

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

AGENCY: Governor's Commission on Disabilities

RULE IDENTIFIER: Chapter M

REGULATION TITLE: Assuring that people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to the Citizens of this State

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SUMMARY OF PROPOSED RULE: This regulation is being repealed and replaced by 525-RICR-10-00-04 Investigation and Hearing of Complaints as part of consolidation and codification of Commission regulations regarding the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 M:



RHODE ISLAND AND PROVIDENCE PLANTATIONS
Executive Department
**GOVERNOR'S COMMISSION ON
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RULES AND REGULATIONS PERTAINING TO

Chapter M Assuring that People with Disabilities are Afforded the Opportunities to Exercise All of the Rights and Responsibilities Accorded to Citizens of this State

Advertised October 21, 1999
Public Hearing November 22, 1999
Amendment adopted November 22, 1999
Effective December 27, 1999
Technical Amendments Adopted September 15, 2003
Technical Amendments proposed August 11, 2009
Technical Amendments adopted on September 21, 2009
Effective on October 28, 2009

Compilers notes:

Red or Blue text indicates a link to an endnote or web link, move mouse 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(1) Governor's Commission on Disabilities – Duties¹ and RIGL 42-51-9 (6) -Definitions²

II. DEFINITIONS

- A. “The Commission” shall mean the [Governor's Commission on Disabilities](#)³.
- B. “Commission's investigator” means the Commission Chairperson, Executive Secretary or the designated staff and / or Commissioner(s)⁴ assigned to conduct the investigation and persuasion of the alleged action or pending action.
- C. “Non-state agency” means any public and private agencies, businesses, and citizens other than 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.
- D. “Respondent” means the entity(ies) alleged responsible for denying people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state.

III. INVESTIGATION AND PERSUASION

- A. The Commission's investigator shall investigate alleged action(s) or pending action(s), by a non-state agency⁵ that would deny or is denying people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state.
- B. The Commission's investigator shall attempt to establish a prompt and equitable resolution of this issue through informal methods of conference, conciliation, and persuasion.

IV. THE COMMISSION AS AGGRIEVED PARTY AND/OR PRESENTS TESTIMONY BEFORE OTHER REGULATORY BODIES

- A. The Commission was created by the RI General Assembly and assigned the duties of:
1. Promoting on behalf of the people with disabilities and assuring, on behalf of the state, that people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state⁶; and
 2. Arousing community interest in the concerns of people with disabilities through the utilization of whatever community and state resources the commission may deem necessary to accomplish the maximum in independent living and human development⁷.
- B. The Commission and or its Executive Committee may authorize and designate the Commission Chairperson, Executive Secretary, staff and / or Commission member(s) to represent the Commission as an aggrieved party when a matter pending before a regulatory body might deny people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state.

- C. The Commission's (or Executive Committee's) authorization may be for:
1. A specific matter pending before a specific regulatory body; or
 2. A blanket authorization encompassing a specific set of circumstances whenever those are pending before the regulatory body of competent jurisdiction.

V. PROCEDURE FOR INITIATING LEGAL ACTION

A. The Commission's investigator shall refer a charge to the Commission, when:

1. The investigator has probable cause to believe that the respondent has taken or plans to take actions that are denying or will deny people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state; and
2. Attempts at persuasion have not provided the restoration of the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state by people with disabilities.

B. The charge shall state:

1. The nature of the actions taken or planned that are alleged to deny or will deny people with disabilities the opportunities to exercise all of the legal rights and responsibilities accorded to citizens of this state;
2. The results of the investigation of those actions;
3. A description of the efforts taken to prevent those actions; and
4. All responses from the respondents explaining their actions and any steps taken or proposed to overcome the affects of those actions.

C. The respondent shall be sent a copy of the charge and invited to make a presentation at the Commission's hearing. The charge must be mailed to the respondent and to each Commissioner at least fifteen (15) business days prior to the hearing, and a notice of the hearing posted in accordance with the Open Meetings law.

D. The Commission shall convene a hearing in accordance with RIGL 42-35, When a quorum is present:

1. The charge shall be read;
2. The respondent's representative given an opportunity to respond to the charge;
3. The Commissioners may question both the respondent's representative and the Commission's investigator.

E. The Commission may, at the completion of testimony at the hearing, by majority vote of the members present, initiate a complaint, on behalf of the state the against respondent if the Commission finds:

1. Probable cause that a violation of state or federal laws protecting the rights of an individual(s) with disabilities has occurred or will be the result of pending action and
2. The violation has not been corrected nor has the respondent presented a credible plan to resolve the charge.

F. The power of the Commission's Executive Committee to develop policy between meetings does not extend to the initiation of complaints against respondents.

VI. FORMS

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

VII. ENDNOTES

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

¹ 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:

(1) Promoting on behalf of the people with disabilities and assuring, on behalf of the state, that people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state;

² RIGL 42-51-9(6) Governor's Commission on Disabilities – Definitions.

(2) "Federal and state laws protecting the rights of individuals with disabilities" means, but is not limited to, the Americans with Disabilities Act of 1990, 42 USC § 12101 et seq.; title V of the Rehabilitation Act of 1973, 29 USC § 794; R.I. Const., art. I, § 2; the provisions of chapter 87 of title 42 and §§ 23-6-22, 37-8-15, 37-8-21 and 42-46-13.

(3) "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.

(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.

(6) "Promoting on behalf of the people with disabilities and assuring, on behalf of the state, that people with disabilities are afforded the opportunities to exercise all of the rights and responsibilities accorded to citizens of this state" means the authority to act and appear on behalf of the people with disabilities to present evidence and make arguments before any federal, state or local agency or public body regarding matters pending before that agency or public body that may have an adverse effect on persons with disabilities.

³ Governor's Commission on Disabilities

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<http://www.disabilities.ri.gov> (website)

⁴ 42-51-6.2. Governor's Commission on Disabilities – Committees and mediation teams.

(1) The commission is authorized to create advisory committees and mediation teams to perform tasks within the jurisdiction of the commission.

(2) The commission may itself, or it may empower these committees and mediation teams to:

(i) Study the concerns of people with disabilities in reaching the maximum in independent living and human development and exercising all of the rights and responsibilities accorded to citizens of this state;

(ii) Arouse community interest in the concerns of people with disabilities;

(iii) Foster through community effort or otherwise good will among the groups and elements of the population of the state towards people with disabilities; and

(iv) Attempt by informal methods of conference, persuasion, and conciliation, to induce compliance with matters within the jurisdiction of the commission.

(3) The committees and teams may make recommendations to the commission for the development of policies and procedures in general.

(4) Advisory committees and mediation teams created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for actual and necessary traveling expenses.

(5) Three (3) members of a committee constitutes a quorum for the purpose of conducting the business of that committee.

⁵ Alleged discriminatory actions taken by a state agency are investigated under Commission Regulation Chapter E.

⁶ see notes 2 & 3 above

⁷ see note 2 & 3 above

To be Repealed