuant to Chapter 5 of Title 30, Code of Alabama 1975, for the protection of an elderly person or an adult in need of protective services.

        4. The Department of Human Resources has made a finding that the individual has committed an act of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services.

    (B) The service providers include the following entities:

        a. Assisted living community centers
        b. Specialty care assisted living communities or centers
        c. Home health agencies
        d. Hospice programs or residential hospice facilities
        e. Hospitals
        f. Long-term care facilities
        g. Skilled nursing facilities
        h. Rehabilitation facilities
        i. Group homes, other residential facilities, and community-based services serving adults in need of protective services, as designed by the rules adopted by the Alabama Department of Human Resources, The Alabama Department of Public Health, and The Alabama Department of Mental Health

j. Foster homes that serve elderly persons or adults in need of protective services.

k. Adult Day Care Facilities

IV. NOTIFICATIONS FROM OTHER AGENCIES

(A) Administrative Office of Courts shall notify the Department of Human Resources of the criminal conviction or protection order concerning an individual under any of the following circumstances:

1. An individual is found guilty of a crime perpetrated against an elderly person or an adult in need of protective services as previously stated in Section I.

2. The court issues an elder abuse protection order against an individual pursuant to Section 38-9F-4, Code of Alabama 1975.

3. The court issues a protection from abuse order against an individual pursuant to Chapter 5 of Title 30, Code of Alabama 1975, for the protection of an elderly person or an adult in need of protective services.

(B) The Alabama Department of Public Health, Alabama Department of Mental Health, and all other agencies responsible for investigating reports of abuse, neglect, exploitation, sexual abuse, or emotional abuse under Section 38-9-6, Code of Alabama 1975, shall notify the Department of Human Resources of the outcome of the investigation if the report is determined to have been true or founded.

1. In addition to documentation required by the department, notification shall include the individual's last known mailing address and any other information that the agency determines is necessary to adequately identify the individual when inquiry to the Registry is made.

(C) Upon receiving notification as previously stated, the Department of Human Resources, in addition to entering the individual's name and address on the Registry, shall enter information pertaining to the offense or offences of which the individual was convicted. If an elder abuse protection order against the individual has been issued, or if a protection

from abuse order against the individual has been issued for the protection of an elderly person or an adult in need of protective services, information pertaining to why the order was issued and the age of the victim shall be entered by the Department when known.

(D) If the individual whose information is entered on the Registry was not convicted of a crime but was found by the investigating agency to have otherwise committed acts of abuse, elder abuse, emotional abuse, exploitation, financial exploitation, intimidation, neglect, sexual abuse, or undue influence against an elderly person or an adult in need of protective services, the Department, in addition to entering the individual's name and address on the registry, shall also enter information pertaining to the offense or offenses the individual was found by the investigating agency to have committed. The Department shall adopt the final dispositional findings of other investigating agencies, provided all requested and applicable due process has been completed.

V. DUE PROCESS

Due process shall be completed prior to an individual's information being placed on the Registry. In submitting the results of their investigations to the Department for placement on the Registry, Alabama Department of Mental Health and Alabama Department of Public Health affirm due process has been completed. Placement on the Registry as to the AOC's submissions shall be determined by the final order of a court of competent jurisdiction.

Where the Department is the investigating agency, due process shall be completed in accordance with Alabama Administrative Code r. 660-5-41- .01. Notice of an indicated finding must be given by personal service or by certified mail to the person responsible for abuse, neglect, and/or exploitation.

VI. EXPUNGEMENT

Once the individual's information is entered on the Registry, it shall remain on the registry even if the individual fulfills the obligations of any criminal sentencing against the individual. DHR will process all expungements in accordance with its regulations.

VII. COUNTY WORKERS

To assess an individual's suitability in an Adult Protective Services referral and/or case, County staff may submit requests for clearance of that individual by submitting an Adult

Abuse, Neglect and Exploitation Clearance form to SDHR APS for clearance of the Alabama Elderly and Adult in Need of Protective Services Abuse Registry.

VIII. CLEARANCE OF ADULT PROTECTIVE SERVICES REGISTRY

Clearance of the Alabama Elder and Adult in Need of Protective Services Abuse Registry will be a State function only. This process should be completed expeditiously.

Adult Abuse, Neglect and Exploitation (AANE) Clearance forms signed by the individual to be cleared must be submitted by mail or email. If submitted by mail, the forms should be mailed to Adult Protective Services Intake Division, Alabama Department of Human Resources, Post Office Box 304000, Montgomery, Alabama 36130-4000. If submitted by email, the forms should be sent to apsregistry@dhr.alabama.gov.