

FOIA Policy on Individual Electronic Participation

The requirements, permitting members of public bodies to participate in electronic meetings following the required 3-day notice, remained unchanged; however, the statutory provisions for participating remotely for “emergency or personal matters” were amended during the 2014 General Assembly Session. The new provisions, contained in *Code of Virginia* § 2.2-3708.1 (of the Virginia Freedom of Information Act) require that public bodies adopt “a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation,” prior to permitting any individual member to participate from a remote location. The statute also limits member-participation for “emergency or personal matters” to two meetings or 25 percent of the meetings held by the public body each calendar year, whichever is fewer.

The italicized text below follows sample language, offered by the Virginia Freedom of Information Advisory Council, which would comply with the requirements of *Code* § 2.2-3708.1.

Remote Participation due to Emergency or Personal Reasons

It is the policy of the Joint Commission on Health Care (JCHC) that individual members may participate in JCHC meetings by electronic means as permitted by Code of Virginia § 2.2-3708.1. 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.

As required by state statute, whenever an individual member wishes to participate from a remote location, a quorum of the JCHC membership shall be physically assembled at the primary or central meeting location, and arrangements shall be made for the voice of the remote participant to be heard by all persons at the primary or central meeting location. When such individual participation is due to an emergency or personal matter, participation shall be limited to two meetings or 25 percent of the meetings of the Joint Commission per member each calendar year, whichever is fewer. Furthermore, [the remaining written policy would delineate the circumstances under which members would be allowed to participate from a remote location without giving required notice due to an emergency or personal matter as well as any additional language approved by the Joint Commission members.]

Taking the number of meetings held per year into account, by law each JCHC member would be limited to participating in only one meeting of the Joint Commission per year from a remote location due to an emergency or personal matter. Moreover, it is the legal opinion of staff of the Freedom of Information Advisory Council that neither of our Subcommittees typically holds a sufficient number of meetings per year to allow for remote participation due to an emergency or personal matter. (This opinion is based on the calculation that 25 percent of two or three meetings equals less than one meeting.)

To assist in adopting a written policy for remote participation for emergency or personal matters, three options for participation and additional suggested language are shown on the next page.

Options for JCHC-Member Consideration Regarding Remote Participation due to Emergency or Personal Reasons

Option 1: Automatic Approval

Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act. If a member's participation from a remote location is disapproved because such participation would violate this policy, such disapproval shall be recorded in the meeting minutes with specificity.

Option 2: Approval by Chair

Individual participation from a remote location under this policy shall be approved or disapproved by the Chair of the Joint Commission on Health Care. If a member's participation from a remote location is disapproved because such participation would violate this policy, such disapproval shall be recorded in the meeting minutes with specificity.

Option 3: Approval by Vote

Individual participation from a remote location under this policy shall be approved or disapproved by vote of the JCHC members present at the central or primary meeting location. If a member's participation from a remote location is disapproved because such participation would violate this policy, such disapproval shall be recorded in the meeting minutes with specificity.

Additional JCHC-Staff Proposed Language

Additional policy provisions may be included as long as those limitations do not violate the express provisions of *Code of Virginia* § 2.2-3708.1. The following additional provisions are suggested.

Option 4. Member-participation in a meeting shall be defined as occurring when a member calls into the meeting and voices his/her presence on the call but not when the member calls in and listens to the meeting presentations without identifying himself or herself. In order to qualify for and receive the legislative per diem, JCHC members who call into the meeting must voice their presence on the phone line.

Option 5. The provisions set forth in this policy do not contradict the medical and disability meeting attendance provisions specifically allowed for in *Code of Virginia* § 2.2-3708.1 (A) 2. which allows for participation if “a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes.”