

APA-1
6/93

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Department or Agency Alabama Department of Public Health

Rule Number 420-5-4-.01

Rule Title General

 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

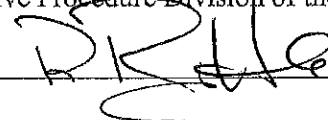
Are all facts of the rulemaking process designed solely for the purpose of and so they have as their primary effect, the protection of the public? Yes

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  Date 5/20/15

FORM APA2
11/96

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

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-5-4-.01 General

INTENDED ACTION: To Amend

SUBSTANCE OF PROPOSED ACTION: To better define the services provided by a licensed assisted living facility. In addition, the rules provide for the gradual phase out of the two or three bed Family Assisted Living Facility as a licensed provider of such services. This change will allow any individual to care for two unrelated persons in a private domestic residence without first obtaining a license. To correct a misspelled word.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: A public hearing will be held at 9:00 a.m. on June 16, 2015, at the Alabama Department of Public Health, RSA Tower, Suite 1540, 201 Monroe St., Montgomery, AL 36104.

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 July 3, 2015. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Ray Sherer, Division of Provider Services, Department of Public Health, P.O. Box 303017, Montgomery, Alabama 36130-3017.
Telephone number: (334) 206-5175.



P. Brian Hale, Agency Secretary

General.

(1) Legal Authority for Adoption of Rules. Under and by virtue of the authority vested in it by the Legislature of Alabama, Code of Ala. 1975, Sections 22-21-20, et. seq., the Alabama State Board of Health does hereby adopt and promulgate the following Rules governing all assisted living facilities.

(2) Definitions.

(a) "Advisory Board" means the Licensure Advisory Board established by law to serve as consultants to the State Health Officer and to assist in rule making necessary to carry out the provisions of Code of Ala. 1975, Section 22-21-20, et. seq.

(b) "Assisted Living Facility" means an individual, individuals, corporation, partnership, limited partnership, limited liability company or any other entity that provides, or offers to provide, any combination of residence, health supervision, and personal care to two three or more individuals who are in need of assistance with activities of daily living which include bathing, dressing, ambulation, feeding, toileting, grooming, medication assistance, diet, and personal safety. Exceptions to this definition are:

1. Individuals who provide residential and personal care services solely to persons to whom they are personally related, shall not be deemed to be an assisted living facility. "Personally related" means that the person receiving the residential and personal care services is the spouse, parent, sibling, adult child, adult grandchild, grandparent, great-grandparent, adult niece, adult nephew, aunt, uncle or first cousin of the person providing such services, or stands in that relation to the current spouse of the person providing the services. This exception is only for individuals, and does not apply to corporations, partnerships, limited partnerships, limited liability companies, or any other organized entity or business.

2. Facilities whose residents are under the care, oversight or protection of another governmental agency shall not be deemed to be assisted living facilities and shall not be subject to these rules, if both of the following conditions are satisfied:

((a)) A federal, state, or other governmental body, agency or authority has a fiduciary relationship or some other legally recognized and enforceable relationship to the residents

of the facility which carries an obligation to oversee the health, safety and welfare of the residents; and

(b) The federal, state, or other governmental body, agency, or authority licenses, certifies, or otherwise legally authorizes the facility to provide accommodations and care for the residents.

(c) "Bed Capacity" means the maximum number of beds which can be installed or set up in an assisted living facility at any given time for use of residents. The bed capacity shall be based upon space designed or specifically intended for such use, whether or not the beds are actually installed.

(d) "Bed Complement" means the number of beds normally installed in an assisted living facility for use of the residents.

(e) "Board", or "State Board of Health" means the Alabama State Board of Health.

(f) "Congregate Assisted Living Facility" means an assisted living facility authorized to care for 17 or more adults.

(g) "Department" means the Alabama Department of Public Health.

(h) "Division" means the Division of Health Care Facilities, Alabama Department of Public Health.

(i) "Family Assisted Living Facility" means an assisted living facility authorized to care for 2 or 3 adults which was licensed prior to the effective date of these amendments(/ / 2015). Family assisted living facilities currently licensed may renew their license yearly but if closed for any reason, may not be relicensed as a family assisted living facility. No new license will be granted for assisted living facilities of fewer than 3 beds after the effective date of these amendments(/ /2015).

(j) "Group Assisted Living Facility" means an assisted living facility authorized to care for 4 3 to 16 adults.

(k) "License" means the legal authority granted by the State Board of Health to operate a facility.

(l) "License Certificate" means the document issued by the State Board of Health and signed by the State Health Officer that constitutes rebuttable evidence of the facility's legal authority to operate.

(m) "Licensed Practical Nurse" means a person currently licensed in the State of Alabama in accordance with Code of Ala. 1975, Sections 34-21-1, et. seq.

(n) "Pharmacist" means a person currently licensed to practice pharmacy in Alabama under the provisions of Code of Ala. 1975, Sections 34-23-1, et. seq.

(o) "Physician" means a person currently licensed by the Medical Licensure Commission of Alabama to practice medicine and surgery in Alabama. The use of the word, "physician" in these rules shall not be deemed to preclude a properly licensed nurse practitioner or a physician assistant from performing any function in an assisted living facility that is within that individual's scope of practice.

(p) "Qualified Dietitian" means a person who is currently licensed in the State of Alabama in accordance with the provisions contained in current state statutes as governed by the Board of Examiners for Dietetic/Nutrition Practice.

(q) "Registered Professional Nurse" or "RN" means a person currently licensed as a Registered Professional Nurse by the State of Alabama Board of Nursing in accordance with Code of Ala. 1975, Section 34-21-21.

(3) Procedure Governing Adoption, Amendment, and Rescission of Rules.

(a) Authority. The State Board of Health, with the advice and approval of the Advisory Board defined in Code of Ala. 1975, Section 22-21-27, has the legal authority to adopt, reasonable rules governing the operation and conduct of assisted living facilities, and it may amend or rescind any rules previously adopted.

(b) Procedure. In adopting, amending, or rescinding rules, the Board shall follow the provisions of the Alabama Administrative Procedure Act. The effective date of any rules adopted, amended or rescinded shall likewise be governed by the Administrative Procedure Act.

(c) Joint Hearings. All hearings shall be joint hearings set by the State Board of Health and the Advisory Board, at which time any interested member of the public may be heard.

(4) Inspections.

(a) Inspections Required. Each assisted living facility for which a license has been granted may be inspected by

the State Board of Health, or by its authorized representatives at such intervals as the Board may direct. The State Board of Health and its authorized representatives may inspect construction work including new facilities, additions, and alterations at any time the construction work is in progress or after it has been completed.

(b) Information Disclosure. 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. Confidential records in the possession of the Department are deemed to be records in the possession of the State of Alabama, and shall be freely shared with any other State of Alabama agency that presents a good reason for access to the records.

Author: Rick Harris, Kelley Mitchell, Walter Geary

Statutory Authority: Code of Ala. 1975, §§22-21-20, et seq.

History: Filed November 20, 1991. **Repealed and New Rule:** Filed October 18, 2001; effective November 22, 2001. **Amended:** Filed June 21, 2006; effective July 26, 2006. **Amended:** Filed March 21, 2007; effective April 25, 2007.