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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2001-02

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Children and Families (AC-CF)

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

DATE: September 10, 2002

TO: Dave Matzen

Committee on Children and Families

FROM: Patrick Fuller, Assembly Assistant Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 99-009

AN ORDER to repeal and recreate chapter HFS 77, relating to criteria and procedures for reimbursement of interpreting services for persons who are deaf or hard of hearing.

Submitted by **Department of Health and Family Services.**

Report received from Agency on **August 29, 2002.**

To committee on **Children and Families.**

Referred on **Tuesday, September 10, 2002.**

Last day for action - **Thursday, October 10, 2002.**

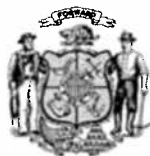
Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



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Governor

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Phyllis J. Dubé
Secretary

State of Wisconsin
Department of Health and Family Services

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August 29, 2002

The Honorable Fred Risser, President
Wisconsin State Senate
17 West Main St., Room 401
Madison, WI 53702

The Honorable Scott Jensen, Speaker
Wisconsin State Assembly
1 East Main, Suite 402
Madison, WI 53702

Re: Clearinghouse Rule 99-099
HFS 77, relating to criteria and procedures for reimbursement of communication access services for persons who are deaf or hard of hearing.

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

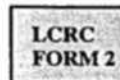
If you have any questions about the rules, please contact Linda Huffer at 266-56412.

Sincerely,

Larry Hartzke
Administrative Rules Manager

cc Gary Poulson, Deputy Revisor of Statutes
Senator Judy Robson, JCRAR
Representative Glenn Grothman, JCRAR
Alice Sykora, Bureau for the Deaf and Hard of Hearing
Linda Huffer, Division of Supportive Living
Gary Radloff, Secretary's Office

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-009

AN ORDER to repeal and recreate chapter HFS 77, relating to criteria and procedures for reimbursement of interpreting services for persons who are deaf or hard of hearing.

Submitted by **DEPARTMENT OF HEALTH AND FAMILY SERVICES**

01-22-99 RECEIVED BY LEGISLATIVE COUNCIL.

02-19-99 REPORT SENT TO AGENCY.

RS:PS:jal;kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

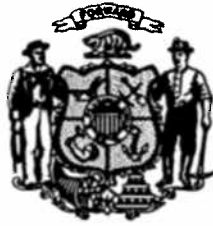
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 99-009

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

In s. HFS 77.06 (1) (intro.) and (2) (intro.), the reference to "sub. (4)" should be changed to "sub. (3)."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HFS 77.02, it appears that the language following the statutory citation on line 4 could be deleted. This material is covered in s. HFS 77.04 (1) (b). If, for some reason, it is determined to be necessary in s. HFS 77.02, it should be moved to a separate sentence, to improve readability.

b. In s. HFS 77.03 (1), does "administrative agency" refer to the department's six region-based coordinators for the deaf and hard of hearing services referenced in the second paragraph of the analysis? Since this is a newly defined term, it should be explained in the analysis.

c. Section HFS 77.04 (3) (b) 4. and 5. refer to final payment being "determined by the department on an annual basis." What does this requirement mean? Will the department set a payment rate for these types of services every year? Where will the reimbursement rate be set forth? In an administrative rule?

d. The timing of actions relating to reimbursements for interpreting services set forth in s. HFS 77.05 does not make sense. Subsections (1) and (2), read together, require that, except in emergencies, a person or entity requesting reimbursement for interpreting services must make the request at least 48 hours in advance of the time an interpreter is needed. However, sub. (3) gives the Department of Health and Family Services (DHFS) five working days after receipt of the request to grant or deny the request. If granted, DHFS gives the requester a list of certified and verified interpreters so that the requester may arrange for the interpreting services. If denied, DHFS must inform the requester in writing of the reasons for the denial and the right and procedure to request a hearing. Thus, it appears that if the requester does not request reimbursement for services until close to the time that services are needed, the requester may not have a response as to whether such services will be reimbursed or have the list of persons to contact to perform interpreting services by the time such services are to be performed. This section should be reviewed and modified as necessary.

e. Section HFS 77.06 (1) (a) sets forth the order in which interpreters certified by the National Registry of Interpreters of the Deaf, Inc., are to be reimbursed for services. It is unclear how the interpreters listed in subds. 3. and 4. differ from each other. Subdivision 3. refers to an interpreter who "has an interpretation and transliteration certificate; certificate of interpretation or certificate of transliteration." Subdivision 4. refers to an interpreter who "has an interpretation certificate or a transliteration certificate." How does the language in subd. 4. differ from the language following the semicolon in subd. 3.? These two provisions should be reviewed and reconciled. Also, in s. HFS 77.06, the language in sub. (1) (intro.) indicates that it applies to reimbursement for certified *and* verified sign language interpreters listed in the registry. The language in sub. (1) (a) (intro.) refers just to "interpreters certified . . ." and the language in sub. (1) (b) refers just to "interpreters verified . . ." If it is the department's intent that interpreters who are either certified or verified, but not necessarily both, are to be reimbursed, it is suggested that the phrase "certified and verified" in sub. (1) (intro.) be deleted.

f. In s. HFS 77.06 (2) (a), the insertion of the three colons in the provision makes its meaning unclear. The provision should be reviewed and the punctuation revised as necessary to make its meaning clear.

g. In s. HFS 77.06 (3), it is not clear whether the services described will be reimbursed.

h. In s. HFS 77.06 (4) (a), the second sentence requires the department to make a reasonable effort to inform the interpreter of a cancellation. If the department is no longer scheduling interpreters, why is the department responsible for informing an interpreter of a cancellation?

i. In s. HFS 77.07 (3) (a), reference is made to determining payment to an interpreter on an individual basis "in accordance with department policy and procedures." Where are those policies and procedures set forth? Will they be in an administrative rule?

j. In s. HFS 77.09 (1) (e), the slash should be removed between "certification" and "verification." Section 1.01 (9) (a), Manual, states that slashed alternatives should not be used in drafting administrative rules. Instead, it should be determined whether the sentence means "and" or "or" and the appropriate word should be used. If the thought to be expressed involves a choice between one or two alternatives, or both, the proper phrasing to be used is "____ or _____, or both."

k. In s. HFS 77.10 (1), the word "and" on line 2 should be replaced by the phrase "that is."

AGENCY REPORT TO THE LEGISLATURE ON CLEARINGHOUSE RULE 99-009

Need for Rules

This order updates the Department's rules for operating a program established under s. 46.295, Stats., that reimburses communication access services providers for the provision of communication access services for persons who are deaf, deafblind or hard of hearing. The Department proposes to update the rules for three reasons:

1. To change how communication access services providers are scheduled. Chapter HFS 77 currently states that the Department will schedule interpreting services for an individual or organization authorized to receive interpreting services funded by the Department. However, although the Department continues to fund interpreting services and maintain lists of qualified communication access services providers, it no longer directly schedules providers. Requests for communication access services are received and reviewed by the Department's six region-based Coordinators of Deaf and Hard of Hearing Services to ensure that the circumstances for which services are requested meet the requirements of s. 46.295, Stats., and ch. HFS 77. If qualified, the Department provides the individual or organization requesting the service with a list of certified communication access services providers and verified interpreters. The individual or organization is subsequently responsible for scheduling the communication access services provider.
2. To use the Wisconsin Interpreting and Transliterating Assessment (WITA) as a method of verifying interpreters. Interpreters verified through WITA will qualify for Department reimbursement for communication access services provided under ch. HFS 77. Chapter HFS 77 is also being revised to include real-time captioning services.
3. To conform with changes in the generally accepted preferred terminology for referring to people with hearing problems and to the services required to support their access to needed communication.

The current rules refer throughout to "hearing impaired persons" and "interpreter services," terms also used, but undefined, in s. 46.295, Stats. These terms are replaced in the proposed rules by the terms "deaf, deafblind or hard of hearing persons" and "communication access services," terms preferred by the deaf and hard of hearing communities.

Responses to Clearinghouse Recommendations

All comments of the Legislative Council's Rules Clearinghouse were accepted. The following two Department responses explain changes to the rules the Department has proposed based on a Clearinghouse comment:

5.c. Comment: Section HFS 77.04 (3) (b) 4. and 5. refer to final payment being "determined by the department on an annual basis." What does this requirement mean? Will the department set a payment rate for these types of services every year? Where will the reimbursement rate be set forth? In an administrative rule?

Response: The Department has changed the wording of the provisions to remove the reference to the Department determining the rates. The final proposed rules state that the payment rate will be determined by what individual communication access services providers and communication access services coordination agencies charge for the services.

5.d. Comment: The timing of actions relating to reimbursements for interpreting services set forth in s. HFS 77.05 does not make sense. Subsections (1) and (2), read together, require that, except in emergencies, a person or entity requesting reimbursement for interpreting services must make the request at least 48 hours in advance of the time an interpreter is needed. However, sub. (3) gives the Department of Health and Family Services (DHFS) five working days after receipt of the request to grant or deny the request. If granted, DHFS gives the requester a list of certified and verified interpreters so that the requester may arrange for the interpreting services. If denied, DHFS must inform the requester in writing of the reasons for the denial and the right and procedure to request a hearing. Thus, it appears that if the requester does not request reimbursement for services until close to the time that services are needed, the requester may not have a response as to whether such services will be reimbursed or have the list of persons to contact to perform interpreting services by the time such services are to be performed. This section should be reviewed and modified as necessary.

Response: The Department modified s. HFS 77.05 (1) to specify that requests for communication access services be received by the Department at least two weeks in advance of the time an interpreter is needed instead of the 48 hours as originally proposed in the rules.

Final Regulatory Flexibility Analysis

These rules apply to deaf, deafblind or hard of hearing persons who need or request interpreting services, sign language and oral interpreters, those who provide such services and governmental agencies, courts and private agencies that request interpreting services or information about interpreting services under s. 46.295, Stats.

The Department maintains directories of certified and verified interpreters and certified real time captioners and reimburses them for their services.

Most of the 300 or so certified and verified sign language interpreters and oral transliterators for deaf and hard of hearing persons in Wisconsin operate as small businesses, as "small business" is defined in s. 227.114 (1) (a), Stats.

The principal rule changes – scheduling done by the requesting individual or organization rather than by the Department; use of the Wisconsin Interpreting and Transliterating Assessment (WITA) as the primary means for certifying and verifying interpreters, which will eventually replace the Wisconsin Quality Assurance Program; and replacing two terms used in the rules with terms generally preferred by persons who are deaf or hard of hearing – will not have any impact on those interpreters who may be classified as "small businesses."

Public Review

The Department held four public hearings on the proposed rules. The Department initially held hearings in Wausau on April 29, 1999, Brookfield on April 30, 1999 and Madison on May 3, 1999. The public comment period ended on May 10, 2000. One person testified at the hearings. Two persons submitted written comments but did not attend any of the public hearings. The Department subsequently made a variety of substantive changes to the rule and, consequently, held another public hearing on the rule in Madison on August 12, 2002. One person attended the 2002 public hearing and only observed. Three persons who were unable to attend submitted written comments.

A summary of the public hearings is included in this report. A summary of the comments received during public review and the Department's responses to those comments is also included in this report.

The Department made several changes in the rules in response to public comments. The changes are indicated in the Department's responses to public comments in the summary of hearing comments.

Summary of Public Hearings and Written Comments on Chapter HFS 77, Service Fund for People Who are Deaf, Deafblind or Hard of Hearing

Public hearings were held in Wausau on April 29, 1999, in Brookfield on April 30, 1999, in Madison on May 3, 1999 and again in Madison on August 12, 2002.

Each of the 1999 hearings was staffed by Joan Sanzen, an employee of the Wisconsin Bureau for Deaf and Hard of Hearing. The 2002 hearing was staffed by Linda Huffer, Acting Director of the Bureau for Deaf and Hard of Hearing. Other individuals providing support at each hearing included:

Wausau: Beth Meyer, Sign Language Interpreter
Darlene Shuh, Northwest Court Reporters
Kathleen Jensen, WDHH Regional Coordinator

Brookfield: Richelle Hammett, Sign Language Interpreter
Rose Coulthart, Gramann Reporting, Limited
Sarah Benton, Vice-Chair, Wisconsin Council for the Deaf and
Hard of Hearing

Madison (1999): Jamie Amacci, Sign Language Interpreter
Theresa Hedges, Sign Language Interpreter
Rose Coulthart, Gramann Reporting, Limited

Madison (2002): Mary Lynn Rose, Sign Language Interpreter
Janilyn Weld-Dalles, Sign Language Interpreter
Wendy L. Sandow, Real Time Captioner

The hearing record remained open until May 10, 1999 for receipt of written comments associated with the initial set of hearings and until August 15, 2002 for the subsequent hearing. Participation at the 1999 hearings is indicated below.

Registered:	1
Testified:	1
Observed, did not testify:	1
Written comments submitted by persons who attended the hearing but did not testify:	0
Written comments submitted by persons who did not attend the hearings:	5

The following is a list of the people who testified at the 1999 hearings or submitted written comments.

1. Stephanie Buell Fitchburg WI Submitted written comments
2. Carol Burns Submitted written comments
Wisconsin Self Help for Hard of Hearing (WI-SHHH) (representing 300 people who are Wisconsin members of the National SHHH)
3. Joyce Houghton Testified

Delavan WI

Participation at the 2002 hearing is indicated below:

- | | | |
|----|--|----------------------------|
| 1. | Jack R. Cassell
DEG, Madison | Observed |
| 2. | Brian Fruits
Madison | Submitted written comments |
| 3. | Katy Lerch
Madison | Submitted written comments |
| 4. | Linda Russell
Wisconsin Association of the Deaf
Darien, WI | Submitted written comments |

**Summary of Public Comments on
Proposed Chapter HFS 77
Service Fund for People Who are Deaf, Deafblind or Hard of Hearing**

Rule Reference	Comment	Departmental Response
General	Chapter HFS 77 is being revised to include real-time captioning services. Consider using VRI. (Lerch)	No change. Video Remote Interpreting (VRI) is a technology that is still in its infancy. The Department will consider the inclusion of VRI at a later date, as well as other new or advanced communication technologies that become generally accepted by the deaf and hard of hearing community.
General	It would be beneficial to cite both state and federal laws as reference upon how the department makes its reimbursement decisions for agencies not in compliance with the law (by not providing communication access). (Fruits)	No change. Section 46.295, Stats., and ch. HFS 77, as proposed by the Department, provide the authority needed by the Department in dealing with non-compliant agencies.
HFS 77.02	Include language that allows the fund to accommodate the needs of people who are hard of hearing who use modes of communication other than sign language interpreters. This would include real-time captioning and assistive listening devices/services. (Burns)	Changed. The Department has broadened the applicability of available funding. Proposed revisions to ch. HFS 77 were made prior to the passage of the SFY 00-01 budget, when the funding level was at \$50,000. With the passage of the SFY 02-03 budget, \$100,000 annually is now available. The additional funding will support additional accommodations, within budget limits and within priority circumstances. Therefore, the Department modified s. HFS 77.02 to extend the chapter's applicability to the broad area captured under the term "communication access services" and has broadened the proposed definition of "deaf or hard of hearing person" under s. HFS 77.03 (11) in the following manner: "Deaf, <u>deafblind</u> or hard of hearing person" means a person who, because of some pathological or functional cause, requires spoken language to be transformed into a visual or tactile mode of language by an interpreter <u>communication access services.</u> "
HFS 77.04 (1)	If state agencies are required to comply but do not, under HFS 77.04 (1) General Requirements, then an additional statement	No change. The term "agency" is defined to include all private or public organizations, so the compliance provisions apply equally to all organizations.

