

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

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**AGENCY:** Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH)

**RULE IDENTIFIER:** ERLID 3891

**REGULATION TITLE:** Rules and Regulations for the Certification of Alcohol Server Training Programs

**RULEMAKING ACTION:** Proposed Rulemaking

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

**Date of Public Notice:** 3/19/18

**End of Comment Period:** 4/18/18

**SUMMARY OF PROPOSED RULE:**

An amendment to R.I. Gen. Laws § 3-7-6.1 in the 2017 legislative session transferred the certification of Alcohol Server Training Programs from BHDDH to the Department of Business Regulation. As a result, BHDDH is repealing its “Rules and Regulations for the Certifications of Alcohol Server Training Programs.” The Department of Business Regulation has simultaneously noticed amendments to its Liquor Control Administration Regulation (formerly Commercial Licensing Regulation 8) 230-RICR-30-10-1, which contain its version of the Certification of Alcohol Server Training Programs rules and regulations.

**COMMENTS INVITED:**

All interested parties are invited to submit written comments concerning the proposed regulations by the end of comment period, 30 days from publication of this notice to the addresses listed below.

Gail Theriault, Esq., BHDDH, 14 Harrington Road, Cranston, RI 02920

Email Address: [gail.theriault@ohhs.ri.gov](mailto:gail.theriault@ohhs.ri.gov)

**WHERE COMMENTS MAY BE INSPECTED:**

A copy of the proposed repeal will be available from 3/19/18 through 4/18/18 to view in person by request, or by email at the addresses below. Electronic copies

of the proposed repeal will also be available on the BHDDH website at [www.bhddh.ri.gov](http://www.bhddh.ri.gov) and Secretary of State's at <http://sos.ri.gov/ProposedRules/>.

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#### **PUBLIC HEARING INFORMATION:**

In accordance with R.I. Gen. Laws § 42-35-2.8, an opportunity to present oral comments will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. Any request for a public hearing must be received by BHDDH within ten (10) days of this notice.

#### **FOR FURTHER INFORMATION CONTACT:**

Gail Theriault, Esq., at (401) 462-2401, or at the email or mailing address listed above.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Analysis Summary and Supporting Documentation:**

This is a full repeal as required by R.I. Gen. Laws § 3-7-6.1(c). For full regulatory analysis or supporting documentation see agency contact person above.

**Authority for This Rulemaking:** R.I. Gen. Laws § 3-7-6.1, 2017 RI Pub. Ch. 043

##### **Regulatory Findings:**

In the development of the proposed repeal 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 Department of Behavioral Healthcare, Developmental Disabilities and Hospitals proposes to repeal the "Rules and Regulations for the Certifications of Alcohol Server Training Programs" as follows:

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

**~~Rules and Regulations for the~~  
~~Certification of Alcohol Server Training~~  
~~Programs~~**

Emergency  
September 2005

Revision  
February 2006 (Technical)

<hr/>	<b>Rhode Island Department of</b>
<b>State of Rhode Island and</b>	<b>Mental Health Retardation and</b>
<b>Providence Plantations</b>	<b>Hospitals</b>

<b>Donald L. Carcieri, Governor</b>	<b>John R. Young, Interim Director</b>
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## PREFACE

~~These Rules and Regulations for the Certification of Alcohol Server Training Programs have been promulgated by the Department of Mental Health, Retardation and Hospitals in accordance with Rhode Island General Laws §3-7-6.1.~~

~~The Department of Mental Health, Retardation and Hospitals staff, along with researchers from the University of Rhode Island, have designed these rules, regulations, and standards. Creating standards for responsible alcohol server training programs is an effort to reduce the incidence of retail availability of alcohol to underage persons and intoxicated persons.~~

~~These Rules, Regulation and Standards have been designed with the most current research and practice knowledge available in this topic area and promulgated to ensure that only comprehensive and complete Alcohol Server Training programs are eligible for certification.~~

~~These rules, regulations and standards supersede any and all prior rules, regulations, and standards, relating to the Certification of Alcohol Server Training Programs promulgated pursuant to Rhode Island General Law section 3-7-6.1.~~

## APPLICABILITY

~~These rules, regulations and standards apply to all persons and/or organizations providing Alcohol Server Training Programs in the State of Rhode Island.~~

## STATUTORY AUTHORITY

~~Authority for these rules, regulations and standards is found in Rhode Island General Laws §3-7-6.1 *et seq.*~~

## Part I

### Section 1.0 Definitions

- 1.1 — ~~“**Applicant**” means a person or organization submitting a request for certification of a training program.~~
- 1.2 — ~~“**Department**” means the Rhode Island Department of Mental Health, Retardation, and Hospitals.~~
- 1.3 — ~~“**Director**” means the Director of the Department of Mental Health, Retardation, and Hospitals (MHRH).~~
- 1.4 — ~~“**Division**” means the Division of Behavioral Healthcare Services within the Department of Mental Health, Retardation and Hospitals.~~
- 1.5 — ~~“**Fraudulent identification**” means any cancelled, revoked, suspended, fictitious, or fraudulently altered official Rhode Island identification card (as defined in Rhode Island General Laws § 3-8-6.2).~~

1.6 — ~~“**Intoxicated person**” means any person whose mental or physical functioning is substantially impaired as a result of the use of alcohol (as defined in Rhode Island General Laws § 23-1.10-2).~~

1.7 — ~~“**Permit**” means a written documentation stating an individual’s successful completion of a certified training program valid for a specified period of time.~~

1.8 — ~~“**Provider**” means a person or organization that delivers a training program.~~

1.9 — ~~“**Responsible Beverage Service**” means the practice of identifying and refusing service to underage and intoxicated patrons.~~

1.10 — ~~“**Server**” means any person who sells or serves alcoholic beverages in a certificated establishment or whose job description entails the checking of identification for the purchase of alcoholic beverages.~~

1.11 — ~~“**Shall**” means an obligation to act is imposed.~~

1.12 — ~~“**Standard drink**” means 12 ounces of beer (approximately 5% alcohol by volume), 4.5 ounces of wine (approximately 12% alcohol by volume), and 1.25 ounces of 80 proof liquor (approximately 40% alcohol by volume).~~

1.13 — ~~“**Test integrity**” means a practice is in place to ensure that only the instructor and those scoring the test know the content of the test and its correct responses.~~

1.14 — ~~“**Training Program**” means a planned, structured course with specific components to educate alcohol servers on the selling, serving and consumption of alcoholic beverages.~~

## **Section 2.0 Application for certification, renewal or change in certification status**

2.1 — ~~To apply for certification, renew an existing certification or remove or replace the conditional status of a certification, an applicant or certified program shall contact the Department’s Division of Behavioral Healthcare Services. The Division shall provide an applicant with the appropriate Departmental application forms.~~

2.2 — ~~The application must include the following:~~

—— ~~2.2.1 Completed application form provided by MHRH;~~

—— ~~2.2.2 Copy of the proposed curriculum;~~

~~2.2.3 Copy of all audio, video, and instructional materials that will be used in the program;~~

~~2.2.4 Copy of all printed materials that will be disseminated to program participants;~~

—— ~~2.2.5 Copy of the examination materials to be administered in the program;~~

- ~~2.2.6 Written description of testing procedures;~~
- ~~2.2.7 Written description of grading procedures;~~
- ~~2.2.8 Written description detailing methods for safeguarding test integrity;~~
- ~~2.2.9 A sample Server Permit.~~

### **Section 3.0 Term of Certification**

- ~~3.1 Within thirty (30) days of receipt and approval of an application for certification, the Department shall issue a certificate or renewal thereof for a period of no more than three (3) years if the applicant meets the requirements of the rules and regulations herein.~~
- ~~3.2 If the application is not approved for certification as submitted, the Department shall provide the applicant with a letter outlining what additions or changes need to be made to the training program.~~
- ~~3.3 If the requested additions or changes are not submitted to the Department within thirty (30) days, the application for certification shall be withdrawn.~~
- ~~3.4 The provider must receive prior written approval from the Department before making any changes to the training program that has been certified by the Department.~~

### **Section 4.0 Conditional Certification**

- ~~4.1 A Conditional Certificate may be issued to an Organization that has demonstrated an inability to maintain compliance with regulations; has a serious violation of applicable regulations; has multiple violations of certification regulations; or has failed to comply with a previous plan of correction.~~
- ~~4.2 A Conditional Certificate may be issued at any time during either the issuance or renewal process or during the term of a certificate at the discretion of the Director.~~
- ~~4.3 The term of a Conditional Certificate may not exceed six (6) months.~~
- ~~4.4 A Conditional Certificate may be renewed; however, a Conditional Certificate and any renewals shall not exceed twelve (12) successive months for all Conditional Certificates and renewals combined.~~
- ~~4.5 A person or Organization holding a Conditional Certificate shall demonstrate progress towards compliance with the regulations.~~
- ~~4.6 The Director may issue a Conditional Certificate if the Director determines that denial of a renewal application or Revocation of an existing certificate would not be in the best interests of the persons served by the certificate holder or in the best interests of the community served by the certificate holder. The Director shall~~

state the requirements of and orders with which a certificate holder must comply in order to receive a Conditional Certificate in lieu of denial of a renewal application or Revocation.

