

**GENERAL PROVISIONS**

**RULES AND REGULATIONS**

**State of Rhode Island and Providence Plantations**  
**Department of Mental Health, Retardation and Hospitals**

June 2004

State of Rhode Island  
And Providence Plantations

Donald L. Carcieri, Governor

Rhode Island Department of Mental Health,  
Retardation, and Hospitals

Kathleen M. Spangler, Acting Director

## **Preamble**

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The Department of Mental Health, Retardation and Hospitals promulgates The General Provisions rules and regulations which provide a description of the Department stating the general course and methods of operations and the methods whereby the public may obtain information or make submissions or requests. These rules and regulations supersede any and all prior rules, regulations, and standards relating to a description of the Department stating the general course and methods of operations and the methods whereby the public may obtain information or make submissions or requests.

## **Statutory Authority**

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These rules and regulations are promulgated in accordance with, and under the authority of, Rhode Island General Laws § 40.1-1-13, and § 42-35-2.

# Rhode Island Department of Mental Health, Retardation and Hospitals Manual

## General Provisions

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### Introduction

### Section 0100

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#### Scope and Purpose of the Department:

0100.05

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Orig. 3/2004

The Department of Mental Health, Retardation and Hospitals, through state Divisions and Programs established by Title 40.1, Chapters 1, 1.1, 2, 3, 5, 5.3, 5.4, 22, and 24, or the Rhode Island General Laws, as amended, is the Department in the Rhode Island State Government authorized by law and designations to:

1. Plan, design, and develop
2. Fund
3. Administer, coordinate and license

a system of services for citizens of Rhode Island with developmental disabilities, behavioral healthcare needs, and those in need of the physical health and/or mental health services of the Eleanor Slater Hospital.

The Department is dedicated to achieving the best possible results for its consumers and the taxpayers of Rhode Island. The Department will achieve these goals with the coordination of the following Divisions:

The Division of Developmental Disabilities  
The Division of Behavioral Healthcare Services  
The Eleanor Slater Hospital  
The Office of Facilities and Programs Standards and Licensure

#### The Division of Developmental Disabilities

0100.05.05

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Orig. 3/2004

The purpose of the Division of Developmental Disabilities within the Department of Mental Health, Retardation and Hospitals is to advance public interest, to promote, safeguard and protect the human dignity, constitutional and statutory rights and liberties, social well being, and general welfare of all developmentally disabled citizens of the state; promote a comprehensive system to support the families of developmentally disabled adults in their own homes and environments, and to encourage families to maintain their developmentally disabled relatives in their own homes when appropriate; ensure that all developmentally disabled adults receive such developmental, supportive, and ancillary services as prescribed in an individualized program plan, developed with the participation of the developmentally disabled person and his/her family, guardian or advocate; provide or to secure certain social, protective and other types of appropriate

services; and promote the coordination of all available services, both generic and specialized, for all developmentally disabled citizens under public and private auspices.

**Division of Behavioral Healthcare Services**

**0100.05.10**

Orig. 3/2004

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The Division of Behavioral Healthcare Services encompasses the following services:

1. Substance Abuse Treatment and Prevention Services
2. Integrated Mental Health Services

The purpose of the Substance Abuse Treatment and Prevention Services within the Division of Behavioral Healthcare Services is to provide funding, planning, technical assistance, standards development, and oversight to substance abuse treatment and prevention services, as well as to programs for problem gambling.

The purpose of the Integrated Mental Health Services within the Division of Behavioral Healthcare Services is to fund, plan, develop, implement and oversee a complete and comprehensive system of mental health services. The Department's highest priorities shall be to provide these services to adults with serious mental illness. There shall also be technical assistance provided to all state supported diagnostic facilities, rehab centers, community residences, community mental health centers, and other facilities for adults with serious mental illness licensed by the Department of Mental Health, Retardation and Hospitals.

**The Eleanor Slater Hospital**

**0100.05.15**

Orig. 3/2004

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The purpose of the Eleanor Slater Hospital is to provide hospital level care for those individuals who cannot be appropriately treated in the community and who cannot stay in an acute community hospital, and to provide care for individuals committed through the criminal justice system to the Forensic Unit.

**The Office of Facilities and Programs Standards and Licensure**

**0100.05.20**

Orig. 3/2004

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The purpose of the Office of Facilities and Programs Standards and Licensure is to provide for the development, establishment, and enforcement of standards:

1. For facilities and programs providing rehabilitation, psychological support, and social guidance to individuals who are alcoholic, drug abusers, mentally ill or who are persons with developmental disabilities
2. For the construction, maintenance, and operation of facilities which promote safe and adequate accommodations for individuals who are

- alcoholic, drug abusers, mentally ill or who are persons with developmental disabilities; and
3. For the establishment of a comprehensive licensing policy with respect to facilities and programs for people who are alcoholic, drug abusers, mentally ill or who are persons with developmental disabilities.

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**Purpose of the Manual****0100.10**

Orig. 3/2004

The purpose of this manual is to set forth a description, a statement of the general course and method of operations, and the methods whereby the public may obtain information or make submissions or requests of the Department of Mental Health Retardation and Hospitals and Divisions within the Department.

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**Motor Voter Registration****0100.15**

Orig. 3/2004

The purpose of the National Voter Registration Act of 1993, also called the Motor Voter Act, is to ensure that more opportunities are available for all people to register to vote or update voter registration. The Act requires that applications to register to vote be provided at agencies providing services to persons with disabilities. These agencies must distribute voter registration forms, provide assistance in completing forms, and ensure that the completed forms reach the proper state election office for processing. These services are to be provided by every office where such programs are administered.

