

TO: BHC members
FROM: Nathalie Molliet-Ribet, Executive Director
DATE: December 14, 2022
RE: BHC policy on remote participation and all-virtual meetings

The Behavioral Health Commission (BHC) adopted a policy pertaining to remote participation by members and all-virtual meetings to comply with the Virginia Freedom of Information Act (FOIA). The policy was adopted by recorded vote at the BHC's December 13, 2022 meeting, which was open to the public.

This policy adheres to FOIA statutes and FOIA Council guidance. However, the BHC has adopted additional restrictions and is limiting the number of meetings that members can attend remotely to **two** per calendar year, unless otherwise approved by the Chair.

POLICY

The Behavioral Health Commission adopted the following policy in accordance with the provisions set forth in [§ 2.2-3708.3](#).

Remote meeting participation by individual BHC members

It is the policy of the Behavioral Health Commission (BHC) that individual BHC members may participate in meetings virtually as permitted by [§ 2.2-3708.3](#) of the Code of Virginia. This policy shall apply to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. Whenever an individual member wishes to participate from a remote location, the law requires a quorum of the BHC members to be physically assembled at the primary or central meeting location.

Members are permitted to participate in meetings remotely under the following four circumstances, not to exceed two meetings per calendar year:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;
3. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter; or
4. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting.

At the Chair's discretion, a member may be permitted to participate in more than two meetings remotely due to circumstances listed above under item numbers 1, 2, and 4. However, members may not use remote participation for more than two meetings per calendar year due to item number 3 above, personal matters.

When all procedural requirements are met, BHC members participating in meetings remotely may take part in discussions, make motions, vote, join in closed meetings, and otherwise participate fully as if such member was physically present. If procedural requirements are not met, however, then members may only monitor the meeting and cannot otherwise participate.

Requests for remote participation must be sent to BHC staff, who will notify the BHC Chair. Requests will be approved automatically unless the member's participation would violate FOIA. If participation is challenged, the matter will be put to a vote of the BHC members at the meeting. The request and reason for remote participation will be recorded in the meeting minutes.

All-virtual BHC meetings

It is the policy of the BHC that the BHC may hold all-virtual public meetings pursuant to subsection C of [§ 2.2-3708.3](#) of the Code of Virginia. BHC members and staff must comply with the following 10 statutory requirements to hold all-virtual meetings:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting must be included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of [§ 2.2-3707](#);
2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;
4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;
8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of [§ 2.2-3712](#);
9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and
10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by [§ 2.2-3707](#) and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to these requirements is disapproved because such participation would violate the policy adopted pursuant to subsection D of [§ 2.2-3708.3](#), such disapproval shall be recorded in the minutes with specificity.