should be inserted to reflect "(d) non-compliance of state agencies." This will underscore state agencies' responsibilities to provide communication access to deaf, deaf-blind and hard of hearing people in Wisconsin in their services. **(Fruits)**

HFS 77.04 (3)

Eliminate language requiring a prioritization of activities that will be funded. **(Buell)**

Maintain current priorities of activities for which interpreter services can be funded. **(Houghton)**

No change. The list of priorities the Department specifies in s. HFS 77.04 (3) (a) are the same as those mandated by s. 46.295 (2), Stats., the authorizing statute for these rules. These priorities reflect and are consistent with the circumstances that entities providing services are required to give priority consideration to by the Americans with Disabilities Act (ADA). Even though the priority circumstances listed in s. HFS 77.04 (3) (a) are ADA-covered activities, the Department believes that specifying these circumstances in rule will allow the Department to pay for services in emergencies.

Moreover, given that funding for these services varies every two years and are fixed for the two-year period, the Department deems it more appropriate ration these funds on the basis of priority needs of persons in particular circumstances than to, by default, ration them on the basis of "first-come, first-serve." The Department's decision reflects its belief that limited funding warrants rationing on the basis of need.

Funeral or memorial services applicable under this along with "mental health or psychological/psychiatric services?" **(Fruits)**

Changed. The Department accepts this suggestion for including funeral and memorial services as priority circumstances for reimbursement of communication access services and has added it to s. HFS 77.04 (3) (a).

"Life/death situations" that involve grief, such as funerals could potentially fall into this category. **(Lerch)**

We would like to remind the Department to include the following as acceptable and appropriate circumstances for the reimbursement of communication access

No change. These activities fall under the circumstances specified under s. HFS 77.04 (3) (b) 5., 8. and 9. and, as such, are considered as non-priority circumstances. The Department's Bureau of the Deaf and Hard of Hearing will, in the future,

reassess what activities are classified as priority and non-priority circumstances.

services funds: support groups, such as breast cancer, alcohol or other drug abuse counseling; and health and fitness groups such as Weight Watchers. (Russell)

The word "qualified" refers to the Department's determination under s. HFS 77.05 (2) (a) of whether to pay for the services of a communication access service provider. If the Department regional staff person fielding the reimbursement request determines that the request is for any of the circumstances under s. HFS 77.04 (3) (a), the request is considered "qualified." ("Analysis" sections of rulemaking orders, such as the one for ch. HFS 77, always contain such introductions. While the Department wording may be unclear, it has no lawful effect.)

The "Analysis" section of the proposed rulemaking order contains the statement, "Requests for communication access services are received and reviewed by the Department's six region-based Coordinators of Deaf and Hard of Hearing Services to ensure that the circumstances for which services are requested meet the requirements of s. 46.295, Stats., and ch. HFS 77. If qualified, the Department provides the individual or organization requesting the service with a list of certified communication access services providers and verified interpreters." The word "qualified" is not clear. Does "qualified" refer to the request being qualified, or the Department being qualified to make a determination? (Lerch)

Change made. The Wisconsin Interpreting and Transliterating Assessment (WITA) process verifies the qualifications of sign language interpreters in two areas: interpretation and transliteration. Consequently, sign language interpreters receive two scores. The Department changed the paragraph's wording to reflect current WITA policies regarding the qualifications of interpreters required in specific settings.

Clarify the level of WITA verification that is acceptable for reimbursement. Remove the Wisconsin Quality Assurance Program as acceptable for reimbursement since the Program was replaced by WITA. (Benton and Houghton)

No change. The Department believes that exceptions must exist so a person needing service receives service that most closely meets the person's needs as frequently as possible. In rare and extreme cases, hearing-impaired individuals cannot comprehend

The exceptions allow people who are not skilled and not qualified to provide interpreting services. This is a big loophole in the rules. (Benton)

HFS 77.05

HFS 77.06 (1) (b)

HFS 77.06 (3)

either certified or verified interpreters due to mental illness, lack of education or language limited to communication with only family members or friends. Amending this rule as suggested would result in denying the most appropriate interpreting services and, possibly, denying a basic right to communication in a legal, medical, or mental health issue. If an interpreter provides interpreting services and inappropriately bills the state for those services, the Department may bill the interpreter for repayment, as specified under s. HSF 77.08.

HFS 77.08 (2) Per the phrase, "the department shall bill any federal, state, county, municipal or private agency for requested communication access services...", can DHFS, as a state agency, require other state agencies receiving federal agencies to reimburse DHFS? This seems moot when the reimbursement comes from state monies. DHFS may as well go ahead and pay for all services [in accordance with HFS 77.04 (3) (a)] if the state agencies are not going to comply with the federal law and whatever state laws are in place because it is doubtful a state agency can take another agency to court. **(Fruits)**

No change. Section 46.295, Stats., and ch. HFS 77, as proposed by the Department, provide the authority needed by the Department in dealing with non-compliant agencies.

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING AND RECREATING RULES

To repeal and recreate chapter HFS 77, relating to criteria and procedures for reimbursement of communication access services for persons who are deaf or hard of hearing.

Analysis Prepared by the Department of Health and Family Services

This order updates the Department's rules for operating a program established under s. 46.295, Stats., that reimburses communication access services providers for the provision of communication access services for persons who are deaf, deafblind or hard of hearing. The Department proposes to update the rules for three reasons:

1. To change how communication access services providers are scheduled. Chapter HFS 77 currently states that the Department will schedule interpreting services for an individual or organization authorized to receive interpreting services funded by the Department. However, although the Department continues to fund interpreting services and maintain lists of qualified communication access services providers, it no longer directly schedules providers. Requests for communication access services are received and reviewed by the Department's six region-based Coordinators of Deaf and Hard of Hearing Services to ensure that the circumstances for which services are requested meet the requirements of s. 46.295, Stats., and ch. HFS 77. If qualified, the Department provides the individual or organization requesting the service with a list of certified communication access services providers and verified interpreters. The individual or organization is subsequently responsible for scheduling the communication access services provider.

2. To use the Wisconsin Interpreting and Transliterating Assessment (WITA) as a method of verifying interpreters. Interpreters verified through WITA will qualify for Department reimbursement for communication access services provided under ch. HFS 77. Chapter HFS 77 is also being revised to include real-time captioning services.

3. To conform with changes in the generally accepted preferred terminology for referring to people with hearing problems and to the services required to support their access to needed communication.

The current rules refer throughout to "hearing impaired persons" and "interpreter services," terms also used, but undefined, in s. 46.295, Stats. These terms are replaced in the proposed rules by the terms "deaf, deafblind or hard of hearing persons" and "communication access services," terms preferred by the deaf and hard of hearing communities.

The Department's authority to repeal and recreate these rules is found in s. 46.295 (6), Stats. The rules interpret s. 46.295, Stats.

SECTION 1. Chapter HFS 77 is repealed and recreated to read:

Chapter HFS 77

SERVICE FUND FOR PEOPLE WHO ARE DEAF, DEAFBLIND OR HARD OF HEARING

HFS 77.01	Authority and purpose.
HFS 77.02	Applicability.
HFS 77.03	Definitions.
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HFS 77.01 Authority and purpose. This chapter is promulgated under the authority of s. 46.295 (6), Stats., for the purpose of implementing s. 46.295, Stats., by doing all of the following:

(1) Establishing criteria and procedures for providing reimbursement from the appropriations under s. 20.435 (6) (a) and (hs), Stats., to communication access services providers for deaf, deafblind or hard of hearing persons for the provision of communication access services.

(2) Providing prompt payment to communication access services providers for services rendered, whether or not an agency that requested those services makes final payment for them.

(3) Providing final payment for communication access services that are approved by the department and for which no other agency is financially responsible.

(4) Maintaining and providing a list of certified communication access services providers and verified interpreters.

HFS 77.02 Applicability. This chapter applies to deaf, deafblind or hard of hearing persons in need of communication access services, to persons providing those services, and to individuals and city, town, village, county, state, federal and private agencies that request communication access services under s. 46.295, Stats.

HFS 77.03 Definitions. In this chapter:

(1) "Agency" means any private or public organization.

(2) "Certification of interpretation" means a document issued by the registry of interpreters for the deaf that testifies to the proficiency of the holder in interpretation between American sign language and spoken English in both sign-to-voice and voice-to-sign.

(3) "Certification of transliteration" means a document issued by the registry of interpreters for the deaf that testifies to the proficiency of the holder in transliteration between English-based sign language and spoken English in both sign-to-voice and voice-to-sign.

(4) "Certified deaf interpreter" means a deaf or hard of hearing person who:

(a) Interprets in a broad range of settings in situations where a deaf consumer may benefit from the services of a deaf interpreter; and

(b) Holds a document issued by the registry of interpreters for the deaf that testifies to the holder's interpreting proficiency.

(5) "Certified deaf interpreter: provisional" means a deaf or hard of hearing person who has training and at least one year's interpreting experience and is awaiting certification from the registry of interpreters for the deaf.

(6) "Certified communication access services provider" or "certified provider" means a person who has been awarded a certificate of interpreting proficiency by the registry of interpreters for the deaf, inc., the national association of the deaf or national court reporters association or other nationally recognized certification organization.

(7) "Communication access services" means any assistance provided by a person trained to increase the ability of a deaf, deafblind or hard of hearing person to communicate with others.

(8) "Communication access services provider" or "provider" means a person who provides assistance to a deaf, deaf-blind or hard of hearing person that increases the ability of that person to communicate with others.

(9) "Communication technology" means a device used as a medium to transfer audible or text words from a person speaking or typing the words to a person using a device to perceive the words.

(10) "Comprehensive skills certificate" means a document issued by the registry of interpreters for the deaf that testifies to a person's proficiency in both transliterating and interpreting in both sign-to-voice and voice-to-sign.

(11) "Deaf, deafblind or hard of hearing person" means a person who, because of some pathological or functional cause, requires communication access services.

(12) "Department" means the Wisconsin department of health and family services or its designated administrative agency.

(13) "Emergency" means a situation in which the life, liberty, health or property of a deaf or hard of hearing person or a member of a deaf, deafblind or hard of hearing person's family is in immediate danger.

(14) "Final payment" means financial compensation by the department to a person or communication access services coordination agency providing communication access services and which the department will not seek to recover by billing a person or agency.

(15) "Level 3, 4 or 5 rating" means gradations of competency awarded by the national association of the deaf, with the highest number designating the holder's ability to master interpreting situations with minimal difficulty.

(16) "National association of the deaf" is an organization that promotes, protects, and preserves the rights and quality of life of deaf and hard of hearing individuals in the U.S. and certifies persons to be communication access services providers through its assessment and certification program.

(17) "National court reporters association" is an organization that advances the profession of those who capture and integrate the spoken word into a comprehensive and accurate information base for the benefit of the public and private sectors through ethical standards, testing and certification, educational opportunities, communications, government relations, research and analysis, and fiscal responsibility.

(18) "Non-profit organization" means an organization exempt from federal income taxation under 26 USC 501.

(19) "Real-time captioning" means technology that simultaneously processes spoken-word English into readable English.

(20) "Registry of interpreters for the deaf" means a national membership organization that tests and certifies persons who provide sign language interpreting and transliterating services for deaf and hard of hearing persons.

(21) "Specialist certificate legal" means a document issued by the registry of interpreters for the deaf that testifies to the proficiency of a person in legal interpreting.

(22) "Transliterating services" means representing in letters or words English-based sign language and spoken English in both sign-to-voice and voice-to-sign.

(23) "Verified interpreter" means a person who has been awarded recognition as having a level 1 or 2 interpreting proficiency by the Wisconsin interpreting and transliterating assessment.

(24) "Wisconsin interpreting and transliterating assessment" means a program administered by the department to determine and verify the level of competence of communication access services providers who are not certified by the national registry of interpreters for the deaf, inc., the national association of the deaf or national court reporters association or other nationally recognized certification organization.

HFS 77.04 Criteria for reimbursement of communication access services providers.

(1) GENERAL REQUIREMENTS. (a) The department may use funds from the appropriations under s. 20.435 (6) (a) and (hs), Stats., to reimburse communication access services providers for deaf, deafblind or hard of hearing persons in accordance with the requirements of this chapter.

(b) 1. Only in the following circumstances, when the department reimburses a communication access services provider under par. (a), the department shall reimburse the provider without subsequently billing the individual who or agency that requested the communication access services:

a. The individual or agency requesting communication access services is not required by state or federal law to provide those services;

b. No other source of funding is applicable; or

c. The department determines that undue hardship or potential harm to the individual or agency is caused by requiring the individual or agency to provide reimbursement for communication access services.

2. When the department reimburses a communication access services provider under par. (a) in circumstances other than those specified in subd. 1., the department shall reimburse the provider and shall subsequently bill the agency or individual requesting communication access services in accordance with s. HFS 77.08.

(c) Reimbursement for communication access services under this chapter is contingent upon the availability of funds in the appropriations under s. 20.435 (6) (a) and (hs), Stats.

(2) COMMUNICATION ACCESS SERVICES PROVIDERS ELIGIBLE FOR REIMBURSEMENT. Except as provided in s. HFS 77.06 (3), the department may reimburse only communication access services providers on the list of certified providers and verified interpreters maintained by the department under s. HFS 77.09 (1).

(3) CIRCUMSTANCES ELIGIBLE FOR REIMBURSEMENT. (a) *Priority circumstances.* In accordance with s. 46.295, Stats., and subject to s. HFS 77.06 (1), the department shall give priority to requests to pay fees charged by communication access services providers in the following circumstances, in the following order:

1. Emergencies.

2. Medical, mental health, alcohol and drug abuse, psychiatric or psychological services are needed.

3. In obtaining legal services and during civil court proceedings.

4. Matters involving law enforcement personnel.

5. Matters involving any federal, state, county or municipal agency.

6. Job-related appointments for deaf, deaf-blind or hard of hearing persons who are not clients of the Wisconsin department of workforce development's division of vocational rehabilitation.

7. Funerals and memorial services.

(b) *Non-priority circumstances.* The department may reimburse communication access services providers for services provided in connection with any of the following activities:

1. Communications involving financial matters.

2. Communications involving housing and shelter.

3. Meetings relating to the development of new programs, agencies or organizations to promote awareness of issues relating to deaf, deafblind or hard of hearing persons.

4. Meetings, workgroups or conferences sponsored by statewide, nonprofit organizations whose missions relate specifically to deaf, deafblind and hard of hearing persons. Final payment for the purposes specified under this subdivision is determined by the rates charged by individual communication access services providers and communication access services coordination agencies on a fee-for-service basis.

5. Meetings, workgroups or conferences sponsored by nonprofit organizations that do not receive federal funds, do not administer a statewide program, or whose mission is not specifically related to deaf or hard of hearing persons, but are serving the deaf or hard of hearing. Final payment for the purposes specified under this subdivision is determined by the rates charged by individual communication access services providers and communication access services coordination agencies on a fee-for-service basis.

6. Matters relating to the welfare of minor children of deaf, deafblind or hard of hearing parents, including meetings relating to day care or child care, attendance at parental support groups or parenting classes and meetings with schools meeting the criteria in sub. (1) (b).

7. After school activities for children that are temporarily not covered under federal laws while an alternate source of funding is being pursued.

8. Activities that people who are not deaf, deafblind or hard of hearing participate in without accommodations or technologies, including participation on boards of non-profit organizations and training sessions not specifically designated for deaf, deafblind or hard of hearing people when the sponsoring agency or organization is not required by federal or state law to provide those services.

9. Communications that may affect a person's ability to function safely or independently in the community.

HFS 77.05 Requests for reimbursement of communication access services. (1) Any individual or any city, town, village, county, state, federal or private agency may request, in writing, that the department reimburse a communication access services provider to provide communication access services. Except in an emergency, a request shall be received by the department at least 2 weeks in advance of the time a provider is needed.

Notes: Requests for reimbursement of communication access services shall be made to the Regional Bureau Coordinator for Deaf and Hard of Hearing Services. To find out which Regional Bureau Coordinator to contact, write or phone the Division of Supportive Living, Bureau for the Deaf and Hard of Hearing, P.O. Box 7851, Madison, Wisconsin 53707, (608) 266-3118 for both voice and teletext typewriter (TTY). A map of the regions may also be viewed over the internet at: <http://www.dhfs.state.wi.us/sensory/staff/DSL-regions.htm>.

(2) (a) Within 5 working days after receipt by the department of a request for reimbursement of communication access services under sub. (1) and subject to the priority circumstances in s. HFS 77.04 (3) (a), the department shall grant or deny the request.

(b) If the request is granted, the department shall provide the individual or agency requesting the service with a list of certified communication access services providers and verified interpreters and real-time captioners so that the individual or agency may arrange communication access services.

(c) 1. If the request is denied, the department shall send the requestor within 48 hours after the action takes place a written notice of the reasons for denial and the procedure for requesting a hearing under ch. 227, Stats. Receipt of the notice is presumed within 5 calendar days of the date the department mailed the notice.

2. To request a hearing, an individual or agency shall file a written request with the department of administration's division of hearings and appeals within 30 calendar days after the date of the notice. A request is considered filed when received by the division of hearings and appeals. The division of hearings and appeals shall hold the hearing no later than 30 calendar days after receiving the request for the hearing unless both parties agree to a later date and shall provide at least 10 calendar days prior notification of the date, time and place for the hearing. The hearing examiner shall issue a proposed or final decision within 10 calendar days after the hearing. The denial shall remain in effect until a final decision is rendered.

Note: A hearing request should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707, 608-266-3096. Hearing requests may be delivered in person to that office at 5005 University Ave., Room 201, Madison, WI.

HFS 77.06 Communication access services providers eligible for reimbursement. (1) PRIORITY CIRCUMSTANCE REIMBURSEMENT. In priority circumstances as specified under s. HFS 77.04 (3) (a), except as provided under sub. (3), the department may reimburse the following communication access services providers listed under s. HFS 77.09 (1):

(a) A person holding any of the following from the national registry of interpreters for the deaf:

1. A specialist certificate: legal for an appointment relating to legal services.
2. Certification of interpretation.
3. Certification of transliteration.
4. A comprehensive skills certificate.

(b) A person certified with a level 4 or 5 rating in sign language interpreting by the national association of the deaf.

(c) A certified deaf interpreter.

(d) A person verified by the Wisconsin interpreting and transliterating assessment as level 1 or 2 in interpreting or transliterating.

(e) A person certified in oral transliterating by the national registry of interpreters for the deaf.

(f) A person certified in real-time captioning by the national court reporters association.

(2) **NON-PRIORITY CIRCUMSTANCE REIMBURSEMENT.** In non-priority circumstances as specified under s. HFS 77.04 (3) (b), except as provided under sub. (3), the department may reimburse the following communication access services providers listed under s. HFS 77.09 (1):

(a) A person holding any of the following from the national registry of interpreters for the deaf:

1. Certification of interpretation.
2. Certification of transliteration.
3. A comprehensive skills certificate.

(b) A person certified with a level 3, 4, or 5 rating in sign language interpreting by the national association of the deaf.

(c) A certified deaf interpreter or certified deaf interpreter: provisional.

(d) A person verified by the Wisconsin interpreting and transliterating assessment as level 1 or 2 in interpreting or transliterating.

(e) A person certified in oral transliterating by the national registry of interpreters for the deaf.

(f) A person certified in real-time captioning by the national court reporters association.

Note: A description of the skills included under each category of certification and verification specified in subs. (1) and (2) is available from the Bureau for the Deaf and Hard of Hearing, P.O. Box 7851, Madison, Wisconsin 53707, 608-266-3118 for both voice and teletext typewriter (TTY). A description of the skills may also be viewed over the internet at: <http://www.dhfs.state.wi.us/sensory/WITA/desclevels.htm>.

(3) **EXCEPTIONS.** The department shall reimburse communication access services providers in all situations where the department determines any of the following:

(a) The deaf, deafblind or hard of hearing person's method of communication is nontraditional or uses signs known only to family members or associates.

(b) The deaf, deafblind or hard of hearing person can understand only a particular noncertified or nonverified communication access services provider.

(c) The method of communication of the deaf, deafblind or hard of hearing person is based on a language other than English or American sign language.

(d) The deaf, deafblind or hard of hearing person's request for a specific communication access services provider is justified based on that provider's understanding of the subject matter, particular communication method, or unique suitability for a particular appointment as determined by the person or agency requesting communication access services.

(4) **CANCELLING AN APPOINTMENT.** (a) *Person or agency.* 1. Before canceling an appointment for which the department has approved reimbursement and for which a communication access services provider has been scheduled, the person who or agency that requested communication access services shall give the provider or communication access services coordination agency a minimum of 48 hours' notice.

2. When a person or agency that requested communication access services misses an appointment for which the department has approved reimbursement and does not give prior notification of the cancellation because of circumstances outside of the control of the person or agency, the department shall reimburse the communication access services provider or communication access services coordination agency for 2 hours of communication access services.

Note: The Department is not the ultimate payor in cases where the Department bills another entity for communication access services such as those described in s. HFS 77.08 (2).

3. When a person or agency that requested communication access services misses an appointment for which the department has approved reimbursement and does not provide notice to the communication access services provider or communication access services coordination agency because of circumstances within the control of the person or agency for the third time, the department may elect not to approve subsequent requests from that person for reimbursement.

(b) *Communication access services provider.* A communication access services provider who needs to cancel an appointment shall notify the person or agency that requested communication access services at least 24 hours before the time of the appointment.

HFS 77.07 Reimbursement policies. (1) **REIMBURSEMENT RATES.** The department shall reimburse communication access services providers according to certification and verification levels, with the levels requiring the most skill receiving the highest rates of pay.

(2) **REIMBURSEMENT POLICIES.** (a) To be eligible for department reimbursement, an agency that provides communication access services providers shall provide to the department proof that the agency is exempt from federal income taxation and does not charge a fee to the consumer or the communication access services coordination agency that contacts the agency supplying providers.

Note: The proofs and confirmations in par. (a) ensure that the agency is not required by federal or state law to provide communication access services.

(b) A state employee who is a certified communication access services provider or verified interpreter may, if no other provider is available, be reimbursed for assignments completed after normal working hours, while on vacation or during leave without pay. The state employee shall demonstrate that there is no conflict of interest in accepting a reimbursed interpreting assignment by obtaining the prior approval of his or her supervisor. The state employee shall be reimbursed at rates charged by individual providers or communication access services coordination agencies on a fee-for-service basis.

HFS 77.08 Billing and collections. (1) Services provided under this chapter are subject to the provisions of ch. HFS 1 for ability to pay, billing and collection purposes.

(2) The department shall bill any federal, state, county, municipal or private agency for requested communication access services reimbursed by the department if the department determines that the agency is required under state or federal law to provide communication access services to a deaf or hard of hearing person or if the agency is not required to provide communication access services but agrees to pay for the services.

(3) The department shall deposit all monies collected under this section into the appropriation under s. 20.435 (6) (hs), Stats.

(4) If any agency identified under sub. (2) does not pay a bill, the bill shall be referred to the department's bureau of fiscal services for collection.

HFS 77.09 List of certified communication access services providers and verified interpreters. (1) The department shall maintain a list of certified communication access services providers and verified interpreters and real-time captioners. To be included in the list, a person shall provide documentation of his or her certification or of training and skills to the department. The list shall include the following information for each person:

- (a) Name.
- (b) Address and telephone number.
- (c) Certification or verification level.
- (d) Expiration date of each certification or verification.

Note: Communication access services providers wishing to be included in the list should contact the Bureau for the Deaf and Hard of Hearing by mail at P.O. Box 7851, Madison, WI 53707, by fax at 608-266-3256, or in person at 1 West Wilson Street in Madison. The list is also available at <http://www.dhfs.state.wi.us/sensory/WITA/terpdirectory.htm>.

(2) After providing 10 calendar days notice, the department may exclude from the list under sub. (1) a communication access services provider for cause. A provider may appeal the department's decision. To request a hearing, a provider shall file a written request with the department of administration's division of hearings and appeals within 30 calendar days after the date of the department's notice. A hearing request is considered filed when received by the division of hearings and appeals. The division of hearings and appeals shall hold the hearing no later than 30 calendar days after receiving the request for the hearing unless both parties agree to a later date and shall provide at least 10 calendar days prior notification of the date, time and place for the hearing. The hearing examiner shall issue a proposed or final decision within 10 calendar days after the hearing. The denial shall remain in effect until a final decision is rendered.

Note: A hearing request should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707, or faxed to the Division at 608-266-3096. Hearing requests may be delivered in person to that office at 5005 University Ave., Room 201, Madison, WI.

HFS 77.10 Grievances. If an individual providing communication access services under this chapter or an individual or agency receiving communication access services under this chapter is dissatisfied with any action or decision of the department relating to communication access services, the individual or agency may file a grievance, in writing or orally, with the

department. The grievance shall be addressed to the department's division of supportive living and shall be received by the administrator's office of the division of supportive living within 45 days after the date of the department's action or decision.

Note: To file a grievance, write or phone Administrator, Division of Supportive Living, P.O. Box 7851, Madison, Wisconsin 53707, 608-266-5451 voice or 608-267-9880 TTY. Grievances may also be filed in person at 1 West Wilson Street in Madison.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____
Phyllis J. Dubé
Secretary

SEAL: