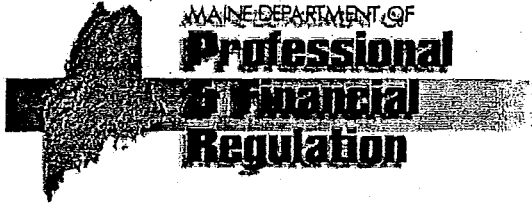


MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



**Report
Of the Commissioner of the Department of Professional and Financial
Regulation**

**To the Joint Standing Committee on Business, Research and Economic
Development**

Sunrise Review of L.D. 909

*“Resolve, Directing the Department of Professional and Financial
Regulation to Conduct a Sunrise Review for the Regulation of Spoken
Language Interpreters”*

January 15, 2004

*John Elias Baldacci
Governor*

*Robert E. Murray, Jr.
Commissioner*



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
35 STATE HOUSE STATION
AUGUSTA, MAINE

04333-0035

JOHN ELIAS BALDACCI
GOVERNOR

ROBERT E. MURRAY, JR.
COMMISSIONER

December 22, 2003

Senator Lynn Bromley, Senate Chair
Representative Nancy B. Sullivan, House Chair
Joint Standing Committee on Business, Research
and Economic Development
100 State House Station
Augusta, ME 04333-0100

Re: Sunrise Review Report on Regulation of Spoken Language Interpreters

Dear Senator Bromley and Representative Sullivan:

I have enclosed the Department's "Sunrise Review" Report in response to PL 2003 c. 49 (LD 909) "*Resolve, Directing the Department of Professional and Financial Regulation to Conduct a Sunrise Review for the Regulation of Spoken Language Interpreters.*" The report includes several appendices which include relevant background information as well as copies of the written submissions of interested parties in response to the Department's request for information.

I will be pleased to discuss the report with the Committee at your convenience. We have also provided copies for each member of the Committee and several extra copies for members of the Committee's staff.

Sincerely,

Robert E. Murray, Jr.
Commissioner

OFFICES LOCATED AT: 122 NORTHERN AVENUE, GARDINER, MAINE

PHONE: (207) 624-8511 (Voice)

TDD: 207-624-8563

FAX: (207) 624-8595

Internet: robert.e.murray,jr@maine.gov

I. Introduction

The State of Maine does not require spoken language interpreters to be licensed. LD 909 “*Resolve, Directing the Department of Professional and Financial Regulation to Conduct a Sunrise Review for the Regulation of Spoken Language Interpreters*” was the final product of a bill that originally provided for the creation of a legislative study group to assess the feasibility of creating a licensure program for the state of Maine. Because supporters of the original bill agreed that their ultimate goal was a regulatory program where none currently exists, the Legislature directed this Department conduct a sunrise review pursuant to 5 MRSA § 12015(3) and 32 MRSA § 60-K.

II. Sunrise Review

Pursuant to 5 MRSA § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated, or that proposes to expand existing regulation. Sunrise review is a systematic review of proposed new or expanded regulation undertaken to ensure that the purpose of the regulation is to protect the health, safety, and welfare of the public.

The sunrise review process consists of applying the evaluation criteria established by statute, 32 MRSA § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated, or whether current regulation should be expanded.

Under the law, the sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant’s answers to the evaluation criteria and report those findings back to the Committee; or
3. The Committee may request that the Commissioner establish a technical review committee to assess the applicant’s answers and report its finding to the Commissioner.

Copies of 5 MRSA § 12015(3) and a summary of the Sunrise Review process are included in Appendix A.

III. Charge from Legislature

LD 909 was intended by its legislative sponsors to focus attention on the lack of organized interpreter services for Maine citizens who speak little or no English. The concept of regulation of spoken language interpreters was thought to be one way to increase the quality and quantity of spoken language interpreters in Maine. The bill does not propose or recommend any particular method of regulation, but simply raises the question of whether a regulatory program of some kind is feasible now or in the future.

LD 909 was signed by the Governor on May 27, 2003 and became effective on September 13, 2003. A copy of the enacted bill is attached as Appendix B. The resolve directs that the Commissioner of the Department of Professional and Financial Regulation conduct a sunrise review to determine whether regulation of spoken language interpreters is warranted.

IV. Independent Assessment by Commissioner

The requirements for an independent assessment by the Commissioner are set forth in 32 MRSA § 60-K. The Commissioner is required to apply the specified evaluation criteria set forth in 32 MRSA § 60-J to all answers and information submitted to, or collected by, the Commissioner.¹ After conducting the independent assessment, the Commissioner must submit a report to the Committee setting forth recommendations, including any draft legislation necessary to implement the report's recommendations.

The Commissioner's report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment as to whether final answers to the evaluation criteria are sufficient to support some form of regulation. In addition, if there is sufficient justification for some form of regulation, the report must recommend an agency of State government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the report must reflect the least restrictive method of regulation consistent with the public interest.

V. Evaluation Criteria

As part of the independent assessment process, the Commissioner must review the responses to the evaluation criteria submitted by the applicant group and interested parties. In this instance, there is no discernable "applicant group" although a few interested parties testified in support of the bill. In light of these circumstances, the Commissioner solicited and received information from interest parties, including Catholic Charities Maine (CCM), Maine Department of Education (MDOE), Maine Hospital Association (MHA), and the Administrative Office of the Courts (AOC).

¹ In conjunction with analysis of written comments, the Department publicized and held a public meeting of interested parties at the Gardiner Annex on September 15, 2003 to allow attendees to supplement their written submissions and provide new information. The written submissions of interested parties and a list of participants at the public meeting are attached as Appendix C.

The Department's analysis is structured utilizing the evaluation criteria set forth in 32 MRSA § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in the statute;
2. A summary of the responses received from the applicant group and interested parties; and
3. The Department's independent assessment of the response to the evaluation criteria.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Responses:

The responses of Catholic Charities Maine, the Administrative Office of the Courts, and Maine Medical Center offered anecdotal information on the approximate number of individuals used by the respective organizations in providing language interpretation services to clients. Catholic Charities has about 55 on-call interpreters, the Administrative Office of the Courts responded that it used 42 interpreters during Fiscal Year 2002, and Maine Medical Center responded that it uses about 65 community interpreters. No information was offered to show whether any overlap exists between the three groups of interpreters; however, Catholic Charities estimated that there may be 300 individuals providing language interpretation on an occasional or part-time basis. A representative of the Portland Public School ("PPS") system indicated the school system is required by federal law to provide language interpretation services to groups of 50 students who speak the same language. PPS uses parents and community volunteers to meet the needs of students.

Department assessment:

Given that the interested parties have not proposed a specific regulatory program, this assessment will focus on general topics relevant to whether the information presented by the interested parties justifies the creation of a licensing program for a profession that is not presently regulated by the State or whether additional information is needed before such a determination can be made.

Information provided by commenter indicates that between 57 and 150 different languages and dialects are spoken in Maine today. Little information was offered to show locations of concentrations of non-English speakers, although Portland and

Lewiston are anecdotally mentioned as centers for some percentage of non-English speaking individuals. The only other information offered was an estimate that roughly 300 individuals may be providing some level of spoken language interpreting service.

