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TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Department or Agency Alabama Department of Public Health

Rule Number 420-5-11

Rule Title Rehabilitation Centers

 New XXX Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NA

Are all facts of the rulemaking process designed solely for the purpose of and so they have as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of §41-22-23, Code of Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of Certifying Officer *Patricia B. Mc* Date 4/16/14

**STATE BOARD OF HEALTH
NOTICE OF INTENDED ACTION**

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-5-11 Rehabilitation Centers

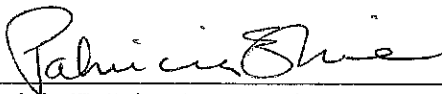
INTENDED ACTION: To amend the current rules

SUBSTANCE OF PROPOSED ACTION: To revise the current rules so that a licensed rehabilitation center can share premises with another separately licensed health care facility.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held on May 14, 2014, at 9:00 a.m., in the Office of General Counsel, Suite 1540, the RSA Tower, 201 Monroe Street, Montgomery, AL 36104. Written comments should be mailed to the agency contact person noted below.

FINAL DATE FOR COMMENTS AND COMPLETION OF NOTICE: Written or oral comments will be received until the close of the record at 5:00 p.m. on June 4, 2014. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Walter T. Geary Jr., M.D., Director, Bureau of Health Provider Standards, Department of Public Health, P.O. Box 303017, Montgomery, Alabama 36130-3017, Telephone number: (334) 206-5366.



Patricia E. Ivie, Agency Secretary

420-5-11-.01 General.

(1) **Legal authority for adoption of Rules** under and by virtue of authority vested in it by the Legislature of Alabama, *Code of Alabama 1975*, Sections 22-21-20, et seq., the State Board of Health does hereby adopt and promulgate the following Rules.

(2) **Definitions.**

(a) "AAC Rule" means Alabama Administrative Code Rule.

(b) "Audiologist" means a person who meets applicable legal requirements for the provisions of audiology services and who meets education and work standards established by the American Speech and Hearing Association for the Certificate of Clinical Competency in Audiology.

(c) "Chief Executive Officer" means a person who is delegated the responsibility for the interpretation, implementation, and proper application of policies and programs established by the governing authority, and is delegated responsibility for the establishment of safe and effective administrative management, control and operation of the services provided. This responsibility is accomplished by corresponding authority. This person is also referred to as the facility administrator.

(d) "Medical Director" means a physician currently licensed by the Medical Licensure Commission, State of Alabama, to practice medicine and surgery and provide medical advice to the center.

(e) "Occupational Therapist" means a person who is certified by the American Occupational Therapy Association, or who is a graduate of a program of occupational therapy accredited by the American Medical Association and who currently meets state legal requirements.

(f) "Occupational Therapist Assistant" means a person who is eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association and who meets state legal requirements.

(g) "Patient" means a person partaking in any of the services provided by a rehabilitation center. The centers may identify patients as clients; however, for the purpose of these Rules, the term patient is used.

(h) "Physician" means a person currently licensed by the Medical Licensure Commission of the State of Alabama, to practice medicine and surgery.

(i) "Physical Therapist" means a person who is a graduate of a program in physical therapy approved by the American Physical Therapy Association or the Council on Medical Education of the American Medical Association and who is licensed by the state.

(j) "Physical Therapist Assistant" means a graduate of a physical therapy curriculum approved by the American Physical Therapy Association or other associations recognized by the Commission on Accreditation of Rehabilitation Facilities and/or its equivalent as determined by requirements established by state regulatory agencies, and who currently meets state legal requirements.

(k) "Psychologist" means a person who holds a master's degree in psychology from a training program approved by the American Psychological Association and who currently meets state legal requirements.

(l) "Registered Nurse (RN)" means a person currently registered in the State of Alabama in accordance with the provisions contained in current state statutes.

(m) "Rehabilitation Center" means a business entity offering and providing outpatient assistance in the rehabilitation of disabled persons by providing two or more services that must be performed by or under the supervision of a physical therapist, occupational therapist or speech pathologist. This term does not include a business entity that is a certified home health agency.

(n) "Social Worker" means a person who is a graduate of a school of social work accredited or approved by the Council on Social Work Education and who currently meets state legal requirements.

(o) "Speech Pathologist" means a person who meets applicable legal requirements for the provision of speech pathology services and who meets the academic and work experience standards established by the American Speech and Hearing Association for the Certificate of Clinical Competence in Speech Pathology and who meets state legal requirements.

(p) "These Rules" means Rules 420-5-11-.01 through 420-5-11-.04, Chapter 420-5-11, Rehabilitation Centers, Alabama Administrative Code.

(q) "Vocational Specialist" means a person who has a bachelor's degree and:

1. Two years experience in vocational counseling in a rehabilitation setting such as a sheltered workshop, state employment service agency, etc., or

2. At least 18 semester hours in vocation rehabilitation, educational or vocational guidance, psychology, social work, special education or personnel administration, and one year's experience in vocational counseling in a rehabilitation setting; or

3. Has a master's degree in counseling, and who currently meets state legal requirements.

(3) Types of License.

(a) Regular License. A regular license may be issued by the State Board of Health after the Board has determined that the rehabilitation center is in substantial compliance with the Rules herein adopted.

(b) Probational License. This license shall be granted when the Board has reason to believe that the operation is questionable, but only when the Board is satisfied that the health and safety of residents will not be endangered during this period. Maximum length of time for probationary status is one year. However, an extension of time may be granted if the governing authority is making specific plans to construct a new rehabilitation center, establish a rehabilitation center in a structure which meets these rules or is actually in the process of meeting these rules. Closure of the rehabilitation center for a period of thirty days or longer except for remodeling or alterations shall mean that it is no longer in continuous operation and it shall meet the requirements for a regular license prior to being reopened.

(4) Licensing.

(a) Application for License. All rehabilitation centers shall apply for licensure on a form designated by the State Board of Health. The application will reflect all data required by *Code of Alabama 1975, Section 22-21-20, et seq.*

(b) Fee. Each application for license shall be accompanied by a fee as mandated by statute. No fee shall be refunded. Fees shall be paid by cash, check or money order made payable to the Alabama Department of Public Health.

(c) Name of Facility. Every rehabilitation center shall be designated by a permanent and distinctive name which shall not be changed until an application has been completed and approved. Words in the name of the center that may reflect a different type of facility or service shall not be used.

(d) Separate License. When more than one facility is operated under the same operating entity, a separate license shall be required for each facility. Separate licenses are not required for separate buildings used by the same facility on the same grounds.

(e) Reissuance of License.

1. The following changes in the status of the facility will require issuance of a new license, upon application and payment of application fee (if applicable).

(i) Change in facility ownership or operating entity (fee required).

(ii) Change in name (no fee required).

2. The governing authority shall file with the State Board of Health an application for license 30 days before any proposed change requiring a new license, in order to permit processing of the application and issuance of the license prior to the desired effective date of the change.

(f) Plan of Services. A plan of services shall be submitted with the initial application for licensing. The plan of services shall specify:

1. If the center provides nursing services.
2. Types of physical restoration provided.
3. Professionals employed for social adjustment.
4. Types of vocational adjustment professionals employed.

(g) Occupancy. No part of a rehabilitation center may be rented, leased or used for any commercial purpose; not reasonably necessary or related to the services the facility is licensed to provide, or for any purpose not necessary or in conjunction with the operation of the center. The Department shall approve all plans for additional occupancy. Food and drink machines may be maintained or a diet kitchen provided. Notwithstanding the foregoing, a rehabilitation center may rent a portion of its premises to another entity, or share a portion of its premises with another entity, if the entity ~~meets the following requirements:~~ The services the entity provides would reasonably be expected to be helpful to patients of a rehabilitation center, such as massage therapy, chiropractic services, acupuncture, or the provision of fitness classes, diet classes, or exercise classes. The safety and appropriate treatment of patients on rehabilitation center premises remain the responsibility of the rehabilitation center, irrespective of whether those patients are receiving services from another entity located on the premises.

- ~~1. The entity must not provide rehabilitation services;~~
- ~~2. The entity must not require separate licensure as a health care facility under the rules of the State Board of Health; and~~
- ~~3. The services the entity provides must be of a nature that would reasonably be expected to be helpful to patients of a rehabilitation center, such as massage therapy, chiropractic services, acupuncture, or the provision of fitness classes, diet classes, or exercise classes.~~

~~The safety and appropriate treatment of patients on rehabilitation center premises remain the responsibility of the rehabilitation center, irrespective of whether those patients are receiving services from another entity located on the premises.~~

(5) Right of Appeal.

(a) Any licensee dissatisfied with administrative decisions made in application of these rules may appeal under the procedures of the Alabama Administrative Procedures Act, *Code of Ala., 1975, Section 41-22-1 et. seq.*

(6) **Waivers.** The State Health Officer may approve a waiver to these rules in the following manner:

(a) The State Health Officer may approve a waiver to any provision of these rules, except for any provision which restates a statutory requirement, or which defines any term.

(b) To be eligible for a waiver, the licensee must be affected by the provision for which the waiver is requested, and must demonstrate by clear and convincing evidence that:

1. Local conditions are such that the licensee cannot or need not meet the provision for which the waiver is applied; and

2. Approval of the waiver will not unreasonably increase the risk of harm that the affected rule provision is intended to protect the public against.

(c) An application for a waiver shall also contain the name and address of the licensee, a statement of purpose, the period of time for which the waiver is requested and evidence demonstrating that the requirements of subsection (b) above are met.

(d) An application for a waiver must be presented in writing to the State Health Officer. All supporting evidence referenced in the application must be attached.

(e) The State Health Officer shall deny any application for a waiver which does not comply with the requirements of this section. Moreover, the Department of Public Health may make periodic evaluations of any waiver that has been granted. The State Health Officer may revoke a waiver if the statements, representations or supporting documentation that are part of the application are discovered to be false or inaccurate, or if local conditions upon which it was based change, or if public health, safety or welfare is adversely affected by a continuation of the waiver.

(f) Waivers issued by the State Health Officer shall be valid for a finite period of time as specified in the waiver.

(7) **Disclosure of Information.** Official reports, such as statements of deficiencies generated by the State Board of Health as a result of on-site inspections, and plans of correction submitted in response to those statements of deficiencies, are subject to public disclosure. Information received through other means and reports, other than statements of deficiencies, shall be deemed to be confidential and shall not be publicly disclosed except in response to a valid subpoena or court order or in proceedings involving the affected facility's license or proceedings involving the license of another facility operated by the same governing authority. Inspection reports will never contain the name or other identification of any patient in the inspected facility.

Author: L. O'Neal Green, L. O'Neal Green, Rick Harris

Statutory Authority: *Code of Alabama 1975*, §§ 22-2-2(6) and 22-21-20, et seq.

History: Repealed and Replaced Filed: December 17, 2003; effective January 21, 2004.

Amended Filed: July 27, 2010; effective September 1, 2010.