

Chapter P Open Meeting Telecommunication Accommodation Waiver Requests

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I. STATUTORY AUTHORITY RI GL 42-46-5(b)(3 & 4).

Open Meetings- Purposes for which meeting may be closed -- Use of electronic communications -- Judicial proceedings -- Disruptive conduct. - ¹

II. STATEMENT OF PURPOSE

A. To ensure that a member of a public body, who has a disability: and

(i) cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication.

III. DEFINITIONS

A. "A member of that public body, who has a disability" means: a member of a public body who has a disability as defined in chapter 87 of title 42².

B. "The Commission" shall mean the [Governor's Commission on Disabilities](#).

C. "Public body" is defined in RI General Law 42-46-2(3)³.

D. Assistive Technology Committee means the Governor's Commission on Disabilities' Assistive Technology Committee.

IV. REQUESTING AN OPEN MEETING TELECOMMUNICATIONS ACCOMMODATION WAIVER

A. Whenever a request for an Open Meeting Telecommunications Accommodation Waiver is made to the Commission, it shall provide the requesting party with a copy of these regulations and assist the individual in preparing an Open Meeting Telecommunications Accommodation Waiver Request GCD Form P-1.

B. The party requesting the waiver shall provide medical information:

1. Only medical information needed to document the need for the accommodation that is specifically related to limitations caused by the public body member's disability that prevent that member from attend meetings of that public body solely by reason of his or her disability.
2. The Assistive Technology Committee and its staff member shall review any medical information needed to document that the individual is "a member of that public body, who has a disability" in relation to the need to be accommodated. The Committee members and staff must handle confidential medical information in accord with the RIGL 5-37.3 Confidentiality of Health Care Communications and Information Act⁴.
3. The state's rehabilitation /disability services experts may assist the Assistive Technology Committee understand the medical information provided.
4. Other Commission personnel shall not participate in the review of nor have access to the individual's medical information.

V. GRANTING OR REJECTING A TELECOMMUNICATIONS ACCOMMODATION WAIVER

1. The Assistive Technology Committee shall review the Waiver Request at its next scheduled meeting and approve or reject the request. The member of the public body may appear and testify at meeting of the Assistive Technology Committee via telecommunication devices when their request is on the agenda. Notice of the meeting shall be sent to the affected public body and the member the waiver is requested for.
2. The Assistive Technology Committee shall:
 - a) Review any advice provided by the state's rehabilitation /disability services experts regarding the factors preventing the public body member's physical attendance at meetings of that public body.
 - b) Conduct a technical review of possible electronic communication or telephone communication equipment or devices that would enable that member to participate in the public body's meetings.
3. If the Assistive Technology Committee grants the waiver, the Committee's staff person shall issue the waiver in writing:
 - A) Send the original waiver to public body's presiding officer;
 - B) Send a copy to the requesting member; and
 - C) Place a copy of the waiver on the public record.
4. If the Assistive Technology Committee rejects the waiver request, the Committee shall state its reasons for rejection in writing to the requesting member, within a week of the meeting and place a copy of the waiver rejection on the public record.

VI. FORMS

The Commission's staff shall prepare and revise the forms referenced above, as necessary.

VII. ENDNOTES

These endnotes are the text of several general laws and are provided for clarification and are not part of the regulation. They are subject to revision, as amended by the General Assembly.

¹ History: Rule proposed on November 11, 2007 Advertised on December 19, 2007 Small Business Impact Review Completed on December 19, 2007 Public Hearing on January 15, 2008 Adopted on February 4, 2008 Effective on March 26, 2008

RIGL 42-46-5. Open Meetings - Purposes for which meeting may be closed -- Use of electronic communications -- Judicial proceedings -- Disruptive conduct. –

(a) A public body may hold a meeting closed to the public pursuant to section 42-46-4 for one or more of the following purposes:

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including but not limited to state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes (a) of conducting student disciplinary hearings or (b) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

(10) Any discussion of the personal finances of a prospective donor to a library.

(b) No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) any waiver decisions shall be a matter of public record.

(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

² RIGL 42-87-1 (1) Civil Rights of People with Disabilities -- Definitions.

As used in this chapter:

(1) "Disability" means any impairment as defined in subdivision (8); provided, however, that whether a person has a disability shall be determined without regard to the availability or use of mitigating measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting a limitation; or

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in subdivision (8) of this section but is treated as having an impairment.

(5) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(7) "Person with a disability" means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities; or

(ii) Has a record of an impairment; or

(iii) Is regarded as having an impairment.

(8) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

³ RIGL 42-46-2(3) Open Meetings – Definitions

As used in this chapter:

(3) "Public body" means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded a majority of its operational budget in the prior budget year with public funds, and shall include all authorities defined in 42-35-1(b). For purposes of this section, any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however, that no such meeting shall be used to circumvent the requirements of this chapter.

RIGL 42-35-1(2) Administrative Procedures - Definitions

As used in this chapter:

(2) "*Authorities*" includes the following: the Rhode Island industrial building authority, the Rhode Island recreational building authority, the Rhode Island economic development corporation, the Rhode Island industrial facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and mortgage finance corporation, the Rhode Island solid waste management corporation, the Rhode Island public transit authority, the Rhode Island student loan authority, the Howard development corporation, the water resources board, the Rhode Island health and educational building corporation, the Rhode Island higher education assistance authority, the Rhode Island turnpike and bridge authority, the Blackstone Valley district commission, the Narragansett Bay water quality management district commission, their successors and assigns, and any body corporate and politic with the power to issue bonds and notes, which are direct, guaranteed, contingent, or moral obligations of the state, which is hereinafter created or established in this state.

⁴ 5-37.3-4. Confidentiality of Health Care Communications and Information Act -- Limitations on and permitted disclosures.

(a) (1) Except as provided in subsection (b) of this section or as specifically provided by the law, a patient's confidential health care information shall not be released or transferred without the written consent of the patient or his or her authorized representative, on a consent form meeting the requirements of subsection (d) of this section. A copy of any notice used pursuant to subsection (d) of this section, and of any signed consent shall, upon request, be provided to the patient prior to his or her signing a consent form. Any and all managed care entities and managed care contractors writing policies in the state shall be prohibited from providing any information related to enrollees which is personal in nature and could reasonably lead to identification of an individual and is not essential for the compilation of statistical data related to enrollees, to any international, national, regional, or local medical information data base. This provision shall not restrict or prohibit the transfer of information to the department of health to carry out its statutory duties and responsibilities.

(2) Any person who violates the provisions of this section may be liable for actual and punitive damages.

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- (3) The court may award a reasonable attorney's fee at its discretion to the prevailing party in any civil action under this section.
- (4) Any person who knowingly and intentionally violates the provisions of this section shall, upon conviction, be fined not more than five thousand (\$5,000) dollars for each violation, or imprisoned not more than six (6) months for each violation, or both.
- (5) Any contract or agreement which purports to waive the provisions of this section shall be declared null and void as against public policy.
- (b) No consent for release or transfer of confidential health care information shall be required in the following situations:
- (1) To a physician, dentist, or other medical personnel who believes, in good faith, that the information is necessary for diagnosis or treatment of that individual in a medical or dental emergency;
 - (2) To medical and dental peer review boards, or the board of medical licensure and discipline, or board of examiners in dentistry;
 - (3) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies; provided, that personnel shall not identify, directly or indirectly, any individual patient in any report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;
 - (4) By a health care provider to appropriate law enforcement personnel, or to a person if the health care provider believes that person or his or her family is in danger from a patient; or to appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic drugs from the health care provider illegally; or to appropriate law enforcement personnel or appropriate child protective agencies if the patient is a minor child who the health care provider believes, after providing health care services to the patient, to have been physically or psychologically abused; or to law enforcement personnel in the case of a gunshot wound reportable under [11-47-48](#);
 - (5) Between or among qualified personnel and health care providers within the health care system for purposes of coordination of health care services given to the patient and for purposes of education and training within the same health care facility; or
 - (6) To third party health insurers including to utilization review agents as provided by [23-17.12-9\(c\)\(4\)](#), third party administrators licensed pursuant to [chapter 20.7 of title 27](#) and other entities that provide operational support to adjudicate health insurance claims or administer health benefits;
 - (7) To a malpractice insurance carrier or lawyer if the health care provider has reason to anticipate a medical liability action; or
- (8) (i) To the health care provider's own lawyer or medical liability insurance carrier if the patient whose information is at issue brings a medical liability action against a health care provider.
- (ii) Disclosure by a health care provider of a patient's health care information which is relevant to a civil action brought by the patient against any person or persons other than that health care provider may occur only under the discovery methods provided by the applicable rules of civil procedure (federal or state). This disclosure shall not be through ex parte contacts and not through informal ex parte contacts with the provider by persons other than the patient or his or her legal representative. Nothing in this section shall limit the right of a patient or his or her attorney to consult with that patient's own physician and to obtain that patient's own health care information;
- (9) To public health authorities in order to carry out their functions as described in this title and titles 21 and 23, and rules promulgated under those titles. These functions include, but are not restricted to, investigations into the causes of disease, the control of public health hazards, enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of health professionals and facilities, review of health care such as that required by the federal government and other governmental agencies;
 - (10) To the state medical examiner in the event of a fatality that comes under his or her jurisdiction;
 - (11) In relation to information that is directly related to current claim for workers' compensation benefits or to any proceeding before the workers' compensation commission or before any court proceeding relating to workers' compensation;
 - (12) To the attorneys for a health care provider whenever that provider considers that release of information to be necessary in order to receive adequate legal representation;
 - (13) By a health care provider to appropriate school authorities of disease, health screening and/or immunization information required by the school; or when a school age child transfers from one school or school district to another school or school district;
 - (14) To a law enforcement authority to protect the legal interest of an insurance institution, agent, or insurance-support organization in preventing and prosecuting the perpetration of fraud upon them;
 - (15) To a grand jury or to a court of competent jurisdiction pursuant to a subpoena or subpoena duces tecum when that information is required for the investigation or prosecution of criminal wrongdoing by a health care provider relating to his or her or its provisions of health care services and that information is unavailable from any other source; provided, that any information so obtained is not admissible in any criminal proceeding against the patient to whom that information pertains;
 - (16) To the state board of elections pursuant to a subpoena or subpoena duces tecum when that information is required to determine the eligibility of a person to vote by mail ballot and/or the legitimacy of a certification by a physician attesting to a voter's illness or disability;

(17) To certify, pursuant to [chapter 20](#) of [title 17](#), the nature and permanency of a person's illness or disability, the date when that person was last examined and that it would be an undue hardship for the person to vote at the polls so that the person may obtain a mail ballot;

(18) To the central cancer registry;

(19) To the Medicaid fraud control unit of the attorney general's office for the investigation or prosecution of criminal or civil wrongdoing by a health care provider relating to his or her or its provision of health care services to then Medicaid eligible recipients or patients, residents, or former patients or residents of long term residential care facilities; provided, that any information obtained shall not be admissible in any criminal proceeding against the patient to whom that information pertains;

(20) To the state department of children, youth, and families pertaining to the disclosure of health care records of children in the custody of the department;

(21) To the foster parent or parents pertaining to the disclosure of health care records of children in the custody of the foster parent or parents; provided, that the foster parent or parents receive appropriate training and have ongoing availability of supervisory assistance in the use of sensitive information that may be the source of distress to these children;

(22) A hospital may release the fact of a patient's admission and a general description of a patient's condition to persons representing themselves as relatives or friends of the patient or as a representative of the news media. The access to confidential health care information to persons in accredited educational programs under appropriate provider supervision shall not be deemed subject to release or transfer of that information under subsection (a) of this section; or

(23) To the workers' compensation fraud prevention unit for purposes of investigation under [42-16.1-12](#) - [42-16.1-16](#). The release or transfer of confidential health care information under any of the above exceptions is not the basis for any legal liability, civil or criminal, nor considered a violation of this chapter; or

(24) To a probate court of competent jurisdiction, petitioner, respondent, and/or their attorneys, when the information is contained within a decision-making assessment tool which conforms to the provisions of [33-15-47](#).

(c) Third parties receiving and retaining a patient's confidential health care information must establish at least the following security procedures:

(1) Limit authorized access to personally identifiable confidential health care information to persons having a "need to know" that information; additional employees or agents may have access to that information which does not contain information from which an individual can be identified;

(2) Identify an individual or individuals who have responsibility for maintaining security procedures for confidential health care information;

(3) Provide a written statement to each employee or agent as to the necessity of maintaining the security and confidentiality of confidential health care information, and of the penalties provided for in this chapter for the unauthorized release, use, or disclosure of this information. The receipt of that statement shall be acknowledged by the employee or agent, who signs and returns the statement to his or her employer or principal, who retains the signed original. The employee or agent shall be furnished with a copy of the signed statement;

(4) Take no disciplinary or punitive action against any employee or agent solely for bringing evidence of violation of this chapter to the attention of any person.

(d) Consent forms for the release or transfer of confidential health care information shall contain, or in the course of an application or claim for insurance be accompanied by a notice containing, the following information in a clear and conspicuous manner:

(1) A statement of the need for and proposed uses of that information;

(2) A statement that all information is to be released or clearly indicating the extent of the information to be released; and

(3) A statement that the consent for release or transfer of information may be withdrawn at any future time and is subject to revocation, except where an authorization is executed in connection with an application for a life or health insurance policy in which case the authorization expires two (2) years from the issue date of the insurance policy, and when signed in connection with a claim for benefits under any insurance policy the authorization shall be valid during the pendency of that claim. Any revocation shall be transmitted in writing.

(e) Except as specifically provided by law, an individual's confidential health care information shall not be given, sold, transferred, or in any way relayed to any other person not specified in the consent form or notice meeting the requirements of subsection (d) of this section without first obtaining the individual's additional written consent on a form stating the need for the proposed new use of this information or the need for its transfer to another person.

(f) Nothing contained in this chapter shall be construed to limit the permitted disclosure of confidential health care information and communications described in subsection (b) of this section.