Information submitted by legal and medical service providers indicates that there is a small concentration of interpreters working in conjunction with Maine Medical Center and the Administrative Office of the Courts primarily in the greater Portland area.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Responses:

The interested parties agree that an individual must have specialized language and communication skills in order to provide high quality spoken language interpretation services. Catholic Charities Maine asserts that such interpreters must be fluent in English and at least one other language; be knowledgeable in the role of an interpreter and the Interpreter Code of Ethics, and trained in modes of interpretation including consecutive, simultaneous, and sight translation, as well as knowledge of specialized terminology including legal and medical terminology in two languages.

Department assessment:

There is little doubt that a spoken language interpreter must speak English and another language. It is also evident that spoken language interpreters should have some specialized training in the ethical standards that require an interpreter to remain neutral in the manner in which critical information is communicated. Interpreters must also understand the importance of confidentiality rules that apply to their communications. The Department did not receive information regarding the existence of training programs for spoken language interpreters although Catholic Charities Maine indicated that it has developed an in-house training component for its interpreters.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Responses:

The Chair of the National Limited English Proficiency (LEP) Advocacy Task Force submitted a written comment stating concern that Maine providers of critical services in hospitals, courts, police stations, housing authorities and schools "commonly fail to provide qualified language assistance to limited English proficient (LEP) individuals legally entitled to equal access and meaningful participation in such programs and activities. This lack of trained interpreters may place LEP individuals at risk in life-threatening medical situations.

The Director of the Administrative Office of the Courts has indicated his office concurs that an individual's lack of understanding of his or her legal rights in legal proceedings and medical consequences in medical settings without the assistance of a spoken language interpreter is clearly a problem but did not present information that would indicate that potential harm to the public would increase in the absence of a regulatory program for spoken language interpreters. He did state that he would be more concerned about inadequate skill of a spoken language interpreter rather than about the overall number of such interpreters.

The National LEP Advocacy Task Force representative opines that generally hospitals and school systems act to provide spoken language interpreters only in anticipation of the filing of a complaint by the Federal Government. Although the Maine Department of Education takes a neutral position on whether regulation is necessary, it agrees that schools and hospitals may be pushed to meet the needs of its students and patients by threatened legal action on federal grounds.

An attorney working in the judicial setting related some of her experiences working with individuals with low English proficiency. In one case, she served as a guardian ad litem for two children in a custody case brought involving the children's father who did not speak English. Rather than use one of the children to interpret for the father, an approach that she deemed inappropriate, she located an adult relative to interpret. The commenter also represented the plaintiffs in a lawsuit brought against Maine Medical Center for failure to provide adequate interpreting services in violation of Federal law.

In addition, situations of failure to provide adequate spoken language interpretation were described anecdotally by advocates working with the Hispanic community in Maine involving local police departments, Maine Medical Center, the Department of Human Services, and the Portland Social Security Office.

The Maine Hospital Association opposes regulation of spoken language interpreters because there are currently no nationally accepted minimum standards applicable to this group of individuals and no generally applicable test of competency.

Department Assessment:

Sunrise review is typically triggered when an organized group of unregulated individuals petitions the Legislature for a new licensing program. Under those circumstances, evidence of consumer complaints against individuals within the unlicensed profession

that relate to the quality of service to the public is an important factor to be taken into account when the Legislature evaluates the public need for a new licensure program. In the context of sunrise review to evaluate the public need for regulation of spoken language interpreters, no information about complaints filed against individual interpreters for incompetent or unskilled spoken language interpreting services was received.

The Department did receive information about lawsuits filed by LEP advocates and the Federal Office of Civil Rights against various agencies and institutions in Maine, including Maine Medical Center, the City of Portland, and the City of Lewiston, for failure to make required interpretation services available for their non-English speaking patients. However, these lawsuits focused on the quantity of services provided and were filed against the institution legally responsible for providing access to interpreter services, rather than on individual interpreters for the quality of their services.

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Responses:

The AOC commented that many interpreters receive training and practice the use of languages in which they interpret to maintain proficiency.

MDOE noted that Maine Medical Center and Catholic Charities Maine maintain voluntary training programs for individuals they call on for interpreting services.

MHA noted that there had been an attempt to organize a Maine interpreter and translator association to develop standards of practice, but that effort was not successful and no organized professional association exists in Maine today.

Department Assessment:

Information submitted by interested parties indicates that although there are several advocacy groups working on behalf of non-English speaking individuals in Maine and across the country, there is no organized professional association of interpreters practicing spoken language interpretation that would be effective in speaking on behalf of the profession itself.

It is also evident that the force of Federal law in this area has been instrumental in causing hospitals and public school systems in the state to respond to the specific needs of LEP individuals in that particular locality.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Responses:

Although DOE and MMC indicated initially that they neither support nor oppose regulation of spoken language, both organizations state that to the extent regulation of any kind would eliminate unskilled interpreters, the public would benefit.

AOC notes that if regulation results in additional training and testing, the costs associated with those activities would be passed on to those who pay for the services through higher rates.

MHA asserts that licensing fees would increase costs to the consumer and potentially decrease the supply of interpreters. In addition, if regulation were to be imposed, the ATT Language Line, a national telecommunications service that supplies services of spoken language interpreters to many hospitals as well as organizations including Catholic Charities Maine and others, would be lost as a resource if it were required to obtain a Maine license.

CCM notes that unregulated spoken language interpreters can cause harm to the public and increase state health expenditures because recipients of pool interpreting services may not understand, and thus may not comply with medical instructions.

Department Assessment:

It is difficult to draw inferences from available information. Although non-English speaking individuals living in Maine require assistance from interpreters when they interface with school, court and medical personnel, it is also apparent that provisions have been made to make that assistance available. There is little doubt; however, that state regulation of this category of interpreter would result in additional cost to the licensee as well as higher costs to agencies and organizations that would be required to provide interpreter services using only interpreters licensed by the state.

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Responses:

CCM states that regulation phased in over time would allow interpreters ample time to prepare to meet a state standard.

MHA and AOC note that any regulation would diminish the provider pool because not all interpreters currently providing service would qualify.

Department Assessment:

In general, imposing licensing requirements typically results in a decrease in licensee numbers. The result may decrease the availability of services to the public in the area of spoken language interpretation. A decrease in the availability of services caused by imposing license requirements on the target group, in the absence of compelling documented safety issues and concerns, does not result in a net benefit to the public.

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

None submitted on this criterion.

Department Assessment:

The Department notes that Title VI of the 1964 Civil Rights Act and other related federal laws have been invoked successfully in Maine to cause effective programs of interpreter services to be developed to meet the needs of critical populations that require special services in medical and legal settings. Similarly, the 1964 Civil Rights Act has been used in law suits to cause public school systems to address the special needs of students in those systems who do not speak English.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Responses:

None were submitted on this criterion.

Department Assessment:

LD 909 as originally drafted would have created a study group to consider the feasibility of creating a regulatory program for spoken language interpreters. The lack of responses

to this criterion is understandable given the change in focus from the original bill to the enacted bill that requires this sunrise review. It is premature to discuss the various methods of regulation that might be appropriate in this case.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Responses:

CCM submitted information that Washington State's Department of Health and Social Services Language Testing and Certification Program provides bilingual certification and testing services to ensure quality services to LEP populations in that state.

Department Assessment:

The Department is not aware of any state that licenses and regulates the activity of spoken language interpreters. The Certification Program administered by the State of Washington requires employees of the Department of Human and Social Services in bilingual positions serving LEP constituents to obtain certification. The program is not a state licensing program in the sense that it would require all spoken language interpreters in the state to become licensed.

There are, however, subject matter based voluntary certification programs for spoken language interpreters. For example, the Consortium for State Court Interpreter Certification is a program administered by the National Center for State Courts in Virginia on behalf of the state courts systems in the United States. It was created as a way to develop court interpreter proficiency tests, make them available to member states, and regulate the use of the tests. It is a voluntary state membership organization that serves as a clearinghouse of testing information but is focused only on spoken language interpretation in judicial settings.² Maine is not a member of the Consortium and the Administrative Office of the Courts does not administer a mandatory or voluntary training and certification program for the spoken language interpreters it employs in judicial proceedings.

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

Responses:

None were submitted on this criterion.

² Information from the "Frequently Asked Questions" section of the website of the National Center for State Courts.

Department Assessment:

The Department is aware of no previous efforts by this state to implement regulation of spoken language interpreters.

Evaluation Criterion #11: Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

Responses:

None submitted on this criterion.

Evaluation Criterion #12: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

MHA noted that LD 909 does not propose standards for regulation; further, it notes that there are no generally accepted standards of minimal competence at present for this group of individuals.

In its response, CCM included a list of voluntary certification programs for Federal Court Interpreters, State Court interpreters, and medical interpreting standards developed by the Massachusetts Medical Interpreters Association & Education Development Center.

Department Assessment:

The Department is not aware of the existence of a nationally accepted set of standards of minimum competence for spoken language interpreters.

Evaluation Criterion #13: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Responses:

DOE responded that "agencies and institutions would 'pay as they go'."

Department assessment:

LD 909 does not propose a structured licensing program; therefore it is premature to address this evaluation criterion. For discussion purposes, the Department notes that licensing programs within the Department of Professional and Financial Regulation are

dedicated revenue agencies, and must be self-supporting through license fees. All costs associated with a new licensing program would have to be paid by the licensees of the program and those costs would be reflected in licensing fees. It is apparent from the responses submitted by interested parties that very few, if any, spoken language interpreters are working as full-time interpreters. Typically, they are in "on-call" status for a number of service providers and may not work on a consistent or regular basis. For these individuals, a license fee might be higher than actual compensation earned.

VI. Recommendations and Conclusions of the Commissioner

State sunrise review law requires the Commissioner to engage in a two-step evaluation process guided by 13 evaluation criteria. First, the Commissioner must evaluate the information provided by the applicant group in support of its proposal to regulate or expand regulation of a profession. Second, the Commissioner must recommend whether the Committee should take action on a proposal. If the Commissioner's recommendation supports regulation or expansion, the report must include any legislation required to implement that recommendation. The recommendation must reflect the least restrictive method of regulation consistent with the public interest.

The purpose of the sunrise process with respect to licensing of spoken language interpreters is to assess the public need for new regulation and the consequences to the public and the regulated community of a new regulatory program.

The following factors have been considered in formulating the Department's recommendations:

- 1 The absence of an organized professional association for spoken language interpreters that could act among other things, as a proponent of developing a set of state standards of competency and as a resource for generating critical information for legislative consideration;
- 2 The absence of information with respect to the number of individuals who would be required to obtain a license to perform interpreting services as well as an absence of information with respect to the estimated number of non-English speaking individuals in Maine, and a breakdown of the number of individuals for each foreign language;
- 3 The absence of documented evidence of complaints that have been registered against individual spoken language interpreters based on the quality of their services;
- 4 The absence of any nationally accepted standard of minimum competency for spoken language interpreters;
- 5 Information demonstrating that in the areas of greatest need and greatest potential for harm to LEP individuals without spoken language interpretation services, including

medical and legal settings, spoken language interpreting services are already being provided; and

6 Information from interested parties showing current heavy reliance on a national telecommunications service, the AT&T Language Line, as a primary source of spoken language interpreting services.

Based on these factors, the Department concludes that regulation of spoken language interpreters cannot be recommended at this time. Although there is no intent to diminish the negative experiences of LEP individuals who may not be able to access interpretation services, or are provided with inadequate interpreting services, they are protected by Title VI of the 1964 Civil Rights Act and related Federal laws that require educational, medical and legal institutions receiving Federal funding to provide these services to the non-English speaking public. The Federal structure provides a safety net that places responsibility on these institutions to meet the needs of its clients and patients in critical and potentially life-threatening situations. This is not to imply that State governments bear no responsibility for providing these interpreting services. However, Maine is not alone in not establishing a licensing program for spoken language interpreters. The Department could find no state that currently requires licensure of spoken language interpreters.

During the public meeting of interested parties on September 30, 2003, it was evident that the represented institutions, including Maine Medical Center, Maine Hospital Association, Catholic Charities Maine and the Administrator of State Courts, rely heavily on the AT&T Language Line as a means of providing spoken language interpreting services to their clients. Maine Medical Center's representative indicated that in the last year, it has documented 11,000 "encounters" in which a patient requires spoken language interpretation. MMC used the ATT Language Line for 70% of those encounters. Similarly, MHA's representative indicated that Maine hospitals, particularly in rural areas make heavy use of the ATT service in those situations in which no other resource may be readily available. Regulation of spoken language interpreters would require that all individuals providing spoken language interpreting services be licensed in Maine. It is highly unlikely that this service would qualify for licensure in Maine and its further use in this regard would be precluded by law.

Imposing licensing requirements on spoken language interpreters in Maine would diminish protection of individuals requiring this service rather than enhance public safety, particularly in light of the heavy reliance on interpreters located out of state and feedback from user agencies that the service provided by the ATT Language Line would not be replaceable with Maine based interpreters.

Under normal circumstances, the proposal to license an unregulated profession is the final step in a series of steps in the development of a defined profession. Regulation is typically preceded by factors such as the evolution of an active state or national professional association representing practitioners that has formalized qualifications,

training and education requirements, and has developed the framework of accepted standards of practice and conduct.

In this case, the developments in the profession itself that would normally precede regulation have not yet occurred. Information submitted in response to the Department's request for public input, as discussed in prior sections of this report, indicates that the number of active interpreters is not known. Nor is the number of individuals requiring spoken language interpreting services known. Imposing licensure requirements or any other form of regulation on spoken language interpreters would not result in an improvement in the quality of interpreter services, but would almost certainly diminish the quantity of active interpreters to the detriment of the public being served in the absence of regulation.

APPENDIX A

Title 5, §12015, New boards

Title 32, §60-J, Evaluation criteria

Title 32, §60-K, Commissioner's independent assessment

Title 5, §12015, New boards

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the First Regular Session of the 121st Legislature, which ended June 14, 2003, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot provide legal advice or interpretation of Maine law. If you need such legal assistance, please contact a qualified attorney.

§12015. New boards

Any boards established on or after July 25, 1984 shall conform to the following provisions. [RR 1997, c. 2, §16 (cor).]

1. Membership; terms; vacancies. Each board may have no fewer than 3 members. Boards established after September 1, 2000 to regulate professions or occupations may have no more than 9 members, including at least 2 public members. Law establishing the board must provide for appointments, terms of office, qualifications and removal of its members. In the event of the death, resignation or removal of any member, the vacancy for that member's unexpired term must be filled in the same manner as that member's original appointment.

[1999, c. 687, Pt. B, §2 (amd).]

2. Sunset.

[1999, c. 668, §49 (rp).]

3. Sunrise review required. Any joint standing committee of the Legislature that considers proposed legislation to establish a board to license or otherwise regulate an occupation or profession not previously regulated or to substantially expand regulation of an occupation or profession currently regulated shall evaluate whether the occupation or profession should be regulated or further regulated. For the purposes of this section, "substantially expand regulation" means to add a new regulatory category or to expand the scope of practice for current practitioners. In order to evaluate this legislation, the joint standing committee shall, without a public hearing, briefly and informally review legislation referred to the committee that proposes a new occupational or professional board or substantial expansion of regulation and an applicant's answers pertaining to evaluation criteria as required by Title 32, section 60-J. Following this informal review, the committee shall:

A. Immediately hold a public hearing to accept information addressing the evaluation criteria listed in Title 32, section 60-J from any professional or occupational group or organization, any individual or any other interested party who is a proponent or opponent of the legislation;

[1995, c. 686, §1 (rpr).]

B. Request that the Commissioner of Professional and Financial Regulation conduct an independent assessment of the applicant's answers to the evaluation criteria listed in Title 32, section 60-J and report the commissioner's findings back to the committee by a specific date; or

[1995, c. 686, §1 (rpr).]

C. Request that the Commissioner of Professional and Financial Regulation establish a technical committee to assess the applicant's answers to the evaluation criteria listed in Title 32, section 60-J following the procedures of Title 32, chapter 1-A, subchapter II and report its findings to the commissioner within 6 months of establishment of the committee.

[1995, c. 686, §1 (rpr).]

D.

[1995, c. 686, §1 (rp).]

E.

[1995, c. 686, §1 (rp).]

F.

[1995, c. 686, §1 (rp).]

Title 5, §12015, New boards

G.

[1995, c. 686, §1 (rp).]

Any recommendation by a joint standing committee to the full Legislature for the establishment or expansion of jurisdiction of an occupational or professional regulatory board must include a written statement describing the manner in which the assessment of answers to the evaluation criteria was conducted and a concise summary of the evaluation.

[1995, c. 686, §1 (rpr).]

Title 32, §60-J, Evaluation criteria

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the First Regular Session of the 121st Legislature, which ended June 14, 2003, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot provide legal advice or interpretation of Maine law. If you need such legal assistance, please contact a qualified attorney.

§60-J. Evaluation criteria

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are: [1995, c. 686, §2 (new).]

1. Data on group. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

[1995, c. 686, §2 (new).]

2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

[1995, c. 686, §2 (new).]

3. Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

[1995, c. 686, §2 (new).]

4. Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

[1995, c. 686, §2 (new).]

5. Cost; benefit. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

[1995, c. 686, §2 (new).]

6. Service availability of regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

[1995, c. 686, §2 (new).]

7. Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm

Title 32, §60-J, Evaluation criteria

potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners;

[1995, c. 686, §2 (new).]

8. Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate;

[1995, c. 686, §2 (new).]

9. Other states. A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis;

[1995, c. 686, §2 (new).]

10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation;

[1995, c. 686, §2 (new).]

11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits;

[1995, c. 686, §2 (new).]

12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and

[1995, c. 686, §2 (new).]

13. Financial analysis. The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

[1995, c. 686, §2 (new).]

PL 1995, Ch. 686, §2 (NEW).

Title 32, §60-K, Commissioner's independent assessment

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we do require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication is current to the end of the First Regular Session of the 121st Legislature, which ended June 14, 2003, but is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot provide legal advice or interpretation of Maine law. If you need such legal assistance, please contact a qualified attorney.

§60-K. Commissioner's independent assessment

1. Fees. Any applicant group whose regulatory proposal has been directed to the commissioner for independent assessment shall pay an administrative fee determined by the commissioner, which may not exceed \$500. The commissioner may waive the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

A. The applicant group is an agency of the State; or

[1995, c. 686, §2 (new).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group.

[1995, c. 686, §2 (new).]

[1995, c. 686, §2 (new).]

2. Criteria. In conducting the independent assessment, the commissioner shall apply the evaluation criteria established in section 60-J to all of the answers and information submitted to the commissioner or otherwise collected by the commissioner pursuant to section 60-J.

[1995, c. 686, §2 (new).]

3. Recommendations. The commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the evaluation, that includes any legislation required to implement the commissioner's recommendation. The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner finds that final answers to the evaluation criteria are sufficient to support some form of regulation, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest.

[1995, c. 686, §2 (new).]

PL 1995, Ch. 686, §2 (NEW).

APPENDIX B

PL 2003, chapter 49, “*Resolve, Directing the Department of Professional and Financial Regulation To Conduct a Sunrise Review for the Regulation of Spoken Language Interpreters*”

APPROVED

CHAPTER

MAY 27 '03

49

BY GOVERNOR

RESOLVES

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THREE

—
S.P. 305 - L.D. 909

**Resolve, Directing the Department of Professional and
Financial Regulation To Conduct a Sunrise Review for the
Regulation of Spoken Language Interpreters**

Sec. 1. Department of Professional and Financial Regulation to conduct sunrise review. Resolved: That the Department of Professional and Financial Regulation shall conduct an independent assessment for the regulation of spoken language interpreters in accordance with the Maine Revised Statutes, Title 32, section 60-K; and be it further

Sec. 2. Reporting date established. Resolved: That the Department of Professional and Financial Regulation shall report its findings to the Joint Standing Committee on Business, Research and Economic Development by January 15, 2004.

APPENDIX C

Written Submissions:

- Administrative Office of the Courts
- Maine Department of Education
- Maine Hospital Association
- Catholic Charities Maine
- National Limited English Proficiency (LEP) Advocacy Task Force
- Kim Matthews
- Maria Sanchez

List of Participants at the September 15, 2003 Public Meeting

Administrative Office of the Courts


62 Elm Street, P.O. Box 4820, Portland, ME 04112

James T. Glessner
State Court Administrator
Telephone: (207) 822-0710
FAX: (207) 822-0781
TTY: (207) 822-0701

MEMORANDUM

Date: September 22, 2003

To: Anne Head, Department of Professional and Financial Regulation

From: Ted Glessner 

Subject: L.D. 909

In response to the request for information in conjunction with the sunrise review evaluation survey for L.D. 909, I am submitting the following, which responds to the items listed on your survey.

A. General Information

1. Group or Organization Represented

Maine's Judicial Branch of Government

2. Position on Legislation

The Judicial Branch does not take a position with regard to this L.D. This is consistent with the Judicial Branch's practice of deferring to the Executive and Legislative branches on matters of policy in proposed legislation.

B. Evaluation Criteria

1. Data on Group Proposed for Regulation

a. The Judicial Branch of Government utilized 42 interpreters for FY '02.

b. No response

c. Given current usage as described above in Subsection A, we would anticipate a significantly larger number of potential licensees, but we are unable to provide an estimate.

2. Specialized Skill

With regard to the public being qualified to select a competent practitioner, there are two concerns frequently cited. First are personal issues; members of the public frequently rely on family members or friends to assist them when interpretation is required. This practice is problematic because of issues of confidentiality and increased likelihood of the interpretation containing input from the interpreter, rather than an objective presentation of the information.

In addition, most members of the public are not likely to understand the need for interpreters who understand the technical terms that are utilized in a legal setting.

3. Threat to the Public

a. I am unable to speak to the threat if the profession is not regulated, only the threat if the interpretation is not done well. Court decisions affect people's rights, they deal with the most sensitive of issues, including custody of children and incarceration of defendants, so the threat of loss to an individual through the court process is of critical importance. In addition, there exists a threat to the community when a person does not understand conditions of release when they are arrested.

b. I do not have this information.

4. Voluntary past regulatory efforts

Many members of the profession receive training and practice the use of languages in which they interpret as a way to maintain proficiency. I am not able to address the issue of these efforts being inadequate to protect the public.

5. Cost and Benefits of Regulation

If regulation results in additional training and testing, it should be anticipated that the cost would be passed on to those who pay for the services through higher rates.

6. Service Availability under Regulation

Presumably not all of those currently serving as interpreters would qualify, thereby diminishing the pool.

7. Existing Laws and Regulations

I do not have available information to respond to this question.

8. Method of Regulation

Unable to answer.

9. Other States

I am aware of various systems in place in other courts around the country, but do not have the detailed information to respond at this time.

10. Previous efforts to regulate

I do not know the answer to this.

11. Mandated Benefits

I am unable to respond.

12. Minimal Competence

N/A

13. Financial Analysis

I am unable to respond.

AUG 12 2003

Department of Professional
& Financial Regulation

L.D. 909, "Resolve, to Establish the Committee to Investigate the Feasibility of and Need
for Regulation of Spoken Language Interpreters"

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented:

Maine Dept of Education

2. Position on legislation. Does this group or organization support or oppose regulation
of spoken language interpreters?

Neither pro nor against has been presented

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. Data on group proposed for regulation. Please provide a description of the
professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;

Schools

- (b) the names and addresses of associations, organizations and other groups
representing potential licensees; and

Catholic Charities Maine - Refugee Resettlement
Services

- (c) An estimate of the number of potential licensees in each group.

Not Known

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Interpreters require communicative skills in both English and the target language. A check for assuring competency in the target language would need to be secured.

3. Threat to public health, safety, or welfare. Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

Interpreters, if not regulated, may provide services as they see fit. Family members and friends will sometimes serve as interpreters - compromising the validity of the information exchanged. Complex English may not be part of their repertoire of English or the nuances of language differences for certain words and phrases.

- (b) The extent to which there is a threat to the public's health, safety or welfare (Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years).

Complaints were filed with the Portland Public Schools as well as Maine Medical Center at the US Office for Civil Rights regarding lack of appropriate interpreters. A complaint is pending against the Lewiston School Department.

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

The Medical Center and Catholic Charities
Maine might fit this description.

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Engaging uniquely skilled, proficient interpreter
would limit the pool of interpreters to those
so credentialed & hence, the market could be
driven by this limitation, to the quality of
interpreter expertise.

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Difficult to project for Maine schools

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

No regulatory agency currently provides for the safeguards described above.

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

See 3 (a)

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Information not known about other states

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

None Known

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

Not Known

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

LD 909 seeks to investigate the feasibility of establishing regulations for interpreters

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Agencies and institutions would pay as they go.

Date: 8/11/03, 2003

Completed by:

Dr Barney Berube
Name:

Title: ESL & Bilingual
Education Specialist III
Me Dept Educ

Dr. Barney Berube from the Dept. of Education arrived for the sunrise review meeting; he wasn't aware of the change of time of the meeting. I spoke with him, and he offered several comments that I thought might be helpful for us.

He said that there were about 75 foreign languages spoken as the native language by Maine students. The Dept. of Education has an interest in interpretive services for special education students, because these discussions with families are considered confidential. The department serves as a resource for schools that need interpreters. When a school calls looking for an interpreter, DOE refers them first to the Refugee and Immigrant Services (RIS) division at Catholic Charities. If RIS cannot help locate an interpreter, DOE checks its own list of non-native English speaking students and will call schools attended by those students to see if the schools know of someone within the community who could interpret for the school in need. The department makes no representations about the ability of these interpreters. The department also will often refer schools to the Portland School District.

Barney noted that the programs initiated by both the Portland Public School District and Maine Medical Center came about because of investigations by the Attorney's General Office of Civil Rights (OCR). OCR's investigations had serious findings that led to agreements with both institutions to undertake significant enhancements in their interpretive services.

Barney suggested that we contact Pierrot Rugaba, the DHS refugee coordinator, for information about other state efforts in this area. Pierrot's tel. is 287-5060.

Barney serves on the Refugee Advisory Council, a group of Maine service providers. He said that he'd mention our sunrise review at the Council's next meeting to see if anyone had information to provide to us.

He suggested that a pilot certification or licensing program might be feasible if it were limited to those languages, such as Spanish or Somali, where there are significant numbers of native language speakers in Maine.

David Bragdon
Assistant to the Commissioner
Department of Professional and Financial Regulation
35 State House Station
Augusta, ME 04333-0035
(207) 624-8525
fax (207) 624-8595
david.bragdon@maine.gov

AUG 07 2003

L.D. 909, 'Resolve, to Establish the Committee to Investigate the Feasibility of and Need
for Regulation of Spoken Language Interpreters'

Sunrise Review Evaluation Survey

A. General Information

1. Group or Organization Represented:

Maine Hospital Association

2. Position on legislation. Does this group or organization support or oppose regulation
of spoken language interpreters?

Oppose

According to 10 MRSA 8008, the purpose of state licensing is to ensure that
the public is served by competent practitioners who meet minimum standards
of proficiency. At this time, there are no nationally accepted
B. Evaluation Criteria (32 M.R.S.A. § 60-D) minimum standards applicable to this
group, and no generally applicable test of

1. Data on group proposed for regulation. Please provide a description of the Competency
professional or occupational group proposed for regulation or expansion of regulation, including:

- (a) The number of individuals or business entities that would be subject to regulation;
- (b) the names and addresses of associations, organizations and other groups
representing potential licensees; and
- (c) An estimate of the number of potential licensees in each group.

Unknown

2. Specialized skill. Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

This is a true statement. ~~not~~

3. Threat to public health, safety, or welfare. Please describe:

- (a) the nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

Regulation is not appropriate at this time, for reasons previously described

- (b) The extent to which there is a threat to the public's health, safety or welfare (Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in *this State* within the past 5 years).

I don't know of any complaints filed anywhere in Maine

4. Voluntary and past regulatory efforts. Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

A group was formed a few years ago to consider developing standards of practice, but I do not know its status.

Who do
The gr
Contact
peop

5. Costs and benefits of regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Licensing fees would certainly increase costs to the consumer as well as potentially decrease supply of interpreters.

Also, many hospitals use ATT's Language Line services. This national resource ~~is a valuable resource~~ would be lost to us if we required a state license.

H
t
t
e

6. Service availability under regulation. Please describe the extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

See above

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

7. Existing laws and regulations. Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Unknown

8. Method of regulation. Please describe why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Unknown

9. Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

I don't know of any states that regulate this
group

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

10. Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

I don't know of any earlier initiatives

11. Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

Unknown

12. Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

There are no standards proposed for regulation that I'm aware of, and there are no generally accepted standard of minimal competence at present

Department of Professional and Financial Regulation
Sunrise Review Evaluation Survey
Independent Assessment for LD 909

13. Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Unknown

Date: 8/6/2003, 2003

Completed by:

Sandra Parker
Name:

Maine Hospital Association
Title:

AUG 29 2003

Department of Professional
& Financial Regulation

L.D.909, "Resolve, to Establish the Committee to Investigate the Feasibility of and Need
for Regulation of Spoken Language Interpreters"

Sunrise Review Evaluation Survey

A. General Information

1. **Group or Organization Represented:** Catholic Charities Maine
2. **Position in legislation.** Does this group or organization support or oppose regulation of spoken language interpreters?

Supports

B. Evaluation Criteria (32 M.R.S.A. § 60-J)

1. **Data on group proposed for regulation.** Please provide a description of the professional or occupational group proposed for regulation or expansion of regulation including:

- a) The number of individuals or business entities that would be subject to regulation;

There are no hard numbers on how many interpreters are in the state of Maine, but estimate is at least 300.

- b) The names and addresses of associations, organizations and other groups representing potential licensees; and

Catholic Charities Maine *RISinterpret*, 250 Anderson Street, Portland, ME 04101
Maine Medical Center's Office of Interpreting and Cross-Cultural Services, 22 Bramhall Street, Portland, ME 04102
The Language Exchange, Inc, 408 Fore Street, Portland, ME 04112
Portland Public Schools Multilingual & Multicultural Programs, 83 Sherman Street, Portland, ME 04101
Sunshine Interpreters, 35 Canal Street, Suite 201, Lewiston, ME 04240

- c) An estimate of the number of potential licensees in each group

Catholic Charities Maine - one staff and 55 on-call interpreters.
Maine Medical Center's Language Bank has a list of 65 community interpreters

2. **Specialized skill.** Please describe whether practice of the profession or occupation proposed for regulation or expansion of regulation require such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Fluency in at least two languages, knowledge of the Roles of the Interpreter and the Interpreter Code of Ethics, training in modes of interpreting such as consecutive, simultaneous, and sign translation, knowledge of specialized terminology (example: medical or legal) in at least two languages.

3. **Threat to public health, safety, or welfare.** Please describe:

- a) The nature and extent of potential harm to the public, if any, if the profession or occupation is not regulated; and

Use of unqualified, untrained, and untested interpreters can lead to consequences such as a wrong medical diagnosis or a jail sentence for an innocent person that can alter people's life significantly.

Lack of qualified professional interpreters can also lead to widespread use of family members, friends and especially children as interpreters.

- b) The extent to which there is a threat to the public's health, safety or welfare. *(Please provide evidence of the potential harm, including: a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional or occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years).*

4. **Voluntary and past regulatory efforts.** Please provide a description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.
5. **Cost and benefit of regulation.** Please describe the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect cost.

Inadequate interpreting can have a negative impact not only on health and well being of LEP population in the State of Maine, but also on the State's overall expenditures for health care and social services for those individuals as well.

LEP individuals often endure restricted access to critical public health, hospital, and medical and social services, which they often desperately need. Language barriers are a primary reason why non-English speaking population disproportionately underutilize cost-effective preventive care. In addition, an inability to comprehend with the patient mixed with fear of liability can lead doctors to order expensive, otherwise avoidable tests and missed diagnosis. It also leads patients to poor compliance with medical instructions, increased use of emergency and urgency care facilities, and seeking care when they are already much sicker. Both service provider and LEP clients benefit from the services of a trained interpreter who can effectively facilitate adequate communication leading to accurate diagnosis and treatment and help ensure overall patient safety through patient compliance with treatment plans, fewer missed appointments, and better health outcomes where language barriers exist.

The same can be said about other areas where interpreters services are needed.

6. **Service availability under regulation.** Please describe the extent into which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Regulating the interpreter's profession in Maine will ensure that quality of interpreter services. If the regulation is done thoughtfully and over the time, it will allow interpreters to prepare to meet the standards.

7. **Existing laws and regulations.** Please discuss the extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.
8. **Method of regulation.** Please describe why registration, certification, license to use the title, license to practice another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

N/A since L.D. 909 is only about Establishing the Committee to Investigate the Feasibility of and Need for Regulation of Spoken Language Interpreters

9. **Other states.** Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

WASHINGTON STATE

Washington State Department of Health and Social Services Language Testing and Certification program (LTC) provides bilingual certification and testing services to ensure quality services to DSHS Limited English Proficient (LEP) populations.

The Language Testing and Certification program provides the following services:

- Language proficiency certification and qualification for DSHS bilingual employees, applicants for bilingual positions, contracted interpreters, contracted translators, and licensed agency personnel.
- Maintenance and monitoring department and contractor compliance with DSHS policies regarding the provision of services to Limited English Proficient (LEP) clients, in consultation with LEP Cluster Coordinators.
- Maintenance of the lists of certified interpreters and translators, maintenance of the lists of qualified interpreters.

For detailed information about language testing and certification, please view the Washington State DSHS website: <http://www.dshs.wa.gov/msa/ltc/index.html>

COURT INTERPRETING

- Consortium for State Court Interpreter Certification Program. 29 member states: Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin. The information relies on the National Center for State Courts (NCSC) website http://www.ncsconline.org/D_Research/CourtInterp.html
- Federal Court Interpreter Certification Program (Spanish, Navajo, and Haitian-Creole languages only)
- National Association of Judiciary Interpreters and Translators (NAJIT) Certification (Spanish only)

MEDICAL INTERPRETING

- Medical Interpreting Standards of Practice
Developed by Medical Interpreters Association & Education Development Center, Inc

10. **Previous efforts to regulate.** Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

Catholic Charities Maine has an interpreter applicant screening system in place designed to assess each candidate's language and interpreting skills, as well as the knowledge of ethics of interpreting.

Interview with the Interpreter Services Coordinator:

During this interview, the Interpreter Services Coordinator asks the applicant questions related to his/her education, interpreting experience, ethical and cultural issues specific to interpreting. A number of possible interpreting scenarios, relevant to each particular language and culture, are used during the interview.

Health Care Terminology Test – Recorded:

It is designed to evaluate applicants' knowledge of medical terminology related to the anatomy, symptoms, illnesses, procedures, medical equipment, health care specialists, treatment, and common medications in both English and Target Language.

After the test, the Interpreter Services Coordinator and an experienced in the Target Language Interpreter listen carefully to recording, and consider and further report on the following:

ACCURACY: Was the information contained in the source language rendered appropriately into the target language?

OMISSIONS: Was all the information rendered into the target language? If not, what were the omissions and were these omissions significant or minor?

VOCABULARY: Were English words used? If so, were they used frequently or rarely? Were the idioms rendered appropriately into the target language? Was the word choice appropriate?

TERMINOLOGY: Was the medical terminology rendered correctly into the target language? If not, what kinds of errors were made?

GRAMMATICAL STRUCTURE: Was correct grammatical structure employed? If not, was the grammatical structure problematic?

REGISTER: Did the applicant render an equivalent style/level of language?

All Catholic Charities Maine employment applicants undergo background check of Maine Driving and Accident Records, District Court Conviction, Department of Human Services, Sex Offender Registry Check, and Maine Child Protective Services Central Case Records.

11. **Mandated benefits.** Please indicate whether the profession or occupation plans to apply for mandated benefits.

N/A

12. **Minimal competence.** Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

STANDARDS OF MINIMAL COMPETENCE

- Federal Court Interpreter Certification Program (for Spanish, Navajo, and Haitian-Creole only)
- Consortium for State Court Interpreter Certification Program.
- Medical Interpreting Standards of Practice
Developed by Massachusetts Medical Interpreters Association & Education Development Center
<http://www.mmia.org/>
- The Standard Guide for Language Interpretation Services
American Society for Testing and Materials <http://www.astm.org>
- Guide to Initial Assessment of Interpreter Qualifications April 2001
The National Council on Interpretation in Health Care Working Papers Series <http://www.ncihc.org/workingpapers.htm>

13. **Financial Analysis.** Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Date: 8/28/03

Completed by:

Name:

Title:

Dolgormaa Hersom
Bonnie J Bagley
Associate Director
Catholic Charities Maine

Garippa, Dona L

From: Kathy Poulos-Minott [lep@maine.rr.com]
Sent: Wednesday, September 17, 2003 12:38 PM
To: dona.l.garippa@maine.gov
Subject: Fw: Comments L.D. 909

----- Original Message -----

From: Kathy Poulos-Minott
To: ; lynn@lynnbromley.com ; npsullivan@qwi.net
Cc: lep@maine.rr.com
Sent: Wednesday, September 17, 2003 12:30 PM
Subject: Comments L.D. 909

Dear Committee Members:

Thank you for the opportunity to comment on L.D. 909, "A Resolve To Establish the Committee To investigate the Feasibility and Need for Regulation of Spoken Language Interpreters." (explain your interest etc.)

I am the (1) chair of the National Limited English Proficiency (LEP) Advocacy Task Force, www.leptaskforce.org, a group of local, regional and national stakeholders who support the laws prohibiting national origin discrimination because of language barriers; (2) an advisory board member of the National Council on Interpreting in Healthcare, <http://www.ncihc.org/mission.htm>, a multidisciplinary organization based in the United States whose mission is to promote culturally competent professional medical interpreting as a means to support equal access to health care for individuals with limited English proficiency; and (3) a participant in the Southeast Asian Resource Action Center Southeast Asian American Advocacy Initiative, whose principal mission is to advance the interests of Southeast Asian Americans in the United States through community empowerment and leadership development.

Comments:

I fully support L.D. 909, "A Resolve To Establish the Committee To investigate the Feasibility and Need for Regulation of Spoken Language Interpreters."

Although many entities in Maine are recipients of federal financial assistance and thus subject to Title VI of the 1964 Civil Rights Act and other federal statutes prohibiting national origin discrimination, (Please refer to www.lep.gov and the recent National Health Law Program Report: <http://www.kff.org/content/2003/4131/4131.pdf>) Maine currently has no regulations regarding the qualifications of interpreters (spoken communication) and translators (written communication). As a result, providers of critical services such as hospitals, courts, police, housing authorities, and schools commonly fail to provide qualified language assistance to limited English proficient (LEP) individuals legally entitled to equal access and meaningful participation in such programs and activities.

In the absence of state regulations and subsequent written policies and procedures regarding interpreter and translator competencies, providers in this state commonly use any "seemingly bilingual" individual to interpret or translate, (*if they use an interpreter at all.*) Providers frequently rely upon untrained employees, friends, neighbors, and minors to interpret and/or

translate for LEP individuals. The practice of using untrained individuals to interpret or translate is known as "language brokering". When language brokers are used, confidentiality and ethics are disregarded. Additionally, miscommunication by such untrained language brokers can range from the annoyances of missed appointments to serious and even life-threatening medical situations.

One of the most disturbing practices by providers in this state is the use of minors as interpreters/translators. Children are commonly burdened with adult responsibilities such as interpreting in domestic violence situations, child protective incidents, medical appointments, and school meetings. Children are routinely subjected to matters of an adult, private and inappropriate nature. On more than one occasion, other advocates and myself have observed children interpreting in health and human services offices during the time they should be in school. Providers who use children as interpreters give these children the power to decide just *what* information will or will not be communicated to their parents. As a result the family dynamics are disrupted, and children may reverse roles with their parents. This reversal of familial authority has sometimes led to family discord to the point of child abuse- when frustrated parents feel they have "lost control" and relinquished their role as a parent.

Advocates have observed that children, who may have just witnessed a violent assault are asked to interpret by the police. This places the children between the abuser and victim, a highly volatile and traumatic situation. The children are expected to explain the circumstances of this violent experience, a practice not only extremely inappropriate, but possibly regarded as abusive.

Despite years of training in Maine provided by other advocates and myself regarding the obligation to provide effective communication with LEP individuals, most Maine providers rarely take substantial steps towards compliance until there is the possibility of a complaint or an actual complaint filed with the federal government. At a recent domestic violence conference in Portland, the Portland Police Department representative stated to the audience that he was not aware of any procedures regarding interpreter qualifications in a domestic violence call and that the police use "anyone" who is available to interpret... neighbors, friends and minors.

We recently used LEP "testers" to find out if the Maine courts are (after all these years) accessible to LEP individuals. Our testers, by telephone and in person attempted to obtain Protection from Abuse Orders. In each case, the court clerks stated that the courts did not have interpreters or translations of written materials available, and our testers were sent away denied the PFAs because of the courts' failure to provide qualified language assistance. Needless to say, the denial of a PFA Order could result in injury or death.

Shortly after our testing and assurances from the State court administrator of compliance, I became involved with an LEP woman who needed to obtain a Protection from Abuse Order after being assaulted. Again, the situation had not improved. Neither the police, domestic violence advocates nor the courts provided qualified interpretation and translation and instead allowed the victim's friend (another controlling man) to interpret. The victim did not want this person to interpret, but she was unable to explain this to any of the providers. This man decided what information she should be allowed to know. He did not tell her she had the right to an attorney, so she was unaware of this service and missed the appointment at Pine Tree Legal Assistance. She went to court without counsel and brought an untrained individual to interpret. We witnessed the judge in this Portland court ask absolutely no questions about the friend's qualifications or potential conflict of interest. Following the hearing, the clerk refused to provide a translated copy of the Protection from Abuse Order for the LEP woman. Prior to going to court, a bilingual employee at her child's school told her to stop causing trouble and go back to her husband. It is not uncommon in these types of situations for the LEP abuser and the victim to then violate conditions

of the PFA order because the courts have not provided qualified language assistance.

The failure to develop and implement Title VI LEP Plans including interpreter and translator competencies has already resulted in administrative and legal complaints in Maine. For example, administrative and legal actions by MCLU, the National Health Law Program, local immigrants, and myself against Maine Medical Center resulted in a Resolution Agreement with the United States Department of Health and Human Services considered a model for the entire United States:

Maine Medical Center Office for Civil Rights Resolution:

<http://www.healthlaw.org/pubs/Alert000718.html>

We additionally have open Title VI complaints throughout the country and in Maine against the City of Lewiston, Portland Housing Authority, the Maine Department of Health and Human Services, Catholic Charities of Maine and the Maine Judicial Branch with the U.S. Department of Justice, U.S. Department of Health and Human Services, and U.S. Department of Education Offices for Civil Rights. Our Tucson Unified School District complaints also resulted in OCR Agreements considered models by the federal government: http://www.helpforschools.com/ELLKBase/legal/Tucson_OCR_Agreement.shtml

Horror stories abound on a local, regional and national level of the risks and devastating results of having no regulations regarding interpreter and translators. L.D. 909 represents the first step our state can take towards assuring compliance with federal and state laws prohibiting national origin discrimination. The following language regarding interpretation and translation qualifications is extracted from the U.S. Department of Health and Human Services Title VI LEP Policy guidance found at www.lep.gov. All recipients of federal financial assistance should look towards this guidance.

Sincerely,

Kathy Poulos-Minott
National LEP Advocacy Task Force
207-878-5196
www.leptaskforce.org
lep@maine.rr.com

Considerations Relating to Competency of Interpreters and Translators

Competence of Interpreters.

Recipients should be aware that competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to perform written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should take reasonable steps, given the circumstances, to assess whether the interpreters:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation)
- To the extent necessary for communication between the recipient or its staff and the LEP person, have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person; \8\

\8\ Many languages have ``regionalisms,`` or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, the interpreter should be aware when languages do not have an appropriate direct interpretation of certain terms and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue, so that the interpreter and recipient can work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

-
- Understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires
 - Understand and adhere to their role as interpreters without deviating into other roles--such as counselor or legal advisor--where such deviation would be inappropriate (particularly in administrative hearings contexts).
 - Some recipients, such as some state agencies, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the context of administrative proceedings, the use of certified interpreters is strongly encouraged.\9\

\9\ For those languages in which no formal accreditation or certification currently exists, certain recipients may want to consider a formal process for establishing the credentials of the interpreter, or assess whether a particular level of membership in a professional translation association can provide some indicator of professionalism.

Competence of Translators.

As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very

different from the skill of interpreting; a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. As noted above, certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator ``check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ``back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.\10\ Community

[[Page 47317]]

organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs.

\10\ For instance, there may be languages which do not have an appropriate direct translation of some specialized medical terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients may find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, to translate nonvital documents that have no legal or other consequence for LEP persons who rely on them, a recipient may use translators that are less skilled than the translators it uses to translate vital documents with

legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to take reasonable steps to determine that the quality and accuracy of the translations permit meaningful access by LEP persons.

B. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as social service eligibility workers or hospital emergency room receptionists/workers, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a child support administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. While telephone interpreters can be used in numerous

situations, they may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing, if available, may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it may be important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. Because such volunteers may have other demands on their time, they may be more useful in providing language access for a recipient's less critical programs and activities where the provision of language services can reasonably be delayed. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. However, when a recipient encounters an LEP person attempting to access its services, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, the recipient should, except as noted below, respect an LEP person's desire to use an interpreter of his or her own choosing (whether a professional interpreter, family member, or friend) in place of the free language services expressly offered by the recipient. However, a recipient may not require an LEP person to use a family member or friend as an interpreter.

In addition, in emergency circumstances that are not reasonably foreseeable, a recipient may not be able to offer free language services, and temporary use of family members or friends as interpreters may be necessary.

[[Page 47318]]

However, with proper planning and implementation, recipients should be able to avoid most such situations.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether making a record of that choice, and of the recipient's offer of assistance, is appropriate.

As with the use of other non-professional interpreters, the recipient may need to consider issues of competence, appropriateness, conflicts of interest, and confidentiality in determining whether it should respect the desire of the LEP person to use an interpreter of his or her own choosing. Recipients should take reasonable steps to ascertain that family, legal guardians, caretakers, and other informal interpreters are not only competent in the circumstances, but are also appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation.

In some circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence matter. For these reasons, where the LEP individual has declined the express offer of free language assistance and has chosen to use a family member, friend or other informal interpreter, if a recipient later determines that a family member or friend is not competent or appropriate, the recipient should provide competent interpreter services to the LEP person in place of or, if appropriate, as a supplement to the LEP individual's interpreter. For HHS recipient programs and activities, this is particularly true, for example, in administrative hearings, child or adult protective service investigations, situations in which life, health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient may want to

consider providing its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well.

Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using minor children as interpreters. The recipient should take reasonable steps to ascertain whether the LEP person's choice is voluntary, whether the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and whether the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

Again, while the use of a family member or friend may be appropriate, if that is the choice of the LEP person, the following are examples of where the recipient should provide an interpreter for the LEP individual:

[sbull] A woman or child is brought to an emergency room and is seen by an emergency room doctor. The doctor notices the patient's injuries and determines that they are consistent with those seen with victims of abuse or neglect. In such a case, use of the spouse or a parent to interpret for the patient may raise serious issues of conflict of interest and may, thus, be inappropriate.

[sbull] A man, accompanied by his wife, visits an eye doctor for an eye examination. The eye doctor offers him an interpreter, but he requests that his wife interpret for him. The eye doctor talks to the wife and determines that she is competent to interpret for her husband during the examination. The wife interprets for her spouse as the examination proceeds, but the doctor discovers that the husband has cataracts that must be removed through surgery. The eye doctor determines that the wife does not understand the terms he is using to explain the diagnosis and, thus, that she is not competent to continue to interpret for her husband. The eye doctor stops the examination and calls an interpreter for the husband. A family member may be appropriate to serve as an interpreter if preferred by the LEP person in situations where the service provided is of a routine nature such as a simple eye examination. However, in a case where the nature of the service becomes more complex, depending on the circumstances, the family member or friend may not be competent to interpret.

Garippa, Dona L

From: kim matthews [kmatth2739@hotmail.com]
