

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

AGENCY: Governor's Commission on Disabilities

RULE IDENTIFIER: Chapter H

REGULATION TITLE: Nondiscriminatory Eligibility Criteria for Services

RULEMAKING ACTION: Direct Final

Direct Final: If no formal objection is received on or before **April 27, 2018** the Governor's Commission on Disabilities will file the adoption without opportunity for public comment.

TYPE OF FILING: Repeal

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date 03/27/2018 and End of comment period 04/27/2018.

SUMMARY OF PROPOSED RULE: This regulation is being repealed and replaced by 525-RICR-10-00-02 Inclusion in State Government Employment, Programs and Activities as part of consolidation and codification of Commission regulations regarding the coordination of state government compliance with state and federal disability rights laws and regulations.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **April 27, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: Governor's Commission on Disabilities
John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049

Email Address: bob.cooper@gcd.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address: Governor's Commission on Disabilities
John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049

FOR FURTHER INFORMATION CONTACT:

ATTN: Bob Cooper, Executive Secretary Governor's Commission on Disabilities
John O. Pastore Center, 41 Cherry Dale Court
Cranston, RI 02920-3049
(401) 462-0100 or bob.cooper@gcd.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

The fiscal impact to both the state and city or town is based on the 2010 US Department of Justice: Disability Rights Section of the Civil Rights Division's Final Regulatory Impact Analysis of the Final Revised Regulations Implementing Titles II and III of the ADA, including Revised ADA Standards for Accessible Design Final Report.

The Final RIA also acknowledges that the final rules will undoubtedly confer substantial and important benefits that cannot be readily quantified or monetized. In this sense, the

regulatory assessment must be considered conservative since it almost certainly understates the overall value of the final rules to society. Few would doubt, for example, that the psychological and social impacts of the ability of persons with disabilities to fully participate in public and commercial activities without fear of discrimination, embarrassment, segregation, or unequal access have significant value. Society generally will also experience benefits from the final rules that are difficult to monetize, including: reduced administrative costs (from harmonization of the final rules with model codes); increased worker productivity (due to greater workplace accessibility); improved convenience for persons without disabilities (such as larger bathroom stalls used by parents with small children); and, heightened option and existence values. In addition to unquantifiable benefits, there may be negative consequences and costs as well, such as costs if an entity defers or foregoes alterations, potential loss of productive space during additional required modifications to an existing facility, or possible reduction in facility value and losses to some individuals without disabilities due to the new accessibility requirements.

Small Businesses must comply with this regulation. Any person or entity doing business in the state, any person or entity regulated, by the state or having received financial assistance from the state, or under any program or activity conducted by the state, its agents or any entity doing business with the state. RI Gen. Laws § 42-87-2. Discrimination prohibited.

Authority for This Rulemaking: R.I. Gen. Laws § 42-51-6(3) Governor's Commission on Disabilities - Duties.

Regulatory Findings:

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

The Proposed Repeal:

The Governor's Commission on Disabilities proposes to repeal Chapter H:



RHODE ISLAND AND PROVIDENCE PLANTATIONS
Executive Department
**GOVERNOR'S COMMISSION ON
DISABILITIES**

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RULES AND REGULATIONS PERTAINING TO

Chapter H Nondiscriminatory Eligibility Criteria for Services

Rule proposed on December 11, 1995
Advertised on January 15, 1996
Adopted on March 25, 1996
Effective on March 27, 1996
Technical Revisions on October 10, 1997
Advertised October 21, 1999
Public Hearing November 22, 1999
Amendment adopted November 22, 1999
Effective December 27, 1999
Technical Amendments Adopted September 13, 2003
Amendments proposed on August 11, 2009
Public Hearing on September 14, 2009
Adopted on September 21, 2009
Effective on October 28, 2009

TO BE REPEALED

COMPILER'S NOTES:

Link to an endnote are ^{red superscript} and web link are [blue](#) as below, move **⌨** to colored text and click to open.

All forms references are available on line at www.disabilities.ri.gov

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I. STATUTORY AUTHORITY

RI GL 42-51-6(3) Governor's Commission on Disabilities – Duties¹.

II. DEFINITIONS

- A. "The Commission" shall mean the [Governor's Commission on Disabilities](#).
- B. "State agency"² is defined in RI General Law 42-51-9 (3).

III. STATE AGENCY RESPONSIBILITY

- A. State Agencies shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity. Such exclusionary criteria may be utilized if it can be shown to be necessary for the provisions of the service, program, or activity being offered³.
- B. All state agencies shall conduct a self-evaluation of current eligibility criteria to determine whether those criteria screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity.

IV. COMMISSION REVIEW AND APPROVAL

A. State agencies shall submit a request to the Governor's Commission on Disabilities⁴, describing any eligibility criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities that the agency:

- 1. Believes are necessary for the provisions of the service, program or activity being offered; and
- 2. Would like to retain, impose or apply.

B The Commission's Hearing Board⁵ shall conduct a public hearing on a state agency's request to retain, impose or apply such criteria. A representative of the department proposing the criteria must attend the public hearing and be prepared to respond to questions from the board members. The state agency must submit, fifteen (15) business days in advance of the hearing:

- 1. A detailed description of all programs, activities, and services affected by the proposed criteria;
- 2. A description of each criterion that may screen out or tend to screen out individuals or classes of individuals with disabilities including the reason the criteria must be imposed or applied;

C. The Commission shall not approve a state agency's request to retain, impose or apply such criteria, unless:

- 1. The requested information (in item 2 above) is furnished;
- 2. Such criteria can be shown to be necessary for the provisions of the service, program, or activity being offered; and

3. The nature of the program, service, or activity would be fundamentally altered without the imposition or application of the proposed eligibility criteria.

V. FORMS

The Commission's staff shall prepare and revise any forms, as necessary.

VI. 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 RIGL 42-51-6. Governor's Commission on Disabilities – Duties.

It shall be the duty of the commission to work in cooperation with the National Council on Disability and other interested federal, state, and local agencies, organizations, and employers in: ...

(3) Coordinating compliance with federal and state laws protecting the rights of individuals with disabilities by state agencies;

RIGL 42-51-9(4) Governor's Commission on Disabilities – Definitions.

(4) "Coordinating compliance" means the authority to:

(i) Issue guidelines, directives, or instructions that are necessary to effectuate compliance with federal and state laws protecting the rights of individuals with disabilities;

(ii) Establish a grievance procedure to promptly and equitably resolve complaints of noncompliance with federal and state laws protecting the rights of individuals with disabilities involving state agencies, including the power to investigate possible discrimination and eliminate unlawful practices by informal methods of conference, conciliation, and persuasion;

(iii) Initiate complaints against any state agency that willfully fails to comply with federal and state laws protecting the rights of individuals with disabilities to the appropriate state or federal agency; and

(iv) Develop, make periodic revisions to, and oversee the implementation of a transition plan for the removal of environmental and communication barriers in state-owned facilities.

² RIGL 42-51-9(3) Governor's Commission on Disabilities – Definitions. "State agency" means any department, division, agency, commission, board, office, bureau, council or authority, either branch of the Rhode Island general assembly or any agency or any committee thereof, or any other agency that is in any branch of Rhode Island state government and which exercises governmental functions.

³ 28 CFR 35.130 (b)(8)

Governor's Commission on Disabilities
John O. Pastore Center- 41 Cherry Dale Court
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<http://www.disabilities.ri.gov> (website)

⁵ 42-51-6.1. Hearing boards.

(a) The commission's chairperson shall appoint five (5) commissioners as the hearing board for the purpose of conducting hearings and rendering decisions on matters relating to the provisions of chapter 87 of this title and 37-8-15.1 and 42-46-13 within the jurisdiction of the commission.

(b) Three (3) commissioners shall constitute a quorum of a hearing board.

(c) The hearing board is empowered to:

(1) Receive, investigate, and act upon charges of unlawful practices within its jurisdiction; and

(2) In connection with any investigation or hearing held on any matter within its jurisdiction to hold hearings, administer oaths, take the testimony of any person under oath, and to require the production for examination of any books and papers relating to any matter under investigation or in question before the hearing board.