

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-.02

Rule Title The License

 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-.02 The License

INTENDED ACTION: To Amend

SUBSTANCE OF PROPOSED ACTION: To correct misspelling and redundant word usage; to change the word 'waiver' to "dispensation" to resolve confusion with the term waiver in the *Alabama Administrative Code* 420-1-2-.09.

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

420-5-4-.02 The License.

(1) Types of License.

(a) Regular License. A regular license shall be granted by the State Board of Health upon a determination by the Board or its authorized agents that there is a reasonable likelihood that the operator or operators of the assisted living facility are capable of achieving and maintaining 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 assisted living facility, establish an assisted living facility in a structure which meets these Rules or is actually in the process of meeting these Rules. Closure of the assisted living facility for a period of thirty days or longer except for remodeling or alterations shall mean that it is longer in continuous operation and it shall meet the requirements for a regular license prior to being reopened.

(2) Application.

(a) Application. An application for license or renewal of license shall be made on forms provided by the State Board of Health and shall contain such information as the Board may require.

(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 Assisted Living Facility. Each assisted living facility shall be designated by a permanent, distinctive and unique name which shall be used in applying for a license and which shall not be changed without first notifying the Board in writing. A notice of name change shall specify the name to be discontinued as well as the new name. The words "hospital", "nursing home", "clinic", "~~saniterium~~ sanatorium", "specialty care facility", "dementia care facility", "impaired memory unit", "Alzheimer's care facility", or any other term which would indicate that the facility is a different type of facility shall not be used as the name of an assisted living facility. An assisted living facility shall use its licensed name on all stationary, all signage, and on all other material that may be

visible to the public, to residents of the facility, or to families of residents. An assisted living facility shall not hold itself out to the public as having a name other than its licensed name.

(d) Number of Beds. Each application for license and license renewal shall specify the bed capacity of the assisted living facility.

(3) Licensing.

(a) Issuance of License Certificate. The license certificate issued by the State Board of Health shall set forth the name and location of the assisted living facility, the classification of the assisted living facility, and the facility's bed capacity.

(b) Separate Licenses. Each assisted living facility shall be separately licensed, regardless of whether it is owned or managed by the same entity as another assisted living facility.

(c) Posting of License Certificate. The license certificate shall be posted in a conspicuous place on the licensed premises.

(d) License Not Transferable. A license to operate an assisted living facility shall not be transferable or assignable and shall be granted only for the premises identified in the license application.

(e) Expiration of License. Each license to operate an assisted living facility shall expire on December 31 following the date of issuance unless it is timely renewed.

(4) Revocation of License.

(a) The State Board of Health may revoke or downgrade the license of an assisted living facility for any of the following reasons:

1. Violation of any of the provisions of these rules.

2. Permitting, aiding or abetting the commission of any unlawful act in the assisted living facility. ~~or~~

3. Conduct or practices deemed by the State Board of Health to be detrimental to the lives, health, safety, or welfare of the residents of the assisted living facility.

4. Conviction in this state or any other jurisdiction

of the owner or administrator for a felony or any crime involving the physical, sexual, mental, or verbal abuse of an individual, or infliction by the owner or administrator of physical, sexual, mental, or verbal abuse of a resident of the licensed facility or any other licensed health care facility.

5. Conviction in this state or any other jurisdiction of the owner or administrator for any crime involving fraud.

6. Refusal by the owner or administrator to permit full inspection or survey of the facility, to permit any resident assessment or interview, or to permit a review of any records deemed necessary by the Department of ~~Public Health~~ to fulfill a survey.

7. Failure by the facility to submit an acceptable plan of correction for deficiencies cited by the Department.

(b) Before any license to operate an assisted living facility is revoked or downgraded to probational status, written notice shall be given to the administrator of the assisted living facility, giving a brief explanation of the reason or reasons that the Board proposes to revoke the license. The written notice shall also state a time and place at which a hearing or other lawful administrative proceeding shall occur to determine whether the license will be revoked. The date of the hearing shall be not less than 30 days from the date of the notice. The notice shall be sent by registered or certified mail to the administrator of the facility as shown on the records of the ~~Alabama Department of Public Health~~, and shall be mailed to the address of the assisted living facility. The hearing or other administrative proceeding shall comply in all respects with the Alabama Administrative Procedure Act and the State Board of Health rules for contested case proceedings. The licensee may be represented by legal counsel at the hearing.

(c) If a license is revoked, a new license may be considered by the State Board of Health only after the conditions which resulted in the revocation have been corrected to the satisfaction of the Board.

(d) Violations of these rules may result in a penalty under Code of Ala. 1975, Section 22-21-33.

(e) Return of License Certificate. Each license certificate shall be returned to the Board immediately upon its revocation or after the facility voluntarily ceases operation.

(5) Right of Appeal. Any licensee dissatisfied with administrative decisions made in the 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 Dispensations for Research. Any licensee who is, or contemplates being, engaged in a bona fide scientific research program which may be in conflict with one or more specific provisions of these Rules may make application for waiver dispensation of the specific provisions in conflict. Application for waiver dispensation shall be made in writing to the Licensure Advisory Board which shall, upon completion of its investigation, send its findings, conclusions, and recommendations to the State Board of Health for final action.

Author: Rick Harris

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.