Individuals to be registered are applicants / recipients meeting all of the following criteria at application for services or if reporting a change of address. The individual must:

- Be 18 years old or over; AND
- Be present in the office at the time of the interview or when a change of address is reported; AND
- Not be registered to vote or not registered to vote at his/her current address

Workers are prohibited from trying to influence an applicant / recipients political preference or party registration; displaying political preference, party allegiance; and making any statement or take any action that may leave the impression that a decision to register or not to register to vote will have any bearing on the availability of program services or benefits. The penalties for failure to comply with these prohibitions could result in a fine, imprisonment (not to exceed 5 years), or both.

Completion of the voter registration form is only an application to register to vote, the State Board of Elections makes the determination of approval or denial of the application and sends its own confirmation or denial notice to the applicant.

**Confidentiality of Information**

**Section 0102**

Orig. 3/2004

The use and disclosure of information concerning applicants and recipients of services, provided by the Department of Mental Health, Retardation and Hospitals will be limited by all applicable state and federal laws and regulations.

**Citizenship or Alienage**

**Section 0103**

Orig. 3/2004

The citizenship status of applicants or recipients of services provided by the Department of Mental Health, Retardation and Hospitals will be evaluated in accordance with all applicable state and federal laws and regulations.

The eligibility criteria regarding citizenship status is contained in the regulations for each of the Divisions, Program/Service areas that are provided by the Department of Mental Health, Retardation and Hospitals.

**Residence**

**0103.05**

**State Residency Requirements**

**0103.05.05**

Orig. 3/2004

The Department of Mental Health, Retardation and Hospitals will comply with all applicable state and federal laws and regulations regarding state residency and eligibility of applicants or recipients of services provided by the Department.

**Equal Access to Justice**

**Section 0104**

**Purpose and Scope of Authority**

**0104.05**

Orig. 3/2004

The purpose of §42-92-1 of the General Laws of Rhode Island, 1993, is to provide equal access to justice for small businesses and individuals.

The rules and regulations of this law govern the application and award of reasonable litigation expenses to qualified parties adjudicatory proceedings conducted by the Department of Mental Health, Retardation and Hospitals (DMHRH).

The rules and regulations herein contained are promulgated pursuant to Chapters 35 and 92 of Title 42 of the Rhode Island General Laws. They are applicable to all agencies currently administered under the auspices of the DMHRH.

It is hereby declared to be the official policy of the DMHRH that individuals and small businesses should be encouraged to contest unjust administrative actions in order to further the public interest, and toward that end, such parties should be entitled to state

reimbursement of reasonable litigation expenses when they prevail in contesting an agency action which is, in fact, without substantial justification.

**Definitions (Equal Access to Justice)**

**0104.10**

Orig. 3/2004

Adjudicative Officer means the presiding officer or deciding official of any adversary adjudicatory proceeding of the DMHRH, without regard to whether the official is designated as an administrative law judge, hearing officer, examiner, or otherwise.

Adversary Adjudicatory Proceeding means any proceeding conducted by or on behalf of the DMHRH, whether administratively or quasi-judicially, which may result in the loss of benefits, the imposition of a fine, the suspension or revocation of a license or permit, or which may result in the compulsion or restrictions of the activities of a party.

Agency means the DMHRH, including any board, commission, or officer of the department authorized to make rules or determine contested cases, to bring any action at law in equity, including injunctive and other relief, or to initiate criminal proceedings. This shall include contract boards of appeal and employment security administrative proceedings.

Party means any individual whose net worth is less than five hundred thousand dollars (\$500,000) at the time the adversary adjudicatory proceeding was first initiated; and any individual, partnership, corporation, association, or private organization doing business and located in the state, which is independently owned and operated, not dominant in its field, and which employs one hundred (100) or fewer persons at the time the adversary adjudicatory proceeding was initiated.

Reasonable Litigation Expenses means those expenses which are reasonably incurred by a party in adversary adjudicatory proceedings, including but not limited to, attorney's fees, witness fees of all necessary witnesses, and other such costs and expenses as were reasonably incurred. Exceptions:

- The award of attorney's fees may not exceed one hundred and twenty five (\$125) per hour.
- No expert witness may be compensated at a rate in excess of the highest rate or compensation for experts paid by this state.

Substantial Justification means that the initial position of the agency, as well as the agency's position in the proceedings, has a reasonable basis in law and fact.

**Application/Awards of Litigation Expenses**

**0104.15**

Orig. 3/2004

All claims for an award of reasonable litigation expenses shall be made on an application form to be supplied by the agency and shall be filed with the hearing office within thirty

(30) days of the date of the conclusion of the adjudicatory proceeding which gives rise to the right to recover such an award. The proceeding shall be deemed to be concluded when the agency or adjudicative officer renders a ruling or decision.

The adjudicative officer may, at his or her discretion, permit a party to file a claim out of time upon a showing of proof and finding by such administrative officer that good and sufficient cause exists for allowing a claim to be so filed.

All claims are filed on a form to provided by the Department, which may be obtained from the Departmental legal office. All claims must be postmarked or delivered to the legal office no later than thirty (30) days from the date of the conclusion of the adjudicatory proceeding. These claims must contain:

- A summary of the legal and factual basis for filing the claim;
- A list of witnesses, if any, that the claimant expects to be called to substantiate the claim if a separate hearing on said claim is conducted by the agency;
- A detailed breakdown of the reasonable litigation expenses incurred by the party in the adjudicatory proceedings, including copies of invoices, bills, affidavits, or other documents, all of which may be supplemented or modified at any time prior to the issuance of a final decision of the claim by the adjudicative officer;
- A notarized statement swearing to the accuracy and truthfulness of the statements and information contained in the claim, and/or filed in support thereof. In this statement the claimant must also certify that legal fee time and amounts contemporaneously kept and that attempts were made to minimize the time spent.