## **Section 5.0 Suspension, Revocation, and Denial**

5.1 The Department may deny, suspend, annul, withdraw, amend, refuse to issue or renew, or revoke the certificate of, any person or organization if it finds any or all of the following:

5.1.1 That the certificate holder has failed to comply with any applicable rules and regulations pertaining to the Certification of the Alcohol Server Training Program, or

5.1.2 That after twelve (12) successive months of Conditional Certification status the Certificate holder has failed to meet the conditions and stipulations placed upon its Certification by the Director, or

5.1.3 That the Certificate holder has failed to work towards compliance while under Conditional Certification Status, or

5.1.4 That the Certificate holder has refused to admit at anytime an employee of the Department authorized by the Director to investigate, audit, or monitor the Alcohol Server Training Program, or

5.1.5 That upon inspection when there is no reasonable and substantial evidence that the program is in operation and due notice and opportunity for hearing has been given pursuant to the provisions of Rhode Island General Laws Section 42-35-9.

## **Section 6.0 Reports of Deficiencies**

6.1 Reports of deficiencies noted in inspections conducted in accordance with these and other applicable Regulations, and results of any Departmental investigation, and plans of correction or compliance orders as described herein, shall be maintained on file in the Department, and shall be considered by the Department in rendering determinations to deny, condition, limit, suspend or revoke the certification of an Alcohol Server Training Program.

## **Section 7.0 Certification Actions**

7.1 The Director may take appropriate action from within the following array of sanctions for dealing with violations of the Department's applicable rules and regulations:

7.1.1 As a result of the denial of an initial application, or of an application for certification renewal, the rights and privileges attendant upon certification shall not accrue to a person or organization.

~~7.1.2 A Conditional Certification may be issued to a person or organization that has demonstrated an inability to maintain compliance with regulations; has a serious violation of applicable regulations; has multiple violations of applicable regulations; has demonstrated conduct or practice found by the Director to be detrimental to the welfare of the persons served; or has failed to comply with a previous plan of correction~~

~~7.1.3 As a result of an order to curtail any or all activities of an Organization, a certificate holder may be ordered to admit no additional persons for training, and/or to take any other corrective action necessary to secure compliance with the requirements established by the applicable Department rules and regulations.~~

~~7.1.4 As a result of suspension, an Organization shall be restrained from enrolling any individuals to training provided by the individual or organization during the period of suspension. The sanctions imposed as a result of suspension are so imposed until such time as the Department determines compliance with the regulations, or until the certification is revoked.~~

~~7.1.5 As a result of a certification revocation, a person or Organization loses all rights and privileges related to certification. The person or Organization will be restrained from enrolling any new individuals. Certification revocation is considered to be permanent.~~

~~7.1.6 The appropriate state agencies shall be notified of any action taken by the Department pertaining to denial, suspension, or revocation of certification or curtailment of activities.~~

## **Section 8.0 Right of Appeal**

~~8.1 A certificate holder has the right to appeal any imposed stipulation, denial or refusal to issue a certificate, denial or refusal to renew a certificate, sanction or action proposed by the Department against the certificate. The Department shall notify the certificate holder by in hand service, registered mail or certified mail, setting forth reasons for the proposed action, and the applicant or certificate holder shall be given an opportunity for a prompt and fair hearing in accordance with Rhode Island General Laws section 42-35-9 and pursuant to the provisions contained herein and in accordance with the Rules and Regulations promulgated by the Department.~~

## **Section 9.0 Monitoring and Auditing**

~~9.1 The Department shall make or cause to be made such inspections that it deems necessary in accordance with the Department rules and regulations.~~

~~9.1.1 Authorized persons from the Department shall have free access to all instructional and exam materials and records relating to any program or permit issuance.~~



~~9.1.2 The Department may attend any training program provided by certified providers at no charge in order to evaluate the course for conformance with these regulations.~~

~~A. No person, organization or trainer shall prohibit or interfere with on-site observations by MHRH/DBR or its staff, or fail to assist MHRH/DBR or its staff in scheduling these observations.~~

