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**COMMENTS ON PROPOSED REGULATIONS OF THE GOVERNOR'S COMMISSION
ON DISABILITIES RELATING TO ACCESS TO OPEN MEETINGS
[525-RICR-10-00-1]
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The ACLU of Rhode Island appreciates the opportunity to comment on these proposed regulations amending current Commission rules governing the participation of public officials with disabilities in public meetings.

Presently, the Open Meetings Act allows people with disabilities who are serving on public bodies to obtain a waiver from the Commission to participate in meetings remotely under certain limited circumstances. This proposal makes two major changes to the Commission's regulations governing this waiver allowance. While the ACLU supports one of the proposed revisions as a helpful step in eliminating potentially unnecessary burdens on qualified individuals to obtain a waiver, we have numerous concerns about the second amendment and urge that it be stricken.

The first amendment (found in Section 1.4(B)) streamlines the procedures for seeking a waiver by allowing a public official to certify both that they have a qualifying disability under the law and their reasons for not being able to attend meetings in person. By eliminating the need to provide medical documentation and thereby place the Commission in the role of evaluating that sensitive material, we believe this amendment furthers the goal of the statute and better protects the legitimate privacy interests of public body members in their detailed medical information.

The second major change in the regulations adds a new section, §1.4.1(E), that significantly expands the circumstances under which a public body member can qualify for a waiver. Under this provision, a waiver from in-person attendance at public meetings could be granted at the

discretion of Commission staff if the public official (1) has a medical condition that, according to the CDC, makes them vulnerable to serious illness if they were to contract Covid-19 or (2) is taking a medication that has the potential to weaken their immune system. The ACLU of Rhode Island strongly opposes this provision as we believe it is in conflict with the OMA's standards and exponentially expands the situations where a public official could avoid their general obligation to participate in meetings in public.

As a matter of policy, we have argued during the post-lockdown Covid regime that there is a strong public benefit to having public bodies meet in person, while at the same time encouraging greater remote access to meetings *by the public*. Accountability and transparency are enhanced when public bodies meet in person, allowing the public and the media to see the interaction among the public body members and to follow up with members on matters that get discussed – things that cannot happen when members of the public bodies are insulated from direct contact with the public. Section 1.4.1(E) would undermine this accountability goal by potentially drastically expanding the ability of public officials to meet remotely.¹

Just as importantly, we do not believe this expansion is authorized by statute. Under the OMA, a member of a public body is entitled to a waiver from in-person attendance at a meeting only if (1) they have a disability as defined in Chapter 42-87; (2) the disability prevents them from being physically present; and (3) remote participation is the only reasonable accommodation. R.I.G.L. §42-46-5(b)(4). However, Section 1.4.1(E) would allow the Commission to grant waivers

¹ It is worth noting that members of the public with these same medical conditions would not necessarily have the same opportunity to watch and participate remotely, as there is no obligation on public bodies to accommodate *the public* with hybrid meetings. Instead, it is presently up to each public body to decide whether to livestream meetings to allow the public to watch, much less participate in, proceedings. We understand that ensuring such an accommodation for the public is beyond the Commission's scope to address, but it highlights the additional unfairness that would be generated by adopting this proposal.

to public officials who do not necessarily meet any of those standards, much less all three of them as required by the statute.

As for medical conditions that make a person with Covid-19 vulnerable to serious illness, the CDC guidelines are virtually limitless.² Among the conditions listed are the presence *or a history* of any type of cancer; moderate asthma; type 1 or type 2 diabetes; ADHD; high blood pressure; obesity; and mood disorders, including depression. Similarly, innumerable medications have the potential to weaken a person’s immune system. They include all corticosteroids and other drugs that can be used to treat such medical conditions as allergies, arthritis, and inflammatory bowel disease.³

Having one of these medical conditions or taking one of these medications simply does not necessarily mean that the person meets the statutory standard of being a person with a “disability” as defined by law, nor does it mean that there are no other reasonable accommodations available that would still allow the official to meet in person with the rest of the public body. These expanded standards for qualifying for a waiver would thus allow many more public officials to meet remotely than are currently authorized to do so, and would undercut the benefit of having public officials meet and deliberate in person.⁴

Ultimately, there is no need to include a special provision for these individuals: either their condition or use of medication meets the current statutory standard for qualifying for a waiver, making this section redundant, or it does not, in which case the proposal exceeds the Commission’s statutory authority for granting waivers.

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

³ <https://www.webmd.com/cold-and-flu/ss/slideshow-how-you-suppress-immune-system>

⁴ Depending on its implementation, the standardless discretion given Commission staff in deciding whether to grant waivers could also potentially be somewhat problematic from a due process standpoint.

For all these reasons, and because of its adverse impact on the OMA's goal of having "public business be performed in an open and public manner,"⁵ the ACLU calls on the Commission to withdraw its proposal to add Section 1.4.1(E) to these open meetings regulations.

Thank you for considering our views. If the suggestions we have made are not adopted, we request, pursuant to R.I.G.L. §42-35-2.6, a statement of the reasons for not accepting these arguments.

Submitted by: Steven Brown, Executive Director

⁵ R.I.G.L. § 42-46-1.