

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control 580 Department or Agency Mental Health

Rule No. Chapter 580-5-33 -.04

Rule Title: Promotion and Protection of Individual Rights New X Amend  
           Repeal            Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?            NO           

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?            NO           

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 facets 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 Section 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 Reference Service.

Signature of certifying officer           Debbie Popwell          

Date           11/15/12

**Alabama Department of Mental Health**

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Mental Health

RULE NO. & TITLE: CHAPTER 580-5-33-.04 Promotion and Protection of Individual Rights.

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

This rule defines promotion and protection of individual rights for persons with intellectual disabilities.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

All interested persons may submit data, views, or arguments in writing to Debbie Popwell, Director, Office of Certification Administration, Alabama Department of Mental Health, 100 North Union Street, Suite 540, Montgomery, Alabama 36130 by mail or in person between the hours of 8:00AM and 5:00PM, Monday through Friday, or by electronic means to [debbie.popwell@mh.alabama.gov](mailto:debbie.popwell@mh.alabama.gov) until and including January 3, 2013. Persons wishing to submit data, views, or arguments orally should contact Ms. Popwell by telephone at (334) 353-2069 during this period to arrange for an appointment.

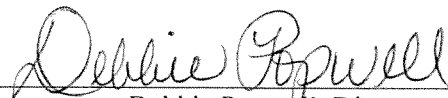
FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

January 3, 2013

CONTACT PERSON AT AGENCY:

Persons wishing a copy of the proposal may contact  
Debbie Popwell  
Department of Mental Health  
100 North Union Street, Suite 540  
Montgomery, Alabama 36130  
(334) 353-2069

A copy of the proposed change is available on the department's website at <http://mh.alabama.gov>  
Click on Commissioner's Office and then Certification Administration to find code with changes.



Debbie Popwell, Director  
Office of Certification Administration

**History: New Rule:** Filed August 1, 2012; effective October 1, 2012.

**580-5-33-.04 Promotion and Protection of Individual Rights.**

(1) The organization implements a policy and procedure that clearly defines its commitment to and addresses the promotion and protection of individual rights of people.

(2) The policy lists rights afforded all citizens ~~as indicated by the United Nation's Declaration of Human Rights,~~ by the constitution, and laws of the Country and State of Alabama.

(3) The policies and procedures describe the organization's due process that includes individual rights review and documentation in the event of a proposed restriction of a person's rights.

(4) The organization has no standing policies or procedures that restrict individual rights without due process.

(5) The organization documents upon admission and annually thereafter, verification that it provides to persons and their legally authorized representatives an oral and written summary of rights/responsibilities and how to exercise them, in language that the person understands.

(6) Each person's ability to understand and exercise his or her rights is assessed and updated on an ongoing basis but at least annually.

(7) The rights assessment addresses people's civil and legal rights and personal freedoms. The assessment includes, but is not limited to the ability to do the following:

- a. Exercise freedom of movement within physical environments.
- b. Manage money.
- c. Send and receive mail.

- d. Make and receive telephone calls and use other means of communication.
- e. Visit and be visited by whomever they choose.
- f. Access personal possessions.
- g. Vote and otherwise participate in the political process.
- h. Make choices about religious affiliation and participation.
- i. Socially interact with members of either gender.

(8) The rights assessment addresses the need for and scope of advocacy, guardianship and alternatives to guardianship for each person.

(9) The rights assessment results, including supports needed to protect and promote the person's rights, are documented in the person's record.

(10) The organization provides assistance to the person in areas identified as important by the person and that person's Support Team.

(11) The organization provides education regarding voter registration and the voting process to anyone age eighteen (18) or over that expresses an interest. The organization assists people with registering and voting as needed.

(12) Each organization provides individualized supports/services that are free from discrimination by race, gender, age, language, ethnicity, disability, religion, sexual orientation, or financial circumstances.

(13) Written, informed consent is obtained prior to any intrusive medical or behavioral intervention, and prior to participation in research. Information regarding procedures to be followed, potential discomforts and/or risks, and expected benefits of participation shall be presented in a non-threatening environment, and explained in language that the person can understand. The person is also informed that he/she may withhold or withdraw consent at any time.

