

**WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT PERMANENT RULES**

The Wisconsin Department of Health Services proposes an order to **repeal** DHS 77.03 (2) to (6), (9) and (10), and (15) to (24), 77.04 (3) (b) 4., 6. and 7., 77.06 (1) (a) to (f), (2) and (note), (3) (intro.) and (a) to (c), (4) (a) 3., and 77.09 (1) (d); **renumber** DHS 77.03 (12) to (14), 77.04 (3) (a) 7., (b) 9., and 77.06 (4) (b); **renumber and amend** DHS 77.03 (7) and (8), (11), 77.04 (3) (a) 6., (b) 5. and 8., and 77.06 (1) (intro.), (3) (d), (4) (a) 1. and 2.; **amend** DHS 77.04 (1) (a), (b) 1. (intro.) and a. and b., 2., and (c), (2) (title) and (2), 77.04 (3) (b) (intro.), 77.05 (title), (1), (2) (a) and (b), 77.06 (title), 77.07 (title), (1), (2) (a) and (b), 77.09 (title), (1) (intro.) and (a) to (c), and 77.10 and (note); and **create** DHS 77.06 (2) (note), and 77.09 (1) (note 2) and (note 3), relating to service fund for people who are deaf, deafblind or hard of hearing.

RULE SUMMARY

Statute interpreted

Not applicable.

Statutory authority

Sections 46.295 (1) to (6), Section 227.11 (2) (a)

Explanation of agency authority

Section 46.295 (1) to (6), Stats.:

- (1) The department may, on the request of any hearing-impaired person, city, village, town, or county or private agency, provide funds from the appropriation accounts under s. 20.435 (1)(da) and (hs) to reimburse interpreters for hearing-impaired persons for the provision of interpreter services.
- (2) The department shall grant priority to requests to pay fees charged by interpreters for the following, in the following order:
 - (a) Emergencies.
 - (b) Medical, mental health, alcohol and drug abuse, psychiatric and psychological services.
 - (c) Legal services and civil court proceedings.
 - (d) Matters concerning law enforcement personnel.
 - (e) Matters concerning any federal, state, county or municipal agency.
- (3) The department shall maintain lists of qualified interpreters under s. 885.37 (5)(b).
- (4) The department may use as an interpreter for hearing-impaired persons only the following:
 - (a) An interpreter for hearing-impaired persons who is certified by the national registry of interpreters for the deaf.
 - (b) In an interpreter under par. (a) is unavailable, an interpreter for hearing-impaired persons whose qualifications have been deemed appropriate by the department.
- (5) The department may bill any public or private agency at the rates established by the department for interpreter services for hearing-impaired persons commensurate with the certification or qualification level of the interpreter providing services if the department determines that the agency is required under state or federal law to provide interpreter services to a hearing-impaired person or if the agency agrees to pay for the services.
- (6) The department shall promulgate rules to implement this section.

Section 227.11 (2) (a), Stats.:

- (2) Rule-making authority is expressly conferred on the agency as follows:
 - (a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. All of the

following apply to the promulgation of a rule interpreting the provisions of a statute enforced or administered by an agency:

1. A statutory or nonstatutory provision containing a statement or declaration of legislative intent, purpose, findings, or policy does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
2. A statutory provision describing the agency's general powers or duties does not confer rule-making authority on the agency or augment the agency's rule-making authority beyond the rule-making authority that is explicitly conferred on the agency by the legislature.
3. A statutory provision containing a specific standard, requirement, or threshold does not confer on the agency the authority to promulgate, enforce, or administer a rule that contains a standard, requirement, or threshold that is more restrictive than the standard, requirement, or threshold contained in the statutory provision.

Related statute or rule

- Section 504 of the Rehabilitation Act of 1973 requires entities that receive financial assistance from any federal department or agency to provide effective communication for individuals who are deaf, hard of hearing and deafblind. Effective communication includes sign language interpreters, captioning and tactile communications.
- The Americans with Disabilities Act of 1990 (ADA) requires effective communication be provided to individuals who are deaf, hard of hearing or deafblind in employment, state and local government services, public accommodations, transportation and telecommunication.
- The Wisconsin Fair Employment Law prohibits employers from discriminating against employees and job applicants because of disability; this also requires the provision of effective communication and accommodations that include sign language interpreters, captioning and tactile communications.
- The 2009 Wisconsin Act 360 and the 2019 Wisconsin Act 17 requires that sign language interpreters working for compensation in Wisconsin be required to hold a license from the Department of Safety and Professional Services.

Plain language analysis

Section 46.295 (1) of the Statutes authorizes the department to reimburse certain interpreters (hereinafter "communication access services providers") for the provision of interpreter services (hereinafter "communication access services") via appropriation funds from s. 20.435 (1) (da) and (hs), Stats. (hereinafter "the Service Fund." Subsections (2) through (5) of s. 46.295, Stats., provide additional requirements regarding priority requests for fees, maintaining lists of qualified providers, certification criteria, and billing rates. Subsection (6) permits the department to establish rules to implement s. 46.295, Stats. DHS 77 was promulgated to implement s. 46.295, Stats.

Section 46.295, Stats., was established in 1995, which was prior to the variety of communication access services that are currently available; therefore the term "interpreter" (specific to sign language interpreters) was used. Since 1995, individuals who are deaf, hard of hearing and deafblind have access to a variety of communication accommodations in addition to sign language interpreters which include: Communication Access RealTime Translation (CART) for individuals who are hard of hearing and sign support providers for individuals who are deafblind and may rely on tactile communication. By defining communication access services and providers, the Department will be able to ensure that, regardless of communication accommodation, individuals with hearing loss in Wisconsin will be able to benefit from the service fund provider in s. 46.295, Stats.

Chapter DHS 77 has not been updated since 2002 and many provisions are outdated and do not reflect changes in federal and state laws that govern the provision of communication access services. The Service Fund provides payment to communication access services providers in situations not covered by existing state or federal laws, such as funerals, memorial services, burials, engagement in service organizations that support people who are deaf, hard of hearing or deafblind, housing meetings, services at homeless

shelters and more. Current situations, such as medical procedures at hospitals, clinics, court hearings, legal appointments, interactions with law enforcement and any matters involving federal, state and local municipalities are mandated by federal law to provide communication accommodations, and are thereby no longer necessary for reimbursement under ch. DHS 77. The eligibility requirements for communication access service providers are inconsistent with state professional certifications and licensure requirements, such as 2009 Wis. Act 360 and 2019 Wis. Act 17, which require sign language interpreters to hold a professional license from the Department of Safety and Professional Services. The definitions, criteria for program reimbursement, processes and procedures currently prescribed in ch. DHS 77 are outdated and do not reflect the program's current needs and objectives.

The department proposes to update the rules to do all of the following:

- (1) Further define communication access services providers.
- (2) Update situations eligible for program funding to align with applicable laws.
- (3) Update licensing requirements for communication access services providers to align with state licensure and certification requirements.
- (4) Revise application and processing requirements to align with current program operations.
- (5) Revise provisions to reflect changes in federal and state law and communication access services available to individuals who are deaf, deafBlind and hard of hearing that have occurred since the rule was last revised in 2002.

Summary of, and comparison with, existing or proposed federal regulations

There appear to be no existing or proposed federal regulations that address state programs assisting deaf, deafblind or hard of hearing persons with paying for communication access services and providers, but section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act require entities to provide communication access services and payment for communication access service providers for individuals who are Deaf, Hard of Hearing and DeafBlind when requested to reasonably accommodate a person's disability.

Comparison with rules in adjacent states

Illinois:

The Illinois Language Services Act, 210 ILCA 87, governs the provision of interpreters for patients in health facilities. Administrative code provisions for enforcing and administering the act are contained in Parts 940.100 to 940.170 of the Illinois Administrative Code. There appear to be no other regulations in Illinois that assist deaf, deafblind or hard of hearing persons with paying for communication access services in situations not covered by state or federal law.

Iowa:

Iowa's Deaf Services Division was created by Iowa Code section 216A.1, and rules governing its administration are contained in Rules 429-1.1 to 429-10.21. Rule 429-2.2 provides that the division shall make services available to all deaf or hard-of-hearing residents or nonresidents who may be visiting or conducting business in the state. Rule 429-2.4 governs the fee for services provided by the division. There appear to be no other regulations in Iowa that assist deaf, deafblind or hard of hearing persons with paying for communication access services in situations not covered by state or federal law.

Michigan:

Sections 393.501 to 393.509 of the Michigan Statutes contain the Deaf Persons' Interpreters Act. Section 393.507 of the statute provides that payment of interpreter expenses shall be paid by courts of appointing authorities other than a court as provided by law. There appear to be no other regulations in the Michigan that assist deaf, deafblind or hard of hearing persons with paying for communication access services in situations not covered by state or federal law.

Minnesota:

Sections 256C.21 to 256C.26 of the Minnesota Statutes contain the Deaf and Hard-of-Hearing Services Act. Section 256C.261 of the Minnesota Statutes governs services for persons who are deaf,

deafblind or hard of hearing, and permits the Minnesota Commissioner of Human Services to award grants for the provision of services. There appear to be no other regulations in Minnesota that assist deaf, deafblind or hard of hearing persons with paying for communication access services in situations not covered by state or federal law.

Summary of factual data and analytical methodologies

The department formed an advisory committee to help develop the proposed rules. The committee met on five occasions to discuss potential impacts of changes to the rule. The committee included stakeholders, customers and communication access services providers.

