

TITLE 210 - EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

CHAPTER 10 – EOHHS GENERAL PROVISIONS

SUBCHAPTER 05 – CONSUMER RIGHTS, RESPONSIBILITIES, AND PROTECTIONS

Part 4 – Access to Public Records

4.1 LEGAL Authority

This Regulation is promulgated pursuant to R.I. Gen. Laws § 38-2-1 *et seq.* (Access to Public Records) and R.I. Gen. Laws § 42-35-2(a) (Administrative Procedures).

4.2 Definitions

A. As used herein, the following terms shall be construed as follows:

1. “Executive Office of Health and Human Services” or “EOHHS” means the state agency established in 2006 under the provisions of R.I. Gen. Laws Chapter 42-7.2 *et seq.* within the executive branch of state government and serves as the principal agency for the purposes of managing the Departments of Children, Youth, and Families (DCYF); Health (DOH); Human Services (DHS); and Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH). The EOHHS is designated as the “single state agency,” authorized under Title XIX of the U.S. Social Security Act (42 U.S.C. § 1396a *et seq.*) and, as such, is legally responsible for the program / fiscal management and administration of the Medicaid Program.
2. “Public record” or “Public records” means 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 officials 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.

4.3 Purpose

A. The purpose of this Regulation is:

1. To establish consistency with implementation of R.I. Gen. Laws § 38-2-1 *et seq.* and R.I. Gen. Laws § 42-35-2(a) relating to access to public records maintained by the Department of Human Services; Department of Children, Youth and Families; Department of Behavioral Healthcare, Developmental Disabilities and Hospitals; Division of Elderly Affairs; Division of Veteran's Affairs; and the Department of Health as detailed in the current Rules and Regulations Pertaining to Access to Public Records of the Department of Health;
2. To facilitate open and transparent government at the Department to the greatest extent possible, while balancing privacy rights of the public, employees and vendors of the State; and
3. To recognize the public's right to access public records while balancing an individual's right to be protected from an unwarranted invasion of personal privacy.
4. To provide the public with rules and procedures for accessing public records maintained by each of the State agencies set forth in § 4.2(A)(1) of this Part.

4.4 Policy

The Executive Office of Health and Human Services (EOHHS) recognizes both the public's right to access public records and the individual's right to dignity and privacy. It is the EOHHS policy to facilitate public access to all public records that may be disclosed in accordance with R.I. Gen. Laws § 38-2-1 *et seq.* It is also the policy of the EOHHS to ensure all public records under its jurisdiction be available for public inspection and reproduction consistent with all applicable state and/or federal law, unless otherwise prohibited by a court of competent jurisdiction.

4.5 Procedure for Requesting Public Records

4.5.1 Public Records

- A. All records defined as public record in R.I. Gen. Laws Chapter 38-2 shall be open for public inspection during normal business hours of the Departments.
- B. All requests for records shall be in writing unless readily available, or available under the Administrative Procedures Act, or prepared for the public. A written request to inspect or copy public records should be sent to the Division of Legal Services at the Department. Written requests may be mailed, hand delivered, e-mailed to the Department, or through the Access to Public Records page of the State of Rhode Island's Transparency Portal or another internet portal approved by the Department or sent via facsimile. Hand delivered requests may be made during the Department's regular business hours. It is suggested, but not required,

that requests be submitted on the form provided by the Department. Forms adopted by EOHHS to request to inspect and/or reproduce public records can be obtained at www.eohhs.ri.gov. In order to assure that the Department is able to respond to the request as efficiently and as completely as possible, the request should identify and describe the records being requested with as much specificity as possible. A written record of all requests will be maintained within each Division of the Department.

- C. If the description of records sought in the request is not sufficient to allow the specific Department to identify and locate the requested records, the Department will notify the requestor that additional information is required. Nothing herein shall be construed as requiring the Department to reorganize, consolidate, or compile data not maintained by the Department in the form requested at the time the request to inspect such record is 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.
- D. Any person seeking copies of public records may elect to obtain them in any and all media in which the Department is capable of providing them. If the Department maintains its records in a computer storage system, the Department shall provide any data properly identified in a printout or other reasonable format, as requested.
- E. Nothing in this section shall be construed as requiring the Department 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.
- F. No records shall be withheld based on the purpose for which the Records are sought, nor shall the Department require, as a condition of fulfilling a Request, that a Requestor provide a reason for the Request or provide personally identifiable information about him/herself.
- G. At the election of the person seeking records, the Department shall provide copies of the records electronically, by facsimile, or by mail in accordance with the person's choice, unless complying with that preference would be unduly burdensome due to the volume of records requested or the costs that would be incurred. The person requesting the records shall be responsible for the actual cost of delivery, if any.

4.5.2 Official Publications

Official publications, which the Department prepares in the discharge of duty to inform the public on matters of public interest, shall be furnished free of charge when available.

4.5.3 Copy of Rules and Regulations

The Department will supply one paper copy of its rules and regulations, on a particular subject, to an individual requesting the same, free of charge. Rules and regulations of the Department may also be available online on the Department's website and the Office of the Secretary of State website.

4.5.4 FEE FOR RECORDS

The Departments may charge a fee of fifteen cents (\$.15) per page for documents copied on common letter or legal size paper. The Department will charge the reasonable actual cost for providing electronic records. A reasonable charge may be made for the search or retrieval of documents. Hourly costs for search and retrieval shall not exceed fifteen dollars (\$15.00) per hour and no costs shall be charged for the first hour of the search and retrieval.

4.5.5 PAYMENT IN ADVANCE

All payments for copies shall be made in advance of or at the time of delivery or inspection of the requested documents. The Department shall inform the requesting person at the time a request for records is made, or as soon thereafter as possible, the approximate cost that will be incurred for the requested records, and the actual cost will be collected prior to delivery of the requested records. The Department may require the payment of the approximate costs prior to a search and/or retrieval to ensure that unnecessary costs are not incurred by the Department when the requesting party decides after the search and/or retrieval not to obtain the requested records.

4.5.6 Granting / Denying Requests

- A. A request for records shall be granted if the above procedure has been followed and records sought are not specifically exempt from public disclosure. Any denial of the right to inspect or copy records shall be made in writing, giving the specific reasons for the denial, within ten (10) business days of such request.
 - 1. For the purpose of computing time, the date that the state agency receives the records request is not counted in the total of ten (10) business days.
 - 2. Any reasonably segregable portion of a public record excluded by R.I. Gen. Laws § 38-2-2(4) shall be available for public inspection after the deletion of the information which is the basis of the exclusion. If an entire document or record is deemed non-public, the Department shall state in writing that no portion of the document or record contains reasonable segregable information that is releasable.
- B. In the case of denial, the requestor may petition the Secretary for a review of the denial. The Secretary shall render her/his decision within ten (10) business days after submission of the review petition. If the Secretary also denies the request, or refuses to review the petition, or goes beyond the ten (10) business day limit, the person seeking the record may institute proceedings for injunctive or

declaratory relief in the Superior Court or file a complaint with the Department of the Attorney General.

- C. The inspection of public records must be accomplished in a manner which will provide for general supervision by authorized Departmental staff. This is necessary to prevent the misplacement or unauthorized removal of records or any other action which may impair the integrity of the public record.
- D. Personnel in charge of the Division having possession of the public record requested shall have overall responsibility for the security of the public record. However, the individual in charge of that Division may designate a staff member(s) to coordinate the functions and responsibilities related to the copying and inspection of public records.
- E. All personnel responsible for responding to requests for access to public records shall be made aware by their supervisors, of the provisions of this regulation and the procedures to be followed when an access to public records request is made. Department personnel having any questions regarding the procedures to be followed should direct inquiries to:
 - 1. The person in charge of the Division or unit within the Department responsible for the activity/function to which the public record being requested relates; or
 - 2. In the event that the public record cannot be readily categorized as falling under the responsibility of a specific Division or unit within the Department, the request should be directed to the Division of Legal Services which will serve as a resource in matters relating to the public's access to public records.

4.5.7 Requests for Extension of Time to Respond

- A. There may be instances in which it takes the Department longer than ten (10) business days to search for and retrieve public records. In such cases, and for good cause shown, the ten (10) day time period to respond to the request may be extended an additional twenty (20) business days.
- B. The Department shall provide written notice to the requestor that additional time is necessary to search for and retrieve responsive records and that the time period is being extended an additional twenty (20) days.

4.5.8 Non-Public records

- A. Evidence submitted, and accepted, on a confidential basis in a pending department legal action shall not be available for public inspection. If a record contains both public and non-public information, the public portion will be available for inspection unless it cannot reasonably be segregated from the rest of such record.

- B. The record shall, at all reasonable times, be available for inspection by the parties. Confidential, proprietary, or trade secret records, including any records qualifying as a non-public record under R.I. Gen. Laws § 38-2-2(4) shall, upon motion of a party and for good cause shown, be received at a closed hearing and not be released for public scrutiny.
- C. Any such evidence received on a confidential basis shall not be subject to disclosure. The record of every contested case shall include the hearing notice, all pleadings, motions, all rulings, exhibits, evidence considered, statements of matters officially noted, proposed findings of fact and law and exceptions claimed thereto, decision and/or order, proposed decision and/or order.

4.6 Severability

If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the 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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