(14) All research proposals involving human participants are reviewed prior to the initiation of the research by the agency's Human Rights Committee (HRC). The committee reviews consent procedures and signed consents for adequacy and ensures that the welfare of the persons who participate in research is protected.

(15) Information about people is only shared by the organization with their written, informed consent or that of their legally authorized representatives.

(16) No person is presumed incompetent or denied the right to manage his/her financial or personal affairs or exercise all other rights guaranteed persons of society solely by reason of his/her having received support services, unless legally determined otherwise.

(17) Unless legally determined incompetent to participate in one or all of the following activities every person is free to access courts, attorneys, and administrative procedures, execute legal documents, dispose of property, marry and divorce or to participate in those activities generally requiring legal representation, without fear of reprisal, interference, or coercion.

(18) People receive only the level of support needed to make their own decisions. Supports include assisting people to advocate for themselves.

(19) Each person has a written plan to obtain advocacy, guardianship and alternatives to guardianship if those supports are needed.

(20) All staff of the organization are trained to recognize and demonstrate respect for people's rights including honoring preferences in how people choose to exercise their rights.

(21) Staff that complete assessments are trained to understand and support people's preferences, to identify goals related to exercising their rights and to support people to attain those goals.

(22) Due process is defined as providing people supported, and their legally authorized representatives, with a fair process requiring, at least, an opportunity to

present objections to the proposed action being contemplated. Due process, including review by a Human Rights Committee, is implemented when it is proposed that a person's rights be restricted for any reason.

(23) Staff are trained in due process procedures including any procedures for placing a limitation or restriction on a person's rights.

(24) A Human Rights Committee (HRC) reviews any restriction of a person's right(s) initially and periodically thereafter, but at least annually, during the period which the restriction is imposed and will document such.

(25) When any restrictions are being proposed for a person, the person is supported to attend and provide input at the HRC meeting in which the proposed restriction is being reviewed.

(26) People supported are provided adequate training in due process procedures including any procedures for placing a limitation or restriction on a person's rights and training that supports the removal of rights restrictions.

(27) The continued need for the restriction is reviewed at least quarterly by the Qualified Developmental Disabilities Professional (QDDP) or more often upon request of the person whose rights are restricted.

(28) The organization utilizes a working and effective HRC that complies with the provisions of Chapter 580-3-26.

(29) The HRC reviews policies, procedures and practices that have the potential for rights restrictions without an individualized assessment.

(30) The HRC reviews the frequencies and reasons surrounding the use of restraint for behavioral or medical purposes.

(31) In addition to the requirements in Chapter 580-3-26 (2)(a)-(3), the HRC makes recommendations to the organization for promoting people's rights, proactively promotes and protects people's rights and reviews reports of substantiated allegations of abuse, neglect,

mistreatment, exploitation and other data that reveal the organization's practices with respect to human, civil and legal rights and reviews research projects involving human participation to ensure the protection of people who are involved.

(32) This rule will become effective and operative October 1, 2012 due to training of all providers and giving those organizations time to prepare and make necessary changes to their program, operations, and policies prior to implementing.

**Author:** Division of Developmental Disabilities, DMH  
**Statutory Authority:** Code of Alabama 1975, §22-50-11.  
**History: New Rule:** Filed August 1, 2012; effective October 1, 2012. **Amended:** Filed November 15, 2012;

#### **580-5-33-.05 Dignity and Respect.**

(1) The organization's policies and procedures reflect and reinforce the use of courteous practices towards people, the avoidance of labels to describe people based on physical characteristics or disabilities and the practice of addressing people by their preferred names.

(2) The organization provides training to staff and volunteers on policies regarding dignity and respect.

(3) Identifying information about the organization (name, letterhead, etc.) promotes a positive image of the people, services and supports.

(4) The organization has a mechanism that provides people supported and their legally authorized representatives with information regarding filing complaints and grievances. At a minimum, the complaints/grievance procedures include the name and telephone number of a designated local contact within the organization.

(5) The designated local contact has the knowledge to inform persons, families and legally authorized representatives of the means of filing complaints and grievances and of accessing advocates, ombudsmen or rights protection within or outside the organization.