Analysis and supporting documents used to determine effect on small business

See "Summary of Factual Data and Analytical Methodologies"

Effect on small business

The proposed rule is anticipated to have little to no economic impact if promulgated.

Agency contact person

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Statement on quality of agency data

The department complied with s. 227.14 (2m), Stats., for any data used to draft the rules and analyses.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/permanent.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 77.03 (2) to (6) are repealed.

SECTION 2. DHS 77.03 (7) and (8) are renumbered DHS 77.03 (2) and (3), and amended to read:

DHS 77.03 (2) "Communication access services" means ~~any assistance provided by a person trained to increase the ability of a service that ensures individuals who are deaf, deafblind or hard of hearing person to~~ can communicate effectively with others. Communication access services include sign language interpretation, tactile communication, and captioning.

DHS 77.03 (3) "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~~ trained individual who facilitates communication on behalf of individuals who are deaf, deafblind, or hard of hearing.

SECTION 3. DHS 77.03 (9) and (10) are repealed.

SECTION 4. DHS 77.03 (11) is renumbered DHS 77.03 (4) and amended to read:

DHS 77.03 (4) "Deaf, deafblind or hard of hearing person" means a person ~~who, because of some pathological or functional cause, with some degree of hearing loss who~~ requires communication access services to effectively communicate with others.

SECTION 5. DHS 77.03 (12) to (14) are renumbered DHS 77.03 (5) to (7).

SECTION 6. DHS 77.03 (15) to (24) are repealed.

SECTION 7. DHS 77.04 (1) (a) is amended to read:

DHS 77.04 (1) GENERAL REQUIREMENTS. (a) The department may use funds from the appropriations under s. 20.435 (6) (a) and (1) (hs), Stats., to ~~reimburse pay for~~ communication access services providers for deaf, deafblind or hard of hearing persons in accordance with the requirements of this chapter.

SECTION 8. DHS 77.04 (1) (b) 1. (intro.), 1. a. and b., 2., and (c) are amended to read:

DHS 77.04 (1) (b) 1. ~~Only in the following circumstances, when~~ When the department reimburses pays for a communication access services provider under par. (a), the department shall reimburse pay the provider without subsequently billing the individual ~~who;~~ or agency that requested the communication access services if any of the following apply:

- 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.~~

DHS 77.04 (1) (b) 2. When the department ~~reimburses pays for~~ a communication access services provider under par. (a) in circumstances other than those specified in subd. 1., the department shall ~~reimburse pay~~ the provider and shall subsequently bill the agency or individual requesting communication access services in accordance with s. DHS 77.08.

DHS 77.04 (1) (c) ~~Reimbursement~~ Payment for communication access services under this chapter is contingent upon the availability, or projected availability, of funds in the appropriations under s. 20.435 (6) (a) and (1) (hs), Stats.

SECTION 9. DHS 77.04 (2) (title) and (2) are amended to read:

DHS 77.04 (2) COMMUNICATION ACCESS SERVICES PROVIDERS ELIGIBLE FOR ~~REIMBURSEMENT~~ PAYMENT. Except as provided in s. DHS 77.06 (3), the department may ~~reimburse only pay~~ communication access services providers on the list of ~~certified providers and verified interpreters~~ maintained by the department under s. DHS 77.09 (1).

SECTION 10. DHS 77.04 (3) (a) 6. is renumbered DHS 77.04 (3) (b) 10. and amended to read:

DHS 77.04 (3) (b) 10. ~~Job-related appointments~~ Initial interview for deaf, deaf-blind or hard of hearing persons who are not clients of the Wisconsin department of workforce development's division of vocational rehabilitations. Employment related accommodations, including self-employment, are not eligible.

SECTION 11. DHS 77.04 (3) (a) 7. is renumbered DHS 77.04 (3) (b) 11.

SECTION 12. DHS 77.04 (3) (b) (intro.) is amended to read:

DHS 77.04 (3) (b) *Non-priority circumstances.* ~~The~~ Subject to the availability, or projected availability, of funds, the department may reimburse communication access services providers for services provided in connection with any of the following activities:

SECTION 13. DHS 77.04 (3) (b) 4. is repealed.

SECTION 14. DHS 77.04 (3) (b) 5. is amended to read:

DHS 77.04 (3) (b) 4. Meetings, workgroups or conference sponsored by non-profit organizations that do not receive state or federal funds, do not administer a statewide program, or whose mission is not specifically related to 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.

SECTION 15. DHS 77.04 (3) (b) 6. and 7. are repealed.

SECTION 16. DHS 77.04 (3) (b) 8. is amended to read:

DHS 77.04 (3) (b) 5. 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 session 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.

SECTION 17. DHS 77.05 (title), (1), (2) (a) and (b) are amended to read:

DHS 77.05 **Requests for reimbursement payment 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~~ pay 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.

(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. DHS 77.04 (3) (a) and (b), 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 for communication access services.

SECTION 18. DHS 77.06 (title) (1) is amended to read:

DHS 77.06 **Communication access services providers eligible for reimbursement payment.**

SECTION 19. DHS 77.06 (1) (intro.) is renumbered DHS 77.06 (1) and amended to read:

DHS 77.06 (1) ~~PRIORITY CIRCUMSTANCE REIMBURSEMENT PAYMENT.~~ In priority circumstances as specified under s. DHS 77.04 (3) (a), except as provided under sub. (3), the The department may ~~reimburse the following~~ provide payment to communication access services providers listed under s. DHS 77.09 (1);

SECTION 20. DHS 77.06 (1) (a) to (f) are repealed.

SECTION 21. DHS 77.06 (2) and (note) are repealed.

SECTION 22. DHS 77.06 (2) (note) is created to read:

DHS 77.06 (2) Note: This exception includes a request for a Sign Support Provider for individuals who are deafblind.

SECTION 23. DHS 77.06 (3) (intro.) and (a) to (c) are repealed.

SECTION 24. DHS 77.06 (3) (d) is renumbered DHS 77.06 (2) and amended to read:

DHS 77.06 (2) EXCEPTIONS. The department shall pay communication access service providers in any situation when it determines that 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.

SECTION 25. DHS 77.06 (4) (a) 1. and 2. are renumbered DHS 77.06 (3) (a) 1. and 2. and amended to read:

DHS 77.06 (3) CANCELLING AN APPOINTMENT. (a) *Person or agency.* 1. Before canceling an appointment for which the department has approved ~~reimbursement~~ payment 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.

DHS 77.06 (3) (a) 2. When a person or agency that requested communication access services misses an appointment for which the department has approved ~~reimbursement~~ payment 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~~ pay the communication access services provider ~~or communication access services coordination agency~~ for 2 hours of communication access services.

SECTION 26. DHS 77.06 (4) (a) 3. is repealed.

SECTION 27. DHS 77.06 (4) (b) is renumbered DHS 77.06 (3) (b).

SECTION 28. DHS 77.07 (title) and (1) are amended to read:

DHS 77.07 ~~Reimbursement~~ **Payment policies.** (1) ~~REIMBURSEMENT RATES.~~ The department shall ~~reimburse~~ pay for communication access services providers according to licensure, certification and verification levels specialized skills, with the ~~levels~~ credentials requiring the most skill receiving the highest rates of pay.

SECTION 29. DHS 77.07 (2) (a) and (b) are amended to read:

DHS 77.07 (2) ~~REIMBURSEMENT~~ PAYMENT POLICIES. (a) To be eligible for department ~~reimbursement~~ payment, an individual or agency that provides communication access services providers shall provide to the department ~~proof that he 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~~ any necessary documentation or forms to be added to the list of approved vendors.

DHS 77.07 (2) (b) A state employee who is a ~~certified~~ certified communication access services ~~provider or verified interpreter~~ provider may, if no other provider is available, be ~~reimbursed~~ paid 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.~~

SECTION 30. DHS 77.09 (title), (1) (intro.) and (a) to (c) are amended to read:

DHS 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, or agency, shall provide documentation of ~~his or her~~ licensure, certifications and any specialized ~~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~~ Licensure, certifications and any specialized training.

SECTION 31. DHS 77.09 (1) (d) is repealed.

SECTION 32. DHS 77.09 (1) (Note 2) is created to read:

DHS 77.09 (1) (c) Note: Sign language interpreters must be licensed by the Department of Safety and Professional Services and a captionist must be certified by the National Court Reporters Association to be added to this list.

SECTION 33. DHS 77.09 (1) (Note 3) is created to read:

DHS 77.09 (1) Note: Communication access service agencies shall provide the names of all providers and their respective credentials.

SECTION 34. DHS 77.10 and (note) are amended to read:

DHS 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, over the phone, or videophone~~ ; with the department. The grievance shall be addressed to the department's division of ~~disability and elder services~~ public health and shall be received by the administrator's office of the division of ~~disability and elder services~~ public health within 45 days after the date of the department's action or decision.

Note: To file a grievance, write or phone ~~Administrator, Division of Disability and Elder Services~~ Director, Office for the Promotion of Independent Living, Division of Public Health, P.O. Box 7851, Madison, Wisconsin 53707, 608-266-2000 voice or 608-266-7376 TTY 608-261-7823. Written grievances may be submitted by email to amber.mullett@dhs.wisconsin.gov. Grievances may also be filed in person at 1 West Wilson Street in Madison.

SECTION 35. EFFECTIVE DATE. This rule takes 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 Services

Dated: _____

Kirsten Johnson, Secretary-designee

SEAL: