

**RHODE ISLAND GOVERNMENT REGISTER**  
**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH)

**RULE IDENTIFIER:** ERLID 1747

**REGULATION TITLE:** Rules and Regulations Governing the Practices and Procedures before the Rhode Island Department of Mental Health, Retardation and Hospitals

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

**Date of Public Notice: April 26, 2018**

**End of Comment Period: May 25, 2018**

**SUMMARY OF PROPOSED RULE:**

BHDDH will manage all appeals through the appeal process established by the Executive Office of Health and Human Services rules and regulations at *Appeals Process and Procedures for EOHHS Agencies and Programs*, 210-RICR-10-05-2.

**COMMENTS INVITED:**

All interested parties are invited to submit written comments concerning the proposed regulations by the end of comment period, 30 days from publication of this notice to the addresses listed below.

Gail Theriault, Esq., BHDDH, 41 West Road, Cranston, RI 02920

Email Address: [gail.theriault@ohhs.ri.gov](mailto:gail.theriault@ohhs.ri.gov)

**WHERE COMMENTS MAY BE INSPECTED:**

A copy of the proposed repeal will be available from 4/26/18 through 5/25/18 to view in person by request, or by email at the addresses below. Electronic copies of the

proposed repeal will also be available on the BHDDH website at [www.bhddh.ri.gov](http://www.bhddh.ri.gov) and Secretary of State's at <http://sos.ri.gov/ProposedRules/>.

Gail Theriault, Esq., BHDDH, 41 West Road, Cranston, RI 02920

Email Address: [gail.theriault@ohhs.ri.gov](mailto:gail.theriault@ohhs.ri.gov)

**PUBLIC HEARING INFORMATION:**

In accordance with R.I. Gen. Laws § 42-35-2.8, an opportunity to present oral comments will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. Any request for a public hearing must be received by BHDDH within ten (10) days of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Gail Theriault, Esq., at (401) 462-2401, or at the email or mailing address listed above.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:**

This is a full repeal as required by EOHHS rules and regulations 210-RICR-10-05-2. For full regulatory analysis or supporting documentation see agency contact person above.

**Authority for This Rulemaking:** R.I. Gen. Laws §42-35-1 et seq.

**Regulatory Findings:**

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Repeal:**

The Department of Behavioral Healthcare, Developmental Disabilities and Hospitals proposes to repeal the "Rules and Regulations Governing the Practices and Procedures before the Rhode Island Department of Mental Health, Retardation and Hospitals" as follows:

~~RULES AND REGULATIONS  
GOVERNING  
THE PRACTICES AND PROCEDURES  
BEFORE THE  
RHODE ISLAND DEPARTMENT OF MENTAL HEALTH,  
RETARDATION AND HOSPITALS~~

~~A. Kathryn Power,  
Director, Department of Mental  
Health, Retardation and  
Hospitals~~

~~January, 2002~~

~~SECTION 1 INTRODUCTION, SCOPE AND APPLICABILITY~~

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~~————— These rules and regulations are promulgated pursuant to R.I. Gen. Laws 42-35-1 et seq. and establish uniform procedures and practices governing administrative proceedings before the Department of Mental Health, Retardation and Hospitals. These rules delineate the procedures and practices which will be utilized by the Department to process complaints and conduct hearings in contested cases, adopt and amend rules and respond to Petitions for Declaratory Rulings.~~

~~————— Many of the Department's programs and services are funded by Medicaid and formal hearings regarding an individual's rights pursuant to Medicaid law and regulations shall be heard in accordance with the Department of Human Services' procedures and practices and not in accordance with the formal hearing requirements of these regulations.~~

~~————— All Department hearings and reviews required by law or regulations shall be conducted in accordance with these rules of practice and with the applicable provisions of the Administrative Procedures Act, R.I. Gen. Laws 42-35-1 et seq. These rules and regulations shall be construed to further the fair, prompt, impartial and orderly administration and determination of contested cases in conformity with the Administrative Procedures Act.~~

## SECTION 2 DEFINITIONS

~~————— When used in these rules the following words and or terms, except as otherwise required by the context, shall have the following meaning:~~

~~2.1 "Action" means a Department decision relating to eligibility for Department funded services, the denial of a funding request, or termination or reduction of Department funded services.~~

~~2.2 "Advocate" means a legal guardian or an individual chosen by and acting on behalf of a complainant in a manner clearly consistent with the interests of the complainant and may include a family member, friend or professional representative.~~

~~2.3 "Applicant" means any person who has applied for services from any of the Department's Divisions or any person who has applied for services from any of the Department's service providers who are authorized to determine eligibility for Department funded services.~~

