

Report From Agency

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION AND : AND LICENSING ADOPTING RULES
LICENSING : (CLEARINGHOUSE RULE 11- 018)

ORDER

Order of the Department of Regulation and Licensing (the department) to create chapters RL 200 to 202, relating to sign language interpreters.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes interpreted:

Section 440.032, Stats.

Statutory authority:

Sections 227.11 (2), Stats., and ss. 440.032 (6) (d) and (7) (b), Stats.

Explanation of agency authority:

The department is authorized under s. 440.032 (7) Stats., to promulgate rules defining a code of ethics for the professional conduct of individuals licensed under s. 440.032 (3), Stats. The council is authorized under s. 440.032 (6) (d) to promulgate rules establishing a process and criteria for granting exemptions to licensure under s. 440.032 (2) (c) 2.

Related statute or rule:

Emergency Rule 1103, containing the same provisions as those proposed for this permanent rule, was published on March 16, 2011. There are no related statutes or rules other than the emergency rule and those indicated above.

Plain language analysis:

These proposed rules will implement the statutory provisions created by 2009 Wisconsin Act 360.

SECTION 1 creates ch. RL 200, "Authority and Definitions." Section RL 200.01 identifies the statutory authority under which chapters RL 200 to 202 are adopted. Section RL 200.02

provides the definitions of “advocate,” “conflict of interest,” “consumer,” “council,” “department,” “DRL,” “family member,” “interpreter,” “interpreting situation,” “interpreting,” and “unlicensed interpreter” as those terms are used in chapters RL 200 to 202.

SECTION 2 creates ch. RL 201, “Unprofessional Conduct.” Section RL 201.01 sets forth 25 different types of unprofessional conduct that are prohibited for individuals licensed as sign language interpreters.

SECTION 3 creates ch. RL 202, “State Resident Exemption.” Section RL 202.01 first establishes the criteria for a temporary or permanent licensure exemption under s. 440.032 (2) (c) 2., Stats., which allows the requestor to provide interpreter services either to a specific person, s. RL 202.01 (1), or for a specific time period, s. RL 202.01 (2), without a license.

Section RL 202.02 (1) requires individuals requesting a state resident exemption to submit a written request to the council stating the rationale for the request and providing supporting documentation, if any.

Section RL 202.02 (2) provides a list of 12 items of information a requestor under sub. (1) must include in his or her exemption request. Section RL 202.02 (3) provides a list of 11 items of information a requestor under sub. (2) must include in his or her exemption request. Section RL 202.02 (4) provides three examples of supportive documentation that may be included with an exemption request, if appropriate.

Section RL 202.02 (5) allows the council to require an individual seeking a state resident exemption to appear before the council to provide further information supporting the request.

Section RL 202.02 (6) provides that the council may not grant an exemption under s. RL 202.01 (1) or (2) to individuals waiting to take a test given by, or for test results from, the National Association for the Deaf, Inc., or for certification by Registry of Interpreters for the Deaf, or for verification by Wisconsin Interpreting and Transliterating Assessment, or for other certification or verification required for licensure under s. 440.032 (3), Stats.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation addressing the practice of sign language interpreting.

Comparison with Rules in Adjacent States

Illinois:

Illinois’s Interpreter for the Deaf Licensure Act of 2007 requires the licensure of individuals who provide interpreting or transliterating services to deaf or hard-of-hearing consumers. 225 ILCS 443/15. The Illinois Deaf and Hard of Hearing Commission administers the Act, and has licensing and rule-making authority. 225 ILCS 443/10, 30, 50.

All individuals subject to the Illinois Act must abide by the Act and Code unless specifically exempted by the Act. 68 Illinois Admin. Code 1515.20. The Act exempts from its purview individuals who provide interpreting services in seven (7) specified scenarios. 225 ILCS 443/25 (1)-(7). Subsections (1)-(5) describe scenarios that are similar to those for which Wisconsin does not require a license, such as for educational interpreters and in emergency situations. (Wisconsin's general licensure exemptions may be found at s. 440.032 (2) (b) 1. to 5., Stats.) Subsection (6) of 225 ILCS 443/25 exempts non-residents who are licensed in another jurisdiction, and who either provide interpreting services for not more than 14 days in a calendar year, or who engage in interpreting by teleconference, video conference, or other technological means. Subsection (7) of 225 ILCS 443/25 exempts individuals who provide sign language interpreting services when teleconference, video conference, other technological means, or a licensed Illinois interpreter are unavailable. Illinois law does not otherwise address exemptions for state residents.

[225 ILCS 443/ Interpreter for the Deaf Licensure Act of 2007.](#)

Illinois licensees must comply with standards of professional conduct. 68 Illinois Admin. Code 1515.130. The code provides a non-exclusive list of six instances of unprofessional conduct: (1) interpreting beyond the skill level indicated in the interpreter's certification; (2) accepting interpreting assignments the interpreter either should or does know he or she is not competent to perform; (3) interjecting personal opinions during an assignment regarding the assignment; (4) delegating an assignment to an individual, for which that individual is either not qualified or lacks the appropriate certification; (5) extending an assignment solely for financial gain; and (6) taking advantage of, or causing harm to, the person to whom the interpreter is providing services. 68 Illinois Admin. Code 1515.130 (1)-(6). In addition to the six listed standards, the Illinois rules incorporate by reference the NAD-RID Code of Professional Conduct of the Registry of Interpreters for the Deaf. 68 Illinois Admin. Code 1515.130 (b).

<http://www.ilga.gov/commission/jcar/admincode/068/06801515sections.html>

Iowa:

In Iowa, no individual may engage in the practice of sign language interpreting without a license from the board of sign language interpreters and transliterators, unless the individual qualifies for one of the licensure exceptions. Iowa Code ss. 147.2(1), 154E.4 (2) (a)-(e). Subsections (2) (b)-(e) of s. 154E.4 describe scenarios that are similar to the Wisconsin and Illinois general exemptions. Subsection (2) (a) of Iowa Code s. 154E.4 excepts non-residents who are licensed in another state, and who provide interpreting services for not more than 14 days in a calendar year. Iowa law does not otherwise address exemptions for state residents.

<http://search.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm>

The Iowa Board of Sign Language Interpreters and Transliterations is responsible for enforcement of the licensee rules. The board may sanction a licensee upon finding that he or she has committed, among other things, various types of fraud and fraudulent activities, professional incompetency, practice outside the scope of the profession, untruthful advertising, habitual

intoxication or addiction to drugs, failure to pay costs assessed in any disciplinary proceeding, or failure to comply with a board order. 645 Iowa Admin. Code 363.2(1) – (31).

The board may impose a range of sanctions including: revocation or suspension of a license, additional education and training, civil penalties not exceeding \$1,000, or a citation or warning. 645 Iowa Admin. Code 363.3.

<http://www.legis.state.ia.us/asp/ACODOCS/DOCS/645.362.pdf>

<http://www.legis.state.ia.us/asp/ACODOCS/DOCS/645.363.pdf>

Michigan:

Michigan's Deaf Persons' Interpreters Act requires sign language interpreters to become registered with the state as "qualified interpreter[s]." The Act, codified at ss. 393.501-509, Michigan Compiled Laws (MCL), defines "qualified interpreter" as "a person who is certified through the National Registry of Interpreters for the Deaf [(NRID)] or certified through the state by the [Division of Deaf and Hard of Hearing (DODHH)]." MCL s. 393.502 (f). The Act mandates that in all situations in which state or federal law requires accommodations for a deaf person, the interpreter shall be a "qualified interpreter." MCL s. 393.503a. Section 393.508b, MCL, makes it a misdemeanor for any individual to falsely represent him or herself as qualified under the Act. An individual applying for registration as a qualified interpreter, or an individual already so certified, who violates the Act is subject to application denial, or revocation, suspension, or limitation of his or her certification. MCL ss. 393.508b (2) (a), (b).

[Michigan Legislature - Act 204 of 1982](#)

The Act also provides that DODHH, with advice from the Michigan Department of Education, shall promulgate rules to govern application procedures, certification testing, revocation, suspension, or limitation of certification, registration renewal, minimum credential requirements and levels, continuing education, minimum standards of practice, and grievances. MCL s. 393.508a (1). DODHH has drafted such rules, but they have yet to be promulgated. The rules draft is available at

http://www.michigan.gov/documents/dleg/DELEG_CDC_QualifiedInterpreter_315325_7.pdf.

Other information related to registration of sign language interpreters in Michigan is available at [MDCD - Commission for Disability Concerns](#).

Minnesota:

Minnesota does not regulate sign language interpreters other than those employed in schools and by courts. Minn. Stats. ss. 122A.31, Minn. Court Rule 8. Wisconsin specifically exempts those two categories of interpreters when they are licensed by the Department of Public Instruction as an educational interpreter and certified by the supreme court to act as a qualified interpreter in court proceedings, under s. 885.38(2), Stats., respectively.

[122A.31, 2010 Minnesota Statutes; 8710.5200 Minnesota Rule; https://www.revisor.mn.gov/data/revisor/court_rules/gp/2011-01-20_12-31-18/gp_chapter.pdf](https://www.revisor.mn.gov/data/revisor/court_rules/gp/2011-01-20_12-31-18/gp_chapter.pdf), at pp. 18-26.

Summary of factual data and analytical methodologies:

The sign language interpreters council used the NAD-RID Code of Professional Conduct, as required by statute, as a starting point for creating the rules regarding the sign language interpreter's code of conduct. The council met several times to discuss the NAD-RID standards and modifications to those standards to specifically meet the needs of Wisconsin interpreters and Wisconsin residents. The council then provided its recommendations to the department. Such recommendations were reviewed and considered by the secretary of the department. Changes were made to the recommended code of conduct and approved by the Secretary.

Under s. 440.032 (6) (d), Stats., the council is responsible for promulgating rules regarding licensure exemptions for state residents. Membership in the council is as follows: five (5) deaf or hard of hearing individuals who have used sign language interpreting services, two (2) active sign language interpreters, and one individual not deaf or hard of hearing who has obtained sign language interpreting services for another. Wis. Stat. s. 15.407 (9). Based on the new licensure requirements and the council members' collective experience, the council formulated state-resident exemption criteria that will ensure the minimal competence of an unlicensed interpreter and the safety of consumers of such services.

Analysis and supporting documents used to determine effect on small business:

The department finds that this rule will have no significant effect on small business.

Anticipated costs incurred by private sector:

The department finds that this rule will have no significant fiscal effect on the private sector.

Fiscal estimate:

The department estimates that this rule will require staff time in the Division of Enforcement. The total on-going salary and fringe costs are estimated at \$47,400.

Effect on small business:

These proposed rules will be reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The department's Regulatory Review Coordinator may be contacted by email at john.murray@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Kris Anderson, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2385; email at kristine1.anderson@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Kris Anderson, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 1521, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to kristine1.anderson@wisconsin.gov. Comments must be received on or before May 3, 2011 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter RL 200 is created to read:

CHAPTER RL 200

SIGN LANGUAGE INTERPRETERS; AUTHORITY AND DEFINITIONS

RL 200.01 Authority. The rules in chapters RL 200 to 202 are adopted by the department and the sign language interpreters council pursuant to s. 440.032 (6) (d) and (7) (b), Stats.

RL 200.02 Definitions. As used in chapters RL 200 to 202:

(1) “Advocate” means an individual who provides assistance to an individual who is deaf, deaf-blind, or hard of hearing and may provide counsel, personal opinions, advice, and assist an individual in making personal decisions.

(2) “Conflict of interest” means a conflict, either actual or perceived, between the private interests, whether personal, financial, or professional, and the official or professional responsibilities of a DRL-licensed interpreter, deriving from a specific interpreting situation.

(3) “Consumer” means any individual or entity that is part of the interpreting situation, including individuals who are deaf, deaf-blind, hard of hearing, and hearing.

(4) “Council” means the sign language interpreter council.

(5) “Department” means the department of regulation and licensing.

(6) “DRL” means the department of regulation and licensing.

(7) “Family member” means the spouse, child, grandchild, grandparent, aunt, uncle, brother, sister, parent, step-parent, step-child, step-brother, step-sister, foster child, or first cousin.

(8) “DRL-licensed interpreter” means an individual who provides sign language interpreter services, for compensation, and who is licensed under s. 440.032 (3), Stats.

(9) “Interpreting situation” means any instance of a DRL-licensed interpreter performing interpreting services for consumers.

(10) “Interpreting” means rendering accurate and equivalent messages using sign language to facilitate cultural and linguistic communication.

(11) “Unlicensed interpreter” means an individual who uses sign language to facilitate cultural and linguistic communication who is not licensed under s. 440.032 (3), Stats.

SECTION 2. Chapter RL 201 is created to read:

CHAPTER RL 201
SIGN LANGUAGE INTERPRETERS; UNPROFESSIONAL CONDUCT

RL 201.01 Unprofessional conduct is prohibited. Unprofessional conduct includes any of the following:

(1) Conduct in the practice of sign language interpretation which evidences a lack of knowledge or ability to apply professional principles or skills.

(2) Failing to notify the department in writing within 30 days of any certification, verification, or membership required for licensure being revoked, suspended, expired, or invalidated. This may include certification, verification, or membership by or in National Association of the Deaf, Registry of Interpreters for the Deaf, Inc., Wisconsin Interpreting and Transliterating Assessment or any other certification determined to be substantially similar to certification by the National Association of the Deaf or Registry of Interpreters for the Deaf, Inc. by the department.

(3) Failing to notify the department in writing within 30 days of being convicted of any crime.

(4) Violating the terms of any disciplinary order of the department.

(5) Disclosing any aspect of a confidential communication facilitated by the DRL-licensed interpreter unless one of the following conditions apply:

(a) All parties to the confidential communication consent to the disclosure.

(b) A court determines that the disclosure is necessary for the proper administration of justice.

(6) Failing to convey the content of communications accurately, using language most readily understood by consumers, accounting for their requests or needs regarding language preferences, and correcting errors discreetly and expeditiously.

(7) Failing to facilitate communication in a way that allows for meaningful and equitable access to communication that will support the full interaction and independence of consumers.

(8) Discriminating in the provision of services on the basis of the race, color, national origin, gender, religion, age, disability, or sexual orientation of any party to an interpreting situation.

(9) Providing services when not competent to do so due to physical, mental, or emotional incapacity.

(10) Providing services while the DRL-licensed interpreter's ability to provide such services is impaired by alcohol or other drugs.

(11) Providing services which are inconsistent with the DRL-licensed interpreter's skill levels or for which the DRL-licensed interpreter is not qualified to perform services given the language used, communication mode and setting, or consumer needs.

(12) Failing to monitor the accuracy of the message, and correct such message as necessary, while functioning as a team member.

(13) Failing to request deaf interpreters, when necessary to fully convey the message or to address exceptional communication challenges such as may arise from cognitive disabilities, emerging or limited language proficiency, lack of formal instruction or language, or the use of foreign sign language.

(14) Failing to obtain the consent of all parties to an interpreting situation before allowing an intern to observe or participate in an assignment.

(15) Performing services in situations that involve an actual or perceived conflict of interest unless there is disclosure to all participants and agreement to proceed regardless of the conflict of interest or perceived conflict of interest. DRL-licensed interpreters may not proceed to perform services if the party for whom the services are being provided may not have the mental capacity to appreciate the actual or perceived conflict of interest.

(16) Performing services for a family member.

(17) Performing services for an individual when the DRL-licensed interpreter is the legal guardian for the individual.

(18) Assuming dual or conflicting roles in interdisciplinary settings.

(19) Using confidential interpreted information for personal, monetary, or professional gain or for the benefit of professional affiliations or entities.

(20) Acting as an advocate while functioning as a DRL-licensed interpreter or as an interpreting team member.

(21) Being convicted of any state or federal crime which substantially relates to the practice of sign language interpreting.

(22) Failing to maintain ethical business practices whether in private practice or as an employee of an agency or other entity.

(23) Failing to accurately represent the DRL-licensed interpreter's qualifications, such as certification, education, and experience, failing to provide documentation of the DRL-licensed interpreter's qualifications when requested, or failing to ensure that the DRL-licensed interpreter's qualifications are accurately represented by any agencies or entities that contract for or schedule the DRL-licensed interpreter's services.

(24) Engaging in any harassing, intimidating, or coercive business tactics.

(25) Failing to comply with continuing education requirements as mandated for its members by the Registry of Interpreters for the Deaf, Inc., the National Association of the Deaf, or their successors, or any other certifying organization that the department determines to be substantially equivalent to the Registry of Interpreters for the Deaf, Inc., the National Association of the Deaf, or their successors.

SECTION 3. Chapter RL 202 is created to read:

CHAPTER RL 202
SIGN LANGUAGE INTERPRETERS; STATE RESIDENT EXEMPTION

RL 202.01 State residents may request an exemption from the sign language interpreter licensure requirement pursuant to s. 440.032 (2) (c) 2., Stats., for one of the following purposes:

(1) To provide services to a specific consumer. Unlicensed interpreters applying for a temporary or permanent exemption under this subsection shall demonstrate that the individual to whom services will be provided and for which the exemption is being requested cannot reasonably obtain services from an interpreter licensed under s. 440.032 (3), Stats., to meet his or her needs due to specific language requirements, cultural requirements, or physical, mental, or emotional conditions.

(2) To provide services for a specific period of time. Unlicensed interpreters applying for a temporary or permanent exemption under this subsection shall demonstrate that it is not possible to obtain a sign language interpreter licensed under s. 440.032 (3), Stats., and the existence of a need to provide sign language interpretation services.

RL 202.02 (1) Unlicensed interpreters requesting an exemption under either s. RL 202.01 (1) or (2) shall submit a written request to the council stating the rationale for such request, and provide any documentation that supports the request.

(2) A request submitted pursuant to s. RL 202.01 (1) shall specify all of the following:

(a) Information to support that the criteria stated in s. RL 202.01 (1) has been met.

(b) The identity of the individual to whom services will be provided.

(c) The duration of the exemption being requested.

(d) The setting for which the exemption is requested

(e) The unlicensed interpreter's educational and training background.

(f) Where, when, and from whom the unlicensed interpreter learned sign language.

(g) The unlicensed interpreter's knowledge of sign language and deaf culture.

(h) Any other special training or experience of the requestor in working with persons who are deaf, deaf-blind, or hard of hearing, or with persons with other disabilities.

(i) The unlicensed interpreter's experience with interpreting.

(j) The unlicensed interpreter's knowledge of the code of ethics for DRL-licensed sign language interpreters.

(k) The unlicensed interpreter's relationship to and how long the unlicensed interpreter has known the consumer for whom services will be provided.

(L) Where, if applicable, the unlicensed interpreter is employed.

(3) A request submitted pursuant to s. RL 202.01 (2) shall specify all of the following:

(a) Information to support that the criteria stated in s. RL 202.01 (2) above has been met.

(b) The identity of the consumer to whom services will be provided.

(c) The duration of the exemption being requested.

(d) The setting for which the exemption is requested.

(e) The unlicensed interpreter's educational and training background.

(f) Where, when, and from whom the unlicensed interpreter learned sign language.

- (g) The unlicensed interpreter's knowledge of sign language and deaf culture.
 - (h) Any other special training or experience of the unlicensed interpreter in working with persons who are deaf, deaf-blind, or hard of hearing, or with persons with other disabilities.
 - (i) The unlicensed interpreter's experience with interpreting.
 - (j) The unlicensed interpreter's knowledge of the code of ethics for sign language interpreters.
 - (k) Where, if applicable, the unlicensed interpreter is employed.
- (4) Documentation to support the request for exemption may include, if appropriate, any of the following:
- (a) Letter of support from the individual receiving services or their legal guardian.
 - (b) Medical documentation for the individual receiving services.
 - (c) Letter of support from a teacher or other school personnel.
- (5) The council may, in its discretion, request an appearance before the council by the unlicensed interpreter requesting the exemption to provide further information in support of the request.
- (6) The council may not grant an exemption under s. RL 202.01 for individuals who are waiting to take a test for the National Association for the Deaf, Inc., or for test results, or for certification by the Registry of Interpreters for the Deaf, or for verification from the Wisconsin Interpreting and Transliterating Assessment, or for other certification or verification required for licensure under s. 440.032 (3), Stats.

(END OF TEXT OF RULE)

 The rules adopted in this order shall take effect upon the first day of the month commencing after publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2), Stats.

Dated: _____

Agency: _____

Secretary
 Department of Regulation and Licensing