~~9.1.3 The Department may forward complaints of violation to the Department of Business Regulation.~~

~~9.1.4 No person, organization or trainer shall make any material false or misleading statement to induce or prevent MHRH/DBR actions;~~

~~9.2 Any non-compliance with the regulations cited here in shall constitute a valid ground for certification action.~~

~~9.3 Graduated penalties, related to violations of these rules and regulations, shall be, pursuant to Rhode Island General Laws § 3-7-6.1, the responsibility of the Department of Business Regulation. The Department shall cooperate fully with the Department of Business Regulation.~~

~~9.4 Upon request of the Department the certificate holder shall submit a course schedule.~~

## **Section 10.0 Plans of Correction**

~~10.1 An organization that receives a notice of deficiencies must submit a plan of correction, which shall include the time frames for completion, to the Department within thirty (30) days of the date the organization receives notice of the deficiencies.~~

~~10.2 The Department may request an amended plan of correction. The amended plan of correction must be submitted to the Department within ten (10) business days of the date of the Organization's receipt of the request for an amended plan of correction.~~

~~10.3 If the Department rejects the plan of correction, or if the organization does not provide a plan of correction within the stipulated period, or if the organization whose plan of correction has been approved by the Department fails to execute its plan within a reasonable time, as determined by the Department, the Department may invoke the sanctions enumerated herein.~~

~~10.4 An immediate Compliance Order shall identify violations of the applicable certification standards and instruct the Organization to immediately comply with such order.~~

~~10.5 Failure to comply shall constitute a valid ground for certification action.~~

## **Section 11.0 Rules Governing Practices and Procedures**

~~11.1 All hearings and reviews required pursuant to these rules and regulations shall be held in accordance with the provisions of Rhode Island General Laws section 42-35-1 et seq. and the Department's applicable Rules and Regulations.~~

~~11.2 The Department shall send the Certificate holder or applicant notice by registered or certified mail or personal service and shall set forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or service, at which time the applicant or certificate holder is given the opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or certificate holder, the Department shall make a determination specifying its findings of fact and conclusions of laws. A copy of the determination shall be sent by registered or certified mail, or served personally upon the applicant or certificate holder. The decision denying, suspending, or revoking the certification or application shall become final thirty (30) days after it is so mailed or served unless the applicant or certificate holder within such a thirty (30) day period, appeals the decision to Superior Court, pursuant to Rhode Island General Laws section 40.1-24-8. The procedure governing hearings authorized by this section will be in accordance with rules promulgated by the Department.~~

## **Part II Training Program Criteria**

### **Section 12.0: Training Program Requirements**

~~12.1 Training shall be provided in all basic information relevant to servers, including but not limited to:~~

~~12.1.1 The physiological effects of alcohol, including:~~

- ~~a) Alcohol as a legal drug,~~
- ~~b) Calculating standard drink measurement,~~
- ~~c) Alcohol absorption,~~
- ~~d) Effects of alcohol on the ability to operate a motor vehicle,~~
- ~~e) Effects of alcohol when combined with prescription, and nonprescription drugs.~~

~~12.1.2 Alcohol's association with social problems, including:~~

- ~~a) Health problems associated with heavy alcohol use.~~

~~12.1.3 Coverage of legal requirements related to alcohol service, including:~~

- ~~a) Types of retail licenses,~~
- ~~b) Rhode Island law, including:~~
  - ~~1) Drinking by underage persons (Rhode Island General Laws § 3-8-4),~~
  - ~~2) Acceptable forms of identification (Rhode Island General Laws § 3-8-6),~~
  - ~~3) Alcohol server certification permits (Rhode Island General~~

~~Laws§3-7-6.1),~~

- ~~4) Service of liquor to a visibly intoxicated person (Rhode Island General Laws§ 3-14-7),~~
- ~~5) Regulations regarding happy hour and open bar (Rhode Island General Laws§ 3-7-26),~~
- ~~6) Hours of operation (Rhode Island General Laws§ 3-7-7).~~

- ~~c) Distribution of contact numbers for each of the municipal liquor control boards and the Rhode Island Division of Commercial Licensing and Regulation,~~
- ~~d) Liability,~~
- ~~e) Criminal and administrative penalties for the server, owner, and manager, in the State of Rhode Island,~~
- ~~f) Training programs shall provide a separate module for management/owners, although this does not need to be covered during the training course. The module shall include;~~