~~2.4 "Business days" means the days of the week from Monday through Friday, excluding Saturdays, Sundays and State and Federal holidays.~~

~~2.5 “Client” means a person found eligible to receive services from any of the Department’s Divisions.~~

~~2.6 “Complaint” means a written request for a review of a Department action or decision, including a Department failure to act or decide, which alleges a violation of any Department statute and/or regulation. Examples of actions or decisions which may be the subject of a complaint include, but are not limited to: eligibility determinations; termination or modification of services; modification or reduction of level of services; denial of licensing or certification or renewal of existing license or certification; or any other Department decision which meets the definition of a contested case, as that term is defined in the Administrative Procedures Act and these regulations.~~

~~2.7 “Complainant” means an applicant, a client, a licensee or other person aggrieved by a Department action or decision.~~

~~2.8 “Contested Case” means the statutory definition in R.I. Gen. Laws 42-351(c), and includes, but is not limited to, licensing determinations, eligibility determinations, and other decisions, and actions involving Department benefits in which the legal rights, duties or privileges of a specific party are required by law to be determined by the Department after an opportunity for hearing. It does not include cases which involve personnel/employment actions or decisions or issues related to admission to or discharge from the Eleanor Slater Hospital.~~

~~2.9 “Declaratory Ruling” means a determination by the Department, in accordance with R.I. Gen. Laws 42-35-8, as to the applicability of any statutory provision or any rule or order of the Department.~~

~~2.10 “Department” means the Rhode Island Department of Mental Health, Retardation and Hospitals.~~

~~2.11 “Department of Human Services” means the single state agency which administers the Medicaid Program.~~

~~2.12 “Director” means the Director of the Department of Mental Health, Retardation and Hospitals or his/her designee.~~

~~2.13 “Division” means a subsection of the Department with authority to carry out statutorily designated department functions.~~

~~2.14 “Executive Director” means the person in charge of any of the Department’s Divisions or subsections.~~

~~2.15 “License” means any Department license or certification or similar form of permission required by law.~~

~~2.16 “Medicaid” means Medical Assistance and is the federal/state program to meet the medical needs of low income persons who are 65 or over, blind, disabled or members of families with dependent children or qualified pregnant women and children.~~

~~2.17 “Party” or Parties” means the specifically named person(s) whose legal rights, duties or privileges are being determined in an administrative proceeding, and the Executive Director of the Division involved in the complaint or petition or his/her designee.~~

~~2.18 “Person” means any individual, corporation, company, association, or partnership.~~

### SECTION 3 INFORMAL HEARING PROCEDURE FOR COMPLAINTS

~~— 3.1 Any applicant, client, licensee or other aggrieved party who disagrees with a Division’s decision or action shall be entitled to appeal such a decision or action in accordance with the procedures prescribed in these regulations.~~

~~— 3.2 The informal hearing process begins when a complaint is received by the Executive Director of the Division whose decision or action is being contested. The complaint shall be mailed or delivered to the Executive Director within thirty (30) days of the contested decision or action. The thirty (30) day requirement may be waived for good cause. In the event that a complainant requires assistance in completing a written request, Department staff shall provide any requested assistance to the complainant.~~

~~— 3.3 Upon receipt of a complaint, the Executive Director of the Division or his/her designee shall:~~

- ~~a. acknowledge the receipt of the complaint in writing within five (5) business days;~~
- ~~b. Schedule an Informal Hearing on a mutually satisfactory date. Reasonable effort should be made to schedule the Informal Hearing within twenty (20) business days.~~

~~3.4 The Informal Hearing provides the Division with the opportunity to review the decision with the complainant and to help him/her understand~~

~~the provisions in law or regulations on which the decision was based and it provides the complainant with the opportunity to present any new evidence and to dispute any of the findings or actions of the Division.~~

~~3.5 The complainant may bring to the Informal Hearing an advocate, attorney or any other person who has knowledge of the complainant's history, records or other information relevant to the Informal Hearing.~~

~~3.6 Subsequent to the Informal Hearing, the Executive Director or his/her designee shall render a written decision within twenty (20) business days, unless an extension is requested by the Executive Director and granted by the Complainant.~~

~~3.7 The Executive Director's decision shall contain a brief summary of the facts upon which his/her decision is based and the statute and/or regulations involved in the decision. If the decision is unfavorable to the complainant, it shall include a statement informing the complainant of his/her right to appeal the Division decision. Depending on the nature of the action or determination, the Executive Director's decision shall inform the complainant that his/her decision can be appealed either by filing a written request to the Director of the Department within fifteen (15) days from the receipt of the Executive Director's decision or by filing a Request for a Hearing with the Department of Human Services within fifteen (15) days of the receipt of the Executive Director's decision. The Executive Director's decision shall inform the complainant of the appropriate avenue of appeal based upon the issued involved.~~

~~3.8 If the appeal pertains to a decision concerning a Department statute or regulation and not Medicaid statutes or regulations, the written request to the~~

~~Director of the Department begins the Formal Hearing process. If the appeal involves a decision which affects the person's receipt of Medicaid services and/or funding, the appeal shall proceed in accordance with the hearing policies and procedures of the Department of Human Services~~

~~3.9 If the complainant requests assistance in making a written request to the Director or in completing the D.S.-121, Department staff shall provide the requested assistance to the complainant.~~

## SECTION 4 THE FORMAL HEARING PROCESS

~~—4.1 The Formal Hearing is conducted by a Department Hearing Officer who is appointed by the Director. The Hearing Officer shall be an impartial Department staff member who has not been directly involved in the initial determination of the action in question or in the Informal Hearing. The hearing process begins when a written request is timely received by the Director and the Hearing Officer is appointed. The Hearing Officer shall distribute copies of the request for a hearing to the assigned Department attorney and the appropriate Executive Director. The Hearing Officer shall notify the Department attorney, complainant, and his/her attorney or advocate of the date, time and place for a pre-hearing conference~~

### ~~—4.2 Pre-hearing conference~~

~~a. The parties shall attend the pre-hearing conference to discuss with the Hearing Officer:~~

- ~~(1) the simplification or clarification of the issues;~~
- ~~(2) the possibility of obtaining stipulations, admissions, agreements on documents and similar agreements which will avoid unnecessary proof;~~
- ~~(3) the identification and limitation of the number of witnesses, expert witnesses and avoidance of cumulative evidence;~~
- ~~(4) any exchanges of documents or matters concerning documents.~~
- ~~(5) availability of the parties and witnesses, possible scheduling conflicts and related matters;~~
- ~~(6) the possibility of an agreement which would dispose of all or any of the issues in dispute;~~
- ~~(7) the status of settlement negotiations, if any.~~

~~b. The complainant is entitled to review and obtain copies of documents utilized by the Department in making its decision.~~

### ~~—4.3 Pre-hearing Order~~

~~a. Subsequent to the pre-hearing conference, the Hearing Officer shall prepare a pre-hearing Order, which sets forth:~~

- ~~(1) A concise statement of the issue or issues;~~
- ~~(2) Any stipulations of fact which have been agreed upon by the parties;~~
- ~~(3) A list of any joint exhibits;~~
- ~~(4) A list of exhibits to be offered by each party, other than those to be used for impeachment purposes;~~
- ~~(5) A list of every proposed exhibit to which objection shall be made at the Formal Hearing;~~
- ~~(6) A list of proposed witnesses each party intends to produce in its direct case.~~



~~b. The Hearing Officer shall send the Pre-Hearing Order to the parties and their respective attorneys or advocates and each party shall have five (5) business days within which to object to any aspect of the Pre-Hearing Order. Any objection filed by a party shall become part of the hearing record.~~

~~—4.4 Notice of the hearing~~

~~a. Notice of the hearing shall comply with the requirements of R.I. Gen. Laws 42-35-9.~~

~~b. Notice of the place, date and time of the hearing is sent by the Hearing Officer to the complainant or his/her attorney or advocate and the appropriate Department attorney. Responsibility for notifying witnesses and assuring their presence rests with the party calling such witnesses.~~

~~c. The notice shall also include a statement of the complainant's right to appear personally, to be represented by counsel or an advocate and a statement that notwithstanding failure to appear at a scheduled hearing, absent good cause, the Hearing Officer shall proceed with the hearing and enter an Order based upon the evidence presented.~~

~~d. If the complainant requests that a department employee appear as a complainant's witness, the Department shall grant the employee administrative leave to appear.—~~

~~—4.5 Duties of the Hearing Officer~~

~~The Hearing Officer shall:~~

~~a. Conduct the hearing;~~

~~b. Make all decisions regarding admission or exclusion of evidence or any other procedural matters;~~

~~c. Question any party or witness for the purpose of clarifying his/her statement or the Hearing Officer's understanding or to clarify the record;~~

~~d. Not communicate with any employee involved with the investigation or administration of the matters regarding any decision, excepting on the record with all parties present;~~

~~e. Submit a decision after due consideration of the hearing record, and only the hearing record, and matters noted on the record.~~

~~—4.6 The Hearing Process~~

~~a. Attendance at the Hearing shall be limited to the parties, their attorneys or advocates and the witnesses called to testify.~~

~~b. A complete record of the testimony and argument at the hearing shall be either stenographically or electronically recorded. Transcripts of the proceeding shall be supplied to any party at his/her own expense upon request to the~~

stenographer. Transcripts will be provided without charge to indigent parties.  
~~c. All witnesses shall be sworn and evidence will be admissible in accordance with the provisions of R.I. Gen. Laws 42-35-10.~~

#### ~~—4.7 The Hearing Decision~~

- ~~a. The Hearing Officer shall issue a written decision within twenty-five (25) business days after the close of the hearing.~~
- ~~b. The decision shall contain findings of fact and conclusions of law as necessary to comply with the requirements of R.I. Gen. Laws 42-35-12 and shall contain notice of the right to appeal the decision to the Superior Court pursuant to R.I. Gen. Laws 42-35-15.~~
- ~~c. If the complainant is the prevailing party, the decision shall include, if applicable, written finding and conclusions with respect to the award of reasonable litigation expenses in accordance with the requirements of R.I. Gen. Laws 42-92-1 et seq.~~
- ~~d. Copies of the decision shall be sent to the complainant, his/her attorney or advocate, the appropriate Executive Director, the Director and the Department Attorney.~~
- ~~e. Implementation of any Department action required as a result of the decision will be the responsibility of the respective Executive Director. The action taken will be confirmed in writing and forwarded to the Director within twenty (20) business days of the decision.~~

~~—4.8 At any time prior to the Hearing Officer rendering a final decision, parties to a hearing may attempt to dispose of a matter by entering into a consent order. A joint request for a stay of a hearing for this purpose shall be forwarded to the Hearing Officer and shall indicate the present status of negotiations. If agreement is not reached within the time period for which the stay was approved, the hearing process shall continue from the point from which the stay was issued.~~

### SECTION 5 APPEAL OF FINAL AGENCY DECISION/ JUDICIAL REVIEW

~~—Any complainant who is aggrieved by the final decision of the Hearing Officer may, in accordance with R.I. Gen. Laws 42-35-15, seek judicial review of the decision by filing a complaint in the Superior Court of Providence County within thirty (30) days of the Hearing Officer's decision.~~

### SECTION 6 PROCEDURE FOR ADOPTION OF RULES

~~—The procedure for the adoption, amendment or repeal of any rules or regulations shall be in accordance with R.I. Gen. Laws 42-35-3. A Department~~

~~Hearing Officer, designated by the Director, shall preside at all public hearings. If the Hearing Officer deems it appropriate, he/she shall limit the length of time that each speaker is allowed. All public hearings conducted pursuant to the Administrative Procedures Act and these regulations are open to interested members of the public, and if time or space prohibit hearing all persons present on the appointed day and place, the Hearing Officer may continue the hearing for the purpose of receiving additional comments from those persons who were present on the date of the original hearing.~~

## SECTION 7 PETITIONS FOR RULE MAKING, AMENDMENT OR REPEAL

~~— Any interested person may petition the Director requesting the promulgation, amendment or repeal of any rule in accordance with R.I. Gen. Laws 42-35-6.~~

~~— 7.1 Where a petition requests the promulgation of a rule, the requested or proposed rule shall be set out in full. The petition should include the reasons for the requested rule together with memoranda of any applicable law. Where the petition requests the amendment or repeal of a rule, the petition shall contain the reasons for the requested amendment or repeal as well as any suggested amendments or additions, if any.~~

~~— 7.2 All petitions shall be considered by the Director who may, in his/her discretion, schedule a hearing for further consideration and discussion of the requested promulgation, amendment, repeal or modification of any rule.~~

~~— 7.3 The Director shall notify the petitioning party, within forty five (45) days of receipt of the petition, of the disposition of the petition.~~

~~— 7.4 A hearing shall be granted if requested by twenty five (25) persons, or by a governmental subdivision or agency or an association having not less than twenty five (25) members. The Department shall consider all written and oral submissions respecting the rule.~~

~~— 7.5 Upon adoption or rejection of a rule, the Department, if requested to do so by an interested person, either prior to the adoption or rejection, or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption or rejection, incorporating therein its reasons for its action.~~

## SECTION 8 DECLARATORY RULINGS

~~— As prescribed by R.I. Gen. Laws 42-35-8, any interested person may petition the Director for a declaratory ruling. The petition shall contain the facts and the law upon which the request is made. The Director shall consider the petition and within a reasonable time shall:~~

1. ~~Issue a declaratory ruling; or~~
2. ~~Notify the petitioner that no declaratory ruling shall be issued; or~~ 3. ~~If requested by a petitioner, or at the Director's discretion, set a reasonable time and place for hearing and/or argument upon the matter, and give reasonable notice to the parties of the time and place for such a hearing. After the hearing, the Director or his/her designee shall, within a reasonable time, issue a declaratory ruling.~~