

APA-1
4/18

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control 420 Alabama Department of Public Health

Rule Number 420-1-5-.04
Rule Title Open Records

New 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? No

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 action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

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 proposed 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 Services Agency.

Signature of Certifying Officer P. Brian Hale Date 4/15/2021

REC'D & FILED

APR 15 2021

LEGISLATIVE SVC AGENCY

**FORM APA2
10/17**

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

AGENCY NAME: Alabama Department of Public Health

RULE NUMBER AND TITLE: 420-1-5-.04. Open Records

INTENDED ACTION: To amend the current rules

SUBSTANCE OF PROPOSED ACTION: This amendment will consolidate all public record requests, address requests for electronic records, charge a reduced fee for copies of electronic records and give members of the press access to public records during extraordinary events.

TIME, PLACE, AND MANNER OF PRESENTING VIEWS: Due to the current State Public Health Emergency and the Safer Apart Order of the State Health Officer, comments may be submitted in writing to Dana Billingsley, Assistant General Counsel, Alabama Department of Public Health, P.O. Box 244018, Suite 1540, Montgomery, Alabama 36124; by email to dana.billingsley@adph.state.al.us; or verbal comments may be given by calling 334-206-5209.

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 Friday, June 4, 2021. All comments and requests for copies of the proposed amendments should be addressed to the contact person listed below.

CONTACT PERSON AT AGENCY: Dana Billingsley, Office of General Counsel, Department of Public Health, P.O. Box 244018, Montgomery, Alabama 36124-4018, Telephone number: (334) 260-5209.



P. Brian Hale, Agency Secretary

420-1-5-.04. Open Records.

(1) ~~State-level records~~

~~(a) All public records of the State Board of Health are available for public inspection during business hours. Requests for such records may be made by Alabama citizens either electronically, by mail, or in person, pursuant to the provisions of the Alabama Open Records Act, Ala. Code § 36-12-40.~~

~~(a) Requests to obtain records may be made electronically, by mail, telephone or in person. Minutes of Committee meetings, forms and other records routinely requested by the public Copies of meeting minutes, department forms, bureau records, and county health department records maintained in hard copy may be obtained at a cost of a \$5.00 retrieval fee plus \$1.00 per page for the first 25 pages and \$.50 for every page thereafter, unless otherwise provided by law or rule. This charge may be waived in the case of requests by governmental agencies or indigent persons.~~

~~(b) Copies of records maintained electronically, including messages and attachments exchanged via electronic mail, or for record searches related to extraordinary events, such as public health emergencies of any kind, may be obtained at a cost of a \$25 retrieval fee plus \$.10 per page, unless otherwise provided by law or rule. This charge may be waived in the case of requests by governmental agencies or indigent persons. Copies of records pertaining to extraordinary events may be provided to members of the press who are not citizens of the state, subject to the requested charge.~~

~~(b2) Medical or clinic records, notifiable disease records, records of epidemiological investigations, investigative records of the Bureau of Health Provider Standards or records that are proprietary by statute, case law, rule or custom are not "public records" per se and are not open to the public's inspection. Release of records by subpoena in civil or criminal actions are governed by individual statutes or court rules.~~

(2) ~~County-level records~~

~~(a) Public records in the possession of county health departments may be obtained in the same manner as state-level records. Charges for such records will be assessed in conformity with local fee legislation/schedules.~~

~~(b) Medical or clinic records, notifiable disease records, records of epidemiological investigations, or records that are proprietary by statutory, case law, rule or custom are not "public records" per se and are not open to the public inspection. Release of records by subpoena in civil or criminal actions are governed by individual statutes or court rules.~~

~~(c) In counties where there is no fee legislation and no fee schedules, such records may be obtained as provided for in (1)(a) above.~~

(3) Charge for response to subpoenas-In accordance with Rule 45(a)(3)(c) Alabama Rules of Civil Procedure, a reasonable charge may be requested for response to subpoenas at both the state and county levels. Such records shall be obtained at a cost of a \$5.00 retrieval fee plus \$1.00 per page

for the first 25 pages and \$.50 for every page thereafter unless otherwise provided by law or rule.

(4) Nothing in the rule is intended to require that information defined by 45 CFR, Parts 160 and 164 as “protected health information” (PHI) or that information otherwise protected as confidential by rule or statute, be made available to the public. All questions as to whether a particular document or class of information is public or confidential should be referred to the Office of General Counsel.

AUTHOR: P. Brian Hale

STATUTORY AUTHORITY: Code of Ala. 1975, §§ 13A-14-2, 22-2-2(6), 41-22-4.

HISTORY: Filed July 20, 1990. **Amended:** Filed January 15, 2003; effective February 19, 2003.

Amended: Filed April 21, 2004; effective May 26, 2004. **Amended:** Filed December 17, 2009; effective January 21, 2009. **Amended:** Filed _____; effective _____.