**Allowance of Awards**

**0104.15.05**

Orig. 3/2004

Whenever a party which has provided the agency with timely notice of the intention to seek an award of litigation expenses as provided in these rules, prevails in contesting an agency action, and the adjudicative officer finds that the agency was not substantially justified in: (1) the actions leading to the proceeding; and (2) in the proceeding itself, an award shall be made of reasonable litigation expenses actually incurred.

The decision of the adjudicative officer to make an award shall be made a part of the record, shall include written findings and conclusions with respect to the award, and shall be sent to the claimant, unless the same is represented by an attorney, in which case the decision shall be sent to the attorney of record.

**Disallowance of Awards**

**0104.15.10**

Orig. 3/2004

No award of fees or expenses may be made if the adjudicative officer finds that the agency was substantially justified in the actions leading to the proceeding and in the proceeding itself.

There should be disallowance of fees or expenses if the party is not actually the prevailing party, i.e., the party may be successful on one or two points but not the majority issue.

The adjudicative officer may, at his/her discretion, deny fees or expenses if special circumstances make an award unjust.

The adjudicative officer may deny, in whole or in part, any application for award of fees and expenses where justice so requires or which is considered to be excessive.

Whenever substantially justified, the adjudicative officer may recalculate the amount to be awarded to the prevailing party, without regard to the amount claimed to be due on the application, for an award.

Notice of the decision disallowing an application for an award of fees and expenses shall be sent to the party by the agency via regular mail provided however, that if the party is represented by an attorney, said notice shall be sent by regular mail to the attorney of record.

**Appeals and Severability**

**0104.20**

Orig. 3/2004

Any party aggrieved by the decision to award reasonable litigation expenses may bring an appeal to the Superior Court in the manner provided by the Administrative Procedures Act, Rhode Island General Laws, §42-35-1, et. seq.

If any provision of these rules and regulations, or the application thereof, to any person or circumstances are held invalid, such invalidity shall not affect the provisions of application of these rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.

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**Availability of DMHRH Manuals**

**Section 0105**

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**Public Access to DMHRH Manual**

**0105.05**

Orig. 3/2004

The Department of Mental Health, Retardation and Hospitals Manual is a public document. In an effort to help clients better understand the Department of Mental Health,

Retardation and Hospitals, its Divisions and services, there is a requirement to make available copies of these manuals to interested recipients upon request.

The Executive Directors, or designee, of the Divisions of the Department of Mental Health, Retardation and Hospitals has the responsibility to make available a manual to any person to review. Each should make applicants or recipients of services aware of the availability of the Manual.

Staff should allow applicants or recipients of services to read the Manual and provide any needed interpretation to assist them in understanding any part of it. It is the responsibility of each Executive Director, or designee, to see that the Manual is always up to date.

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**Reproduction of DMHRH Manual**

**0105.10**

Orig. 3/2004

Staff should, upon request, reproduce without charge the specific policy materials necessary for an applicant or recipient or his/her representative to determine whether a fair hearing should be requested or to prepare for a fair hearing. When the request is for reproduction of materials for other purposes, the individual is advised to put his request in writing indicating the purpose to which the material is to be used. The request is forwarded to the Executive Director of the Division for a decision.

The Agency does make available at a charge related to the cost of reproduction, a current copy of the Department of Mental Health, Retardation and Hospitals Manual for access by the public through custodians who (a) request the material for this purpose, (b) are centrally locate and publicly accessible to a substantial number of the recipient population they serve and, (3) agree to accept responsibility for filing all amendments and changes forwarded by the agency. The material is also available at the cost of reproduction to other groups and individuals. When a request is received from a person or group, the request is referred to the Office of the Director and/or his or her designee.

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**Public Records**

**Section 0106**

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**Custody and Protection**

**0106.05**

Orig. 3/2004

In accordance with Rhode Island General Laws §38-1, the Department of Mental Health, Retardation and Hospitals shall ensure that all public records held by the Department will be held in compliance with Rhode Island General Laws Title 38 Public Records, Chapter 1, Sections 1-11.

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**Access to Public Records**

**0106.10**

Orig. 3/2004

In accordance with Rhode Island General Laws §38-2-1, the Department of Mental Health, Retardation and Hospitals shall facilitate public access to public records. The

Department shall do so while protecting from disclosure any information about particular individuals maintained in the files of the Department when such disclosure would constitute a violation of the privacy and confidentiality of said records.

**Definitions**

**0106.15**

Orig. 3/2004

- (1) “Agency” or “public body” shall mean any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in § 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.
- (2) “Chief administrative officer” means the highest authority of the public body as defined in subsection (a) of this section.
- (3) “Public business” means any matter over which the public body has supervision, control, jurisdiction, or advisory power.
- (4) “Public record” or “public records” shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data(including electronic mail messages, except specifically for any electronic mail messages of or to elected official with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:
  - a. all records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.
  - b. Notwithstanding the provisions of this section, or any other provision of the general laws to the contrary, the pension records of all persons who are either current or retired members of the retirement systems established by

the general laws as well as all persons who become members of those retirement systems after June 17, 1991, shall be open for public inspection. "Pension records" as used in this section shall include all records containing information concerning pension and retirement benefits of current and retired members of the retirement systems established in title 8, title 36, title 42, title 45 and future members of said systems, including all records concerning retirement credits purchased and the ability of any member of the retirement system to purchase retirement credits, but excluding all information regarding the medical condition of any person and all information identifying the members designated beneficiary or beneficiaries.

- c. Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.
- d. Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.
- e. All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the diction and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigation or prosecutions or (f) could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public.
- f. Any records which would not be available by law or rule of court to an opposing party in litigation.
- g. Scientific and technological secrets and the security plans of military and law enforcement agencies, the disclosure of which would endanger the public welfare and security.
- h. Any records which disclose the identity of the contributor of a bona fide and lawful charitable contribution to the public body whenever public anonymity has been requested of the public body with respect to the contribution by the contributor.

- i. Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining.
- j. Reports and statements of strategy or negotiation with respect to the investment or borrowing of public funds, until such time as those transactions are entered into.
- k. Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.
- l. Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.
- m. Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- n. Correspondence of or to elected official with or relating to those they represent and correspondence of or to elected officials in their official capacities.
- o. The contents of real estate appraisals, engineering, or feasibility estimates and evaluations made for or by an agency relative to the acquisition of property or to prospective public supply and construction contracts, until such time as all of the property has been acquired or all proceedings of transactions have been terminated or abandoned; provided the law of eminent domain shall not be affected by this provision.
- p. All tax returns.
- q. All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.
- r. Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.
- s. Requests for advisory opinions until such time as the public body issues its opinion.
- t. Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.
- u. Judicial bodies are included in the definition only in respect to their administrative function provided that records kept pursuant to the provisions of chapter 16 of title 8 are exempt from the operation of this chapter.
- v. Library records which by themselves or when examined with other public records, would reveal the identity of the library user requesting, checking out, or using any library materials.
- w. Printouts from TELE-TEXT devices used by people who are deaf or hard of hearing or speech impaired.

- x. All records received by the insurance division of the department of business regulation from other states, either directly or through the National Association of Insurance Commissioners, if those records are accorded confidential treatment in that state. Nothing contained in this title or any other provision of law shall prevent or be construed as prohibiting the commissioner of insurance from disclosing otherwise confidential information to the insurance department of this or any other state or country, at any time, so long as the agency or office receiving the records agrees in writing to hold it confidential in a manner consistent with the laws of this state.
  - y. Credit card account numbers in the possession of state or local government are confidential and shall not be deemed public records.
  - z. However, any reasonably segregable portion of a public records excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.
- (5) “Supervisor of the regulatory body” means the chief or head of a section having enforcement responsibility for a particular statute or set of rules and regulations within a regulatory agency.
- (6) “Prevailing plaintiff” means and shall include those persons and entities deemed prevailing parties pursuant to 42 U.S.C. § 1988.

**Right to Inspect and Copy Records- Duty to Maintain Minutes of Meetings-  
Procedures for Access 0106.20**

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Orig. 3/2004

In accordance with Rhode Island General Laws § 38-2-3, the Department of Mental Health, Retardation and Hospitals shall

- (a) Except as provided in § 38-2-2(4), all records maintained or kept on file by the Department, whether or not those records are required by any law or by any rule or regulation, shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof.
- (b) The Department shall make, keep, and maintain written or recorded minutes of all meetings.
- (c) The Department shall establish procedures regarding access to public records but shall not require written requests form public information available pursuant to Rhode Island General Laws § 42-35-2 or for other documents prepared for or readily available to the public.
- (d) If a public record is in active use or in storage and, therefore, not available at the time a person requests access, the custodian shall inform the person and make an appointment for the citizen to examine such records as expeditiously as they may be made available.
- (e) Any person or entity requesting copies of public records may elect to obtain them in any and all media in which the Department is capable of

providing them. The records, which are maintained in a computer storage system shall be provided any data properly identified in a printout or other reasonable format, as requested.

- (f) The Department is not required to reorganize, consolidate, or compile data not maintained by the Department in the form requested at the time the request to inspect the public records was made except to the extent that such records are in an electronic format and the Department would not be unduly burdened in providing such data
- (g) No public records shall be withheld based on the purpose for which the records are sought.

**Cost for Copying**

**0106.25**

Orig. 3/2004

In accordance with Rhode Island General Laws § 38-2-4, the Department of Mental Health, Retardation and Hospitals shall allow copies to be made or provide copies of public records. The cost per copied page of written documents provided to the public shall not exceed fifteen cents (\$.15) per page for documents copyable on common business or legal size paper.

A reasonable charge may be made for the search or retrieval of documents. Hourly costs for a search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of a search or retrieval.

Copies of documents shall be provided and the search and retrieval of documents accomplished within a reasonable time after a request. The Department shall provide an estimate of the costs of the request for documents prior to providing copies.

Upon request, the Department shall provide a detailed itemization of the costs charged for search and retrieval.

A court may reduce or waive the fees for costs charged for search or retrieval if it determines that the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

**Denial of Access**

**0106.30**

Orig. 3/2004

The Department of Mental Health, Retardation and Hospitals comply with Rhode Island General Laws § 38-2-7.

- a. Any denial of the right to inspect or copy records provided for under Rhode Island General Laws § 38-2, shall be made to the person or entity requesting the right, by the custodian of the record, in writing giving the specific reasons for the denial within ten (10) business days of the request and indicating the procedures for appealing the denial. Except for good

cause shown, any reason not specifically set forth in the denial shall be deemed waived by the Department.

- b. Failure to comply with a request to inspect or copy the public record within the ten (10) business day period shall be deemed to be a denial. Except that for good cause, this limit may be extended for a period not to exceed thirty (30) business days.

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**Administrative Appeals**

**0106.35**

Orig. 3/2004

Any person or entity denied the right to inspect a record of the Department by the custodian of the record may petition the Director of the Department for a review of the determinations made by his or her subordinate. The Director shall make a final determination whether or not to allow public inspection within ten (10) business days after the submission of the review petition.

If the Director determines that the record is not subject to public inspection, the person or entity seeking disclosure may file a complaint with the attorney general.

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**State Affairs and Government**

**Section 0107**

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**Disclosure of Names of State Government Consultants**

**0107.05**

Orig. 3/2004

In accordance with the provisions of Rhode Island General Laws §42-90-1, the Department of Mental Health, Retardation and Hospitals shall prepare and submit to the Secretary of State, on a quarterly basis, a list containing the following information:

- The name of any person who performed legal, medical, accounting, engineering, or any other professional, technical or consultant service on a contractual basis during the previous quarter; and
- The amount of compensation received by each consultant during the previous quarter

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**Open Meetings**

**0107.10**

Orig. 3/2004

In accordance with the provisions or Rhode Island General Laws §42-46, it is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

Every meeting of all public bodies shall be open to the public unless closed pursuant to §§42-46-4 and 42-46-5.

All open meetings shall be accessible to persons with disabilities.

**Definitions****0107.10.05**Orig. 3/2004

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“Meeting” means the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power. As used herein, the term “meeting” shall expressly include, without limiting the generality of the foregoing, so-called “workshop”, “working”, or “work” sessions.

“Open call” means a public announcement by the chairperson of the committee that the meeting is going to be held in executive session and the chairperson must indicate which exception of §42-46-5 is being involved.

“Public body” means any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government, and shall include all authorities defined in §42-35-1(b).

“Quorum”, unless otherwise defined by applicable law, means a simple majority of the membership of a public body.

“Prevailing plaintiff” shall include those persons and entities deemed “prevailing parties” pursuant 42 U.S.C. § 1988.

**Closed Meetings****0107.10.10**Orig. 3/2004

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By open call, a public body may hold a meeting closed to the public upon affirmative vote of the majority of its members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings.

There shall be recorded and entered into the minutes of the meeting the following information:

- The vote of each member on the question of holding a meeting closed to the public
- The reason for holding a closed meeting, by citation to a subdivision of §42-46-5(a)
- A statement specifying the nature of the business to be discussed
  
- All votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to discussions conducted under §42-46-5(a)

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

- Any discussion 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 the public body shall state for the record that any persons to be discussed have been notified and this statement shall be noted in the minutes of the meeting.

- Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation
- Discussion regarding the matter of security including but not limited to the deployment of security personnel or devices
- Any investigative proceedings regarding allegations of misconduct, either civil or criminal
- 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
- 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
- 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
- Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement

No meeting of members of a public body or use of electronic communication shall be used to circumvent the spirit or requirements of §42-46, provided, however, these meetings and discussions are not prohibited.

Provided, further however, that discussions of public body via electronic communication shall be permitted only to schedule a meeting.

This 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.

**Notice****0107.10.15**

Orig. 3/2004

In accordance with Rhode Island General Laws §42-46-6, written notice shall be given of all regularly scheduled meetings at the beginning of each calendar year and shall include the following information:

- Dates of the meetings
- Times of the meetings
- Places of the meetings

Supplemental written public notice of any meeting shall be given within a minimum of forty-eight (48) hours before the date, and shall include the following:

- The date the notice was posted
- The date, time and place of the meeting
- A statement specifying the nature of the business to be discussed

Copies of the notice shall be maintained for a minimum of one year.

Additional agenda items may be added by majority vote of members, these items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.

Written public notice shall include:

- Posting a copy of the notice at the principal office of the public body holding the meeting, or if no principal office exists, at the building in which the meeting is to be held,
- In at least one other prominent place within the Department of Mental Health, Retardation and Hospitals
- Electronic filing of the notice with the secretary of state

**Emergency Meeting****0107.10.20**

Orig. 3/2004

Nothing shall prevent a public body from holding an emergency meeting, upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state.

Upon meeting the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours and only discuss the issue or issues which created the need for an emergency meeting.

**Minutes****0107.10.25**

Orig. 3/2004

In accordance with §42-46-7, the Department of Mental Health, Retardation and Hospitals shall keep written minutes of all open meetings. These minutes shall include the following:

- The date, time and place of the meeting
- The members of the public body recorded as either present or absent
- A record by individual members of any vote taken; and
- Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes

A record of all votes taken at all meetings listing how each member voted on each issue, shall be a public record and shall be available to the public at the office of the public body, within two (2) weeks of the date of the vote.

The minutes shall be public records and unofficial minutes shall be available, to the public at the office of the public body, within thirty five (35) days of the meeting or at the next regularly scheduled meeting, whichever is earlier, except where the disclosure would be inconsistent with §§ 42-46-4 and 42-46-5 or where the public body by majority vote extends the time period for the filing of the minutes and publicly states the reason.

The minutes of a closed session shall be made available at the next regularly scheduled meeting unless the majority of the body votes to keep the minutes closed pursuant to §§ 42-46-4 and 42-46-5.

State public boards and quasi-public boards shall keep official and / or approved minutes of all meetings and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose sole responsibilities are solely advisory in nature.

**Remedies Available to Aggrieved Persons or Entities****0107.10.30**

Orig. 3/2004

Any citizen or entity of the state who is aggrieved as a result of violations of §42-46 Open Meetings, may file a complaint with the Attorney General of the State of Rhode Island.

**Conflict of Interest**

**0108.05**

Orig. 3/2004

In accordance with Rhode Island General Laws §36-14-6, Statement of Conflict of Interest, any employee of the Department of Mental Health, Retardation and Hospitals who, in the discharge of his or her official duties, is or may be required to take an action, make a decision, or refrain therefrom that will or can reasonably be expected to directly result in an economic benefit to the person, or spouse (if not estranged), or any dependent child of the person, or business associate or any business by which the person is employed or which the person represents, shall, before taking any such action or refraining therefrom:

- Prepare a written statement sworn to under the penalties for perjury describing the matter requiring action and the nature of the potential conflict;
- Deliver a copy of the statement to the state ethics commission, and;
  - His or her superior shall, if reasonably possible, assign the matter to another person who does not have a conflict of interest. If he or she does not have an immediate superior, he or she shall take such steps as the commission shall prescribe through rules or regulations to remove him or herself from influence over any action on the matter on which the conflict of interest exists.

**Rhode Island General Laws on Child Abuse/Neglect**

**Section 0109**

Orig. 3/2004

In Accordance with the following provisions of Rhode Island State Law, in the event of actual or suspected cases of child neglect or abuse, Department of Mental Health, Retardation and Hospitals personnel are required to report, the following, to 1-800-RI-CHILD:

RHODE ISLAND GENERAL LAWS §40-11-3. Duty to Report – Deprivation of Nutrition or Medical Treatment

- Any person who has reasonable cause to know or suspect that any child has been neglected or abused as defined herein, shall, within twenty four (24) hours, transfer such information to the DCF, or its agency, who shall cause the report to be investigated immediately. As a result of such reports and referrals, protective social services shall be made available to such children in an effort to safeguard and enhance the welfare of such children and to provide a means to prevent further neglect or abuse. The said Department (DCF) shall establish and implement a single, statewide, toll-free telephone known to operate twenty-four (24) hours per day, seven (7) days per week, for the receipt or reports concerning child neglect or abuse, which reports shall be electronically recorded and placed

in the central registry established to Section 42-72-7. Such electronically recorded records, properly indexed by date and other essential identifying data, shall be maintained for a minimum of three (3) years. The Department (DCF) shall establish rules and regulations requiring hospitals, healthcare centers, emergency rooms and other appropriate health facilities to report, on a quarterly basis, information concerning the number of cases reported by these institutions as suspected child abuse.

Such reporting shall include immediate notification to the Department (DCF) of any instance where parents of an infant have requested deprivation of nutrition that is necessary to sustain life and/or who have requested deprivation of medical or surgical intervention that is necessary to remedy or ameliorate a life-threatening medical condition, if the nutrition or medical or surgical intervention is generally provided to similar nutritional, medical or surgical-conditioned infants, handicapped or non-handicapped.

Nothing in this section shall be interpreted to prevent a child's parents and physician from discontinuing the use of life-support systems or nonpalliative treatment for a child who is terminally ill where, in the opinion of the child's physician exercising competent medical judgment, the child has no reasonable chance of recovery from said terminal illness despite every appropriate medical treatment to correct such condition.

#### RHODE ISLAND GENERAL LAWS §40-11-3.1. Duty to Report Death of Child Due to Child Neglect or Abuse

- Any person required to report under the provisions of this title, who has reasonable cause to know or suspect that child has died as a result of child neglect or abuse, shall immediately transfer such information to the Department (DCF) or its agent who shall cause such report to be investigated immediately. Upon receipt of such a report, the Department (DCF) or its agent shall immediately transfer such information to the local law enforcement agency of the state police as well as to the office of the medical examiner. The office of the medical examiner shall investigate the report and communicate its preliminary findings, orally, within seventy two (72) hours, and in writing within seven (7) working days to the appropriate law enforcement agency, to the Department (DCF) and if the person who made such a report is an employee or a member of the staff of a hospital, to the hospital. The office of the medical examiner shall also communicate its final findings and conclusions, with the basis therefore, to the same parties within sixty (60) days.

#### RHODE ISLAND GENERAL LAWS §40-11-4. Immunity from Liability

- Any person participating in good faith in making a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might otherwise be

incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report

RHODE ISLAND GENERAL LAWS §40-11-6.1. Penalty for Failure to Report

- Any person, official, physician or institution required by this chapter to report known or suspected child neglect or abuse, or to performs any other act who knowingly fails to do so or who knowingly prevents any person acting reasonably from doing so, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for not more than one (1) year, or both. In addition, any person, official, physician or institution who knowingly fails to perform any act required by this chapter, or who knowingly prevents another person from performing a required act shall be civilly liable for the damages proximately caused by such failure.

**Rhode Island General Laws on Elder Abuse, Neglect, Exploitation, and Abandonment** **Section 0110**

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Orig. 3/2004

In Accordance with Rhode Island General Laws § 42-66-8, any person who has reasonable cause to believe that any person sixty (60) years of age or older has been abused, neglected, exploited, or abandoned shall make an immediate report to the Department of Elderly Affairs. All Department of Mental Health, Retardation and Hospitals personnel are required to report suspected cases of elder abuse, neglect, exploitation or abandonment to 1-401-462-0555.

Rhode Island General Laws § 42-66-11, provides that any person participating in good faith in making a report pursuant to § 42-66-8, excluding any perpetrator or conspirator of those acts, has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed.

**Definitions** **0110.05**

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Orig. 3/2004

*Abandonment* means the desertion of an elderly person by a caretaker or other person with the duty of care, or the withdrawal of necessary assistance owed an elderly person by a caretaker or other person with an obligation to provide services.

*Abuse* means the subjection of an elderly person to a willful infliction of physical pain, or willful deprivation of services by a caretaker of other person with a duty of care for the elderly person. Abuse also includes neglect, abandonment, and exploitation.

*Exploitation* means an act or process of taking pecuniary advantage of an elderly person by use of undue influence, harassment, duress, deception, false representation or false pretenses.

*Neglect* means the willful refusal to provide services necessary to maintain physical and mental health on the part of a caretaker or other person with a duty of care.

**Rhode Island General Laws on Penalties for Abuse of Persons with  
Developmental Disabilities** **Section 0120**

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Orig. 3/2004

In accordance with Rhode Island General Laws § 40.1-27-2 any person within the scope of their employment at a program or in their professional capacity who has knowledge of or reasonable cause to believe that a participant in a program has been abused, mistreated or neglected shall make, within twenty-four (24) hours or by the end of the next business day, a written report to the director of the Department of Mental Health, Retardation, and Hospitals or his or her designee. The report shall contain:

- (1) the name, address, telephone number, occupation, and employer's address and the phone number of the person reporting;
- (2) the name and address of the participant who is believed to be the victim of the abuse, mistreatment, or neglect;
- (3) the details, observations, and beliefs concerning the incident(s);
- (4) any statements regarding the incident made by the participant and to whom they were made;
- (5) the date, time, and place of the incident;
- (6) the name of any individual(s) believed to have knowledge of the incident; and
- (7) the name of any individual(s) believed to have been responsible for the incident.

**Definitions**

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**0120.05**

Orig. 3/2004

*Abuse* means:

1. any assault as defined in chapter 5 of title 11;
2. any assault as defined in chapter 37 of title 11;
3. any offense under chapter 10 of title 11;
4. any conduct which harms or is likely to physically harm the participant except where the conduct is a part of the care and treatment, and in furtherance of the health and safety of the participant; or
5. intentionally engaging in a pattern of harassing conduct which is intended to cause psychological harm to the participant; provided, however, nothing herein shall be construed to prohibit the prosecution of any violator of this section under any other section

*Mistreatment* means the inappropriate use of medications, isolation, or use of physical or chemical restraints as punishment, for staff convenience, as a substitute for treatment or care, in conflict with a physician's order, or in quantities which inhibit effective care or treatment, which harms or is likely to harm the participant.

*Neglect* means the failure to provide treatment, care, goods, and services necessary to maintain the health and safety of the participant, or the failure to carry out a plan of treatment or care prescribed by a physician of the participant, provided, however, no person shall be considered to be neglected for the sole reason that he or she relies or is being furnished treatment in accordance with the tenets and teachings of a well organized church or denomination by a duly accredited practitioner thereof.

*Participant* means any person with developmental disabilities who participates in a program.

*Program* means any day treatment program, habilitation program, rehabilitation program, or other program for persons with developmental disabilities licensed by the Department of Mental Health, Retardation, and Hospitals pursuant to § 40.1-24-1 et seq.

**Duties of the Director of the Department of Mental Health, Retardation and Hospitals** **0120.10**

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Orig. 3/2004

Rhode Island General Laws § 40.1-27-3. The Director of the Department of Mental Health, Retardation, and Hospitals or his or her designee shall:

1. Notify the attorney general or his or her designee, the chair of the program's human rights committee forthwith upon receipt of an oral or written report made pursuant to § 40.1-27-2;
2. Investigate and evaluate or cause to be investigated and evaluated the information reported in those reports. The investigation and evaluation shall be made within twenty-four (24) hours if the Director has reasonable cause to believe the participant's health or safety is in immediate danger of further abuse or neglect and within seven (7) days for all other reports. The investigations shall include a visit to the program, an interview with the participant allegedly abused, mistreated or neglected, an interview with all witnesses to the alleged incident, a determination of the nature, extent, and cause or causes of the injuries, the identity of the person or persons responsible therefore, all other pertinent facts and recommendations to prevent further abuse, mistreatment or neglect of the participant or other program participants. The determination shall be in writing;
3. Evaluate the environment in the program named in the report and make a written determination of the risk of physical or emotional injury to any other participants in the same program;

4. forward to the attorney general and the chair of the program's human rights committee within fifteen (15) days after a case is initially reported pursuant to § 40.1-27-2 a summary of the findings and recommendations on each case;
5. If the Director has reasonable cause to believe that a participant had died as a result of abuse, mistreatment, or neglect, immediately report the death to the attorney general and to the office of the medical examiner. The office of the medical examiner shall investigate the report and communicate its preliminary findings, orally within seventy-two (72) hours, and in writing within seven (7) working days to the attorney general and to the Director. The office of medical examiner shall also communicate its final findings and conclusions, with the basis therefore to the same parties within sixty (60) days;
6. Promulgate such regulations as may be necessary to implement the provisions of this chapter; and
7. Maintain a file of the written reports prepared pursuant to this chapter. The written reports shall be confidential, but shall be released to the attorney general, to a court of competent jurisdiction, and upon written request to the participant, his or her counsel, the reporting person or agency, the appropriate review board or a social worker assigned to the case.

**Penalties for Failure to Report**

**0120.15**

Orig. 3/2004

Rhode Island General Laws § 40.1-27-4, (a) any person so required to make a report as provided by § 40.1-27-2 and who fails to do so, shall be guilty of a misdemeanor and be punished by a fine of not more than five hundred dollars (\$500).

(b) any person who alters or changes without authorization or destroys or renders unavailable a report made by another pursuant to § 40.1-27-2 shall be guilty of a misdemeanor and be fined not more than five hundred dollars (\$500).

(c) any person who shall attempt, with or without threats or promises of benefit, to induce another to fail to report an incident of abuse, mistreatment, or neglect shall be guilty of a misdemeanor and be punished by a fine of not more than one thousand dollars (\$1000) or imprisoned for more than one year, or both.

(d) any person who fails to report an incident of abuse, mistreatment, or neglect after another has indicated a reliance on the reporting pursuant to § 40.1-27-2 shall be guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1000) or imprisoned for more than one year, or both.

**Physician's Report of Examination – Duty of Program****0120.20**Orig. 3/2004

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Rhode Island General Laws §40.1-27-5, whenever a program shall receive a report by a person other than a physician that a participant has been harmed as a result of abuse, neglect, or mistreatment, the program shall have the patient examined by a licensed physician. It shall be mandatory for the physician to make a preliminary report of his or her findings to the Director and to the program within forty-eight (48) hours after his or her examination, and a written report within five (5) days after his or her examination.

**Immunity from Liability****0120.25**Orig. 3/2004

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Rhode Island General Laws § 40.1-27-6, any person who, in good faith, makes an oral or written report pursuant to § 40.1-27-2, excluding any perpetrator or conspirator of the acts described in § 40.1-27-1, shall have immunity from any liability, civil or criminal, that might be incurred as a result of having made such a report. No program shall discharge, or in any manner discriminate or retaliate against any person who, in good faith, makes a report, testifies, or is about to testify in any proceeding about the abuse, mistreatment, or neglect of participants.

**Nonretaliation or discrimination****0120.30**Orig. 3/2004

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Rhode Island General Laws § 40.1-27-7, any program which discharges, discriminates, or retaliates against a person who makes a report, testifies, or is about to testify in any proceeding, shall be liable to the person so discharged, discriminated, or retaliated against, for treble damages, costs, and attorney's fees.

**Abrogation of Privilege****0120.35**Orig. 3/2004

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Rhode Island General Laws § 40.1-27-8, any privilege established by chapter 37.3 of title 5 or any professional code, relating to the exclusion of confidential communications and/or the competency of witnesses, may not be invoked in any civil or criminal action arising out of a report made pursuant to this chapter or the failure to make a report as required by this chapter.

**Notice – Posting Provisions****0120.40**Orig. 3/2004

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Rhode Island General Laws § 40.1-27-9, a notice of the reporting requirements imposed under this chapter, and of the penalty imposed for failure to report, shall be conspicuously posted on each floor of any program required to be licensed under the provisions of § 40.1-24-1 et seq.

**Penalties for Acts of Abuse or Neglect**

**0120.45**

Orig. 3/2004

Rhode Island General Laws § 40.1-27-10, (a) any person who knowingly abuses, mistreats, or neglects a participant or commits any acts of abuse, mistreatment, or neglect as those terms are defined by § 40.1-27-1(a)(1), (2), (3), or (4), shall be fined not more than three thousand dollars (\$3000) or imprisoned not more than three (3) years, or both.

(b) any person who commits any act of abuse as the term is defined by § 40.1-27-1(a)(5) shall be fined not more than five hundred dollars (\$500) or imprisoned not more than one year, or both.

**Civil Rights Compliance**

**Section 0130**

**Statement of Principle**

**0130.05**

Orig. 3/2004

The Rhode Island Department of Mental Health, Retardation and Hospitals is committed to the impartial and equitable treatment of all individuals in the administration of its programs and in the provision of its services.

**Nondiscrimination Notice**

**0130.05.05**

Orig. 3/2004

In compliance with:

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964  
[42 U.S.C. 2000D Et. Seq.] AND  
Regulations Codified at CFR Part 80

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972  
[42 U.S.C. 2000D Et. Seq.]; AND  
Regulations Codified at CFR Part 86

SECTION 504 OF THE REHABILITATION ACT OF 1973  
As Amended [29 U.S.C. 794]; AND  
Regulations Codified at 45 CFR Part 84

SECTIONS 704 AND 855 OF THE PUBLIC HEALTH SERVICE ACT  
[42 U.S.C. 292D AND 298b-2]; AND  
Regulations Codified at 45 CFR Part 83

THE AGE DISCRIMINATION ACT OF 1975  
As Amended [42 U.S.C. 6101 Et. Seq.]

BLOCK GRANT PROVISIONS OF THE OMNIBUS BUDGET

RECONDILIATION ACT OF 1981

[42 U.S.C. 300W-7, 300X-7, 300Y-9, 708, 8625, 9906]

THE CODE OF FAIR PRACTICES

[R.I. Executive Order 85-11, May 30, 1985]

And in conformity with regulations established under these acts and orders.

The Rhode Island Department of Mental Health, Retardation and Hospitals does not discriminate on the basis of race, color, sex, religion, national origin, age, mental or physical handicap, in admission and access to, or treatment in its facilities and programs.

For further information about the regulations and the grievance procedure for resolving discrimination complaints contact: Department of Mental Health, Retardation and Hospitals, Office of the Director, 14 Harrington Road, Barry Hall, Cranston, Rhode Island, 02920, 401.462.3201, or TDD 401.462.6087.