- ~~1) Conducting a risk assessment of one's own establishment,~~
- ~~2) Ensuring policy compliance,~~
- ~~3) Developing good policies,~~
- ~~4) Identifying the benefits of adopting responsible beverage service,~~

~~12.1.4 How to identify patrons who are impaired, including but not limited to:~~

- ~~a) Assessing customer size to determine possible effects of alcohol in the first hour of drinking,~~
- ~~b) Circumstances affecting ability to judge signs of intoxication (e.g., disability).~~

~~12.1.5 Techniques in refusing service to intoxicated patrons.~~

~~12.1.6 Training in preventing sales to underage drinkers, including, but not limited to training in detection of fraudulent identification specifically:~~

- ~~a) Strategies underage drinkers use to gain access and signs that a person may be underage,~~
- ~~b) Steps to take when an individual has refused to provide ID or has provided fraudulent identification.~~

~~12.1.7 Training shall be provided in more than one medium, including but not limited to:~~

- ~~a) Video or interactive computer programs,~~
- ~~b) Training manual,~~
- ~~c) Role playing related to refusal of service to intoxicated drinkers,~~
- ~~d) Lecture.~~

~~12.1.8 Training programs shall:~~

- ~~a) Incorporate at least half (1/2) hour of role-play;~~
- ~~b) Include information designed to develop server confidence in speaking to management about responsible beverage service policies.~~

~~12.1.9 Training materials shall:~~

- ~~a) Use real life settings, relevant scenarios, and credible role models;~~
- ~~b) Be respectful of the audience;~~
- ~~c) Have high production quality.~~

~~12.1.10 Training entails a minimum of a four (4) hour duration with no absentee certification of participants.~~

### **Section 13.0: Test Content and Procedure, Grading Procedure**

~~13.1 Training programs are responsible for providing copies of written examinations to the Department.~~

~~13.2 The written test must demonstrate adequate content representation. Specifically, each of the following mandated curriculum content areas shall be represented in no less than ten percent (10%) of the written test:~~

- ~~13.2.1 The physiological effects of alcohol;~~
- ~~13.2.2 Alcohol's association with social problems;~~
- ~~13.2.3 Coverage of legal requirements related to alcohol service;~~
- ~~13.2.4 How to identify patrons who are impaired and;~~
- ~~13.2.5 Techniques in refusing service to intoxicated patrons;~~
- ~~13.2.6 Preventing sales to underage drinkers including training in detection of fraudulent identification.~~

~~13.3 Training programs are responsible for providing the Department with a written description of their testing procedures. Description of testing procedures shall include the following:~~

- ~~13.3.1 Testing shall be completed in the presence of the certified trainer;~~
- ~~13.3.2 During the examination, trainees shall not refer to any written or video material or have a discussion with another person during the exam (unless the instructor authorizes the student to use an interpreter);~~
- ~~13.3.3 If an interpreter is required, the interpreter shall not be the instructor, another student, or a previously certified server.~~

~~13.4 Training programs shall be responsible for submitting a description of their grading procedures to MHRH.~~

~~13.5 Training programs shall be responsible for detailing their methods for safeguarding test integrity. Description of methods for safeguarding test integrity shall include:~~

- ~~13.5.1 Policy toward release of advance test copies;~~
- ~~13.5.2 Methods to ensure that grades cannot be changed once a grade has been  
\_\_\_\_\_ assigned;~~
- ~~13.5.3 Procedures for scoring, noting that tests shall not be scored in the  
\_\_\_\_\_ presence of the test takers;~~
- ~~13.5.4 Methods for preventing cheating.~~

#### **~~Section 14.0: Server Permits~~**

- ~~14.1 Training programs shall be required to submit a sample server permit to the  
\_\_\_\_\_ Department with their application for certification. Server permit shall include, at  
\_\_\_\_\_ a minimum:~~
  - ~~\_\_\_\_\_ 14.1.1 the full name of the server;~~
  - ~~\_\_\_\_\_ 14.1.2 the date of issuance and expiration~~
  - ~~\_\_\_\_\_ 14.1.3 the name of the server training program.~~
- ~~14.2 Permits shall be approximately wallet sized (2'' X 3 ½'') and shall be created  
\_\_\_\_\_ in a way that they cannot be tampered with or altered.~~
- ~~14.3 Permits shall not be issued on site immediately following the training program.~~
- ~~14.4 Permits shall be issued no later than fourteen (14) business days after the training.~~
- ~~14.5 No person, organization or trainer shall falsify, alter, or tamper with alcohol  
\_\_\_\_\_ server training permits or records.~~