**R539. Health and Human Services, Services for People with Disabilities.**

**R539-3. Rights and Protections.**

**R539-3-1. Authority and Purpose.**

(1) Subsection 26B-6-403(2)(b) authorizes this rule.

(2) This rule establishes a procedure and standard for the protection of a person's constitutional liberty interests. This rule supports a person receiving funding from the division in exercising the person's rights. The procedures of this rule constitute the minimum rights for a person receiving a division-funded service and support.

**R539-3-2. Definitions.**

Terms used in this rule are defined in Section 26B-6-401 and Rule R539-13. Additionally:

(1) "Division Human Rights Council" or "DHRC" means the group of stakeholders and division staff that reviews an appeal of a provider human rights committee decision.

(2)(a) "Electronic surveillance" means observing or listening to a person, place, or activity with the aid of an electronic device, including a camera, global positioning system, microphone, motion detector, webcam, or weight detector.

(b) Electronic surveillance does not include:

(i) use of an electronic device as a part of remote support; and

(ii) use of audio or video equipment to record a therapy session.

(3) "Electronic surveillance certification" means documentation approved by the provider human rights committee, containing:

(a) the location of the site under surveillance;

(b) a description of each type of surveillance used;

(c) the name of each person under surveillance;

(d) a signed informed consent from each person as described in Subsection R539-3-6(4); and

(e) evidence of visitor notification as described in Subsection R539-3-6(6).

(4)(a) "Remote support" means the real time provision of a service by a provider at a remote location, in which staff engage with an individual through electronic equipment capable of live two-way communication.

(b) Equipment used to meet this requirement includes at least one of the following:

(i) live audio feed;

(ii) live video feed;

(iii) motion-sensing system;

(iv) radio frequency identification;

(v) web-based monitoring system; or

(vi) another device that facilitates live two-way communication.

**R539-3-3. Human Rights Review.**

(1) A person shall have access to review by a provider human rights committee, unless the following service type applies:

(a) a physical disability service; or

(b) the self-administered service model.

(2) A provider shall create a provider human rights committee or have use of any other provider's committee.

(a) A provider human rights committee shall consist of a minimum of three individuals, and at least one individual may not be employed by the provider.

(b) A provider human rights committee shall review each use of a service by a provider that relates to:

(i) a rights issue;

(ii) a rights restriction; or

(iii) an intrusive behavior support.

(c) A provider human rights committee shall make a recommendation about:

(i) abuse and neglect prevention;

(ii) rights training; and

(iii) supporting a person in exercising that person's rights.

(3) The person or any other individual may request that the rights of a person be reviewed by a provider human rights committee by contacting the person's provider verbally or in writing.

(4) The division shall create the DHRC.

(a) The division director shall appoint each DHRC member.

(b) DHRC membership shall include:

(i) a minimum of one family member of a person in-service or a person enrolled in state plan Medicaid or a Medicaid waiver;

(ii) a minimum of one division employee;

(iii) a minimum of one representative from Adult Protective Services; and

(iv) a minimum of one representative from the department.

(c) DHRC membership may not exceed 12 members.

(d) Each member shall serve a two-year term and may be reappointed for one additional two-year term.

(e) A member may resign from the DHRC at any time by giving 30-day notice in writing to the chair.

(f) The DHRC may remove a member for cause by majority vote. Cause includes:

(i) a continuous failure to be in attendance; or

(ii) a continuous failure to follow through with a task assigned by the DHRC.

(5) The DHRC shall:

(a) review the initial provider human rights plan for each provider;

(b) hear any appeal of a decision made by a provider human rights committee;

(c) report to the Disabilities Advisory Council;

(d) hold an annual public meeting;

(e) help train a provider or provider human rights committee about any trend in human rights violations found through the appeal process; and

(f) review each use of a service by the developmental center that relates to:

(i) a rights issue;

(ii) a rights restriction; or

(iii) an intrusive behavior support.

(6) The person or any other individual may appeal a provider human rights committee decision to the DHRC by contacting the division constituent representative or emailing dhrc@utah.gov.

(a) The DHRC shall decide if there will be a review.

(i) The DHRC shall notify the person, provider, and support coordinator of the decision no later than eight business days after the date of the decision.

(ii) Notification shall contain a statement of the issue under review and the process and timeline for completing the review.

(b) An appeal to the DHRC is not an adjudicative proceeding as described in Section 63G-4-201.

**R539-3-4. Representative Payee Services.**

(1) Except as described in Subsections (1)(a) through (c), a person shall have access to and control over that person's personal funds. A person does not have access to and control over that person's funds if:

(a) a resident of the developmental center or the guardian requests that the developmental center act as the representative payee;

(b) a provider human rights committee approves a restriction on the use and access to personal funds; or

(c) an administrative or court order requires the person to use a representative payee.

(2) A representative payee shall follow each Social Security Administration requirement as described in 20 CFR 416.601 through 20 CFR 416.665 (2025), incorporated by reference in this rule.

(3) The division shall review a sample of representative payee files from provider records on an annual basis. The division may work with any other agency under the department to audit provider records.

(4) The division shall act as the representative payee when:

(a) the department holds guardianship or conservatorship and the Social Security Administration designates the division as the representative payee;

(b) a resident of the developmental center or the guardian requests that the developmental center act as the representative payee; or

(c) an administrative or court order requires the division to act as the representative payee for a resident of the developmental center.

(5) The division shall give the person written notice to end any representative payee relationship as described in Subsection R539-3-4(4).

(6) The person shall complete a change of representative payee through the Social Security Administration.

**R539-3-5. Personal Property.**

(1) A restriction to property implemented by the division or provider shall be:

(a) part of a written behavior support plan as described in Section R539-4-3; or

(b) an emergency behavior intervention as described in Section R539-4-4.

(2) Each restriction must be approved by the team and the provider human rights committee before use of the restriction.

**R539-3-6. Privacy.**

(1) A person who uses a provider-based service shall be afforded privacy, including for:

(a) any method of communication;

(b) personal space;

(c) personal information; and

(d) self-care as defined by Section R539-13.

(2) Any privacy restriction implemented by the division or a provider shall be part of a person-centered support plan approved by the team and the provider human rights committee. A privacy restriction does not include:

(a) assistance with self-care based on an assessed need in the person-centered support plan; or

(b) use of remote support.

(3) A provider may use electronic surveillance in the least intrusive manner possible to meet a health or safety concern.

(4) A provider shall have safeguards in place before using electronic surveillance.

(a) Electronic surveillance of a person shall require:

(i) signed informed consent from the person;

(ii) approval from the person's team and the provider human rights committee; and

(iii) electronic surveillance certification from the provider human rights committee.

(b) Electronic surveillance in a common area shall require:

(i) signed informed consent from each person living on the premises;

(ii) approval from the provider human rights committee; and

(iii) electronic surveillance certification from the provider human rights committee.

(c) The provider shall submit the electronic surveillance certification to the division.

(d) Electronic surveillance data shall be protected, including through:

(i) development of an electronic data policy and procedure;

(ii) maintaining a secure network to send electronic data; and

(iii) maintaining secure storage for any recording.

(5) Administrative or supervisory staff may not use electronic surveillance as a substitute for supervision of an employee providing direct care to a person.

(6) Each visitor shall be provided with notice of electronic surveillance.

(a) The provider shall prominently display notice within each residence equipped with electronic surveillance.

(b) A visitor shall be informed of any monitoring or recording technology in use when entering the premises.

(7) The person's team and the provider human rights committee shall review any electronic surveillance:

(a) at least annually; and

(b) at the request of the person under surveillance.

(8) Electronic surveillance at the Utah State Developmental Center shall comply with 42 CFR 483.420(a)(7) (2025), 42 CFR 483.440(f)(3)(i) through 42 CFR 483.440(f)(3)(iii) , and 42 CFR 483.470(d)(2) , incorporated by reference in this rule.

(9) If remote support uses video or audio equipment that permits remote support staff to view activities or listen to conversations in the residence, the provider shall have signed informed consent from:

(a) the person; and

(b) each other person living on the premises.

(10) Remote support data shall be protected, including through:

(a) development of an electronic data policy and procedure; and

(b) maintaining a secure network to send electronic data.

(11) A provider may not record video or audio as part of remote support.

**R539-3-7. Notice of Agency Action and Administrative Hearings.**

(1) A person has the right to:

(a) receive adequate notice of agency action in writing; and

(b) present a grievance about an agency action by requesting an administrative hearing.

(2)(a)(i) The division shall notify a person in writing at least ten days before taking an agency action, including a change in funding, eligibility, or service.

(ii) If the person signs a written statement acknowledging consent to the agency action, the division shall send notice no later than the date of agency action.

(b) Notice of agency action that affects a non-waiver service shall include the information required by Sections 63G-4-201 and R497-100-5.

(c) Notice of agency action that affects a waiver service shall include the information required by 42 CFR 431.210 (2025), incorporated by reference in this rule, and Sections 63G-4-201, R497-100-5, and R410-14-3.

(d) To assist a person with an administrative hearing request, the division shall send the person a Hearing Request Form 490S when the division sends the Notice of Agency Action Form 522-I.

(3) A person receiving a non-waiver service may request an informal administrative hearing as described in Rule R497-100.

(a) An administrative hearing may be requested within 30 days of the mailing date shown on the Notice of Agency Action Form 522.

(b) The person shall file a Hearing Request Form 490S with the division to request a hearing with the Office of Administrative Hearings within the department.

(c) If the person files a hearing request before the date of agency action written on the Notice of Agency Action Form 522-I, the person's service or benefit shall continue unchanged during the administrative hearing process.

(4) A person receiving a waiver service may request an informal administrative hearing as described in Rule R497-100 or Section R410-14-24.

(a) An administrative hearing may be requested within 30 days of the mailing date shown on the Notice of Agency Action Form 522.

(b) The person shall file the request as described in Section R410-14-5 to request a hearing with the department.

(c) The person shall file a Hearing Request Form 490S with the division to request a hearing with the Office of Administrative Hearings within the department.

(d) If the person files a hearing request before the date of agency action written on the Notice of Agency Action Form 522, the person's service or benefit shall continue unchanged during the administrative hearing process.

(5) To dispute implementation of a service by a provider, a person receiving that service may request an informal administrative hearing as described in Rule R497-100.

(6) A person may request an informal administrative hearing and choose to participate in the division's dispute resolution process before the administrative hearing.

(a) If the person chooses to participate in the division's dispute resolution process, the 30-day deadline to request an administrative hearing described in Subsections (3) and (4) applies.

(b)(i) If the person requests a hearing and chooses the division dispute resolution process, the person must complete the dispute resolution process before the administrative hearing begins.

(ii) The person must submit a written request to the division to end the dispute resolution process before reaching a resolution.

(c) The division's dispute resolution process is not an adjudicative proceeding as described in Section 63G-4-201.

**R539-3-8. Participation in Hospice Services.**

(1) A person receiving division funding may choose the Medicaid hospice benefit as described in Rule R414-14A for their end-of-life care.

(a) The person shall meet hospice eligibility requirements as described in Section R414-14A-3.

(b) The person may continue division services through a waiver program.

(2) If a person loses the capacity to make an informed decision or legally authorize services, any end-of-life care decision shall be made by:

(a) the agent designated by an executed Durable Power of Attorney for Health Care;

(b) a guardian with the legal authority to make end-of-life decisions for the person; or

(c) the team and provider human rights committee if an agent or guardian is not designated or appointed.

(3) Disenrollment of a person receiving waiver funding based on the election of the hospice benefit shall be considered an involuntary disenrollment and requires approval from the Division of Integrated Healthcare in the department.

**R539-3-9. Prohibited Procedures.**

A division, provider, or self-administered service employee may not engage in:

(1) a behavior intervention as described in Rule R539-4 used for coercion, convenience, or retaliation;

(2) a cruel, severe, unusual, or unnecessary practice as described in Subsection 26B-2-123(1)(a);

(3) abusive or demeaning speech;

(4) confinement in a locked room;

(5) denial or restriction of access to an assistive technology device, except when removal prevents injury to the person, injury to any other individual, or property damage as described in Section R539-3-6;

(6) physical punishment, including slapping, hitting, and pinching;

(7) withholding or denial of food or any support for a biological need as a consequence or punishment; or

(8) a procedure in violation of Rules R495-876, R512-202, and R510-302, and Sections 26B-6-201 through 26B-6-218, and 80-2-602 through 80-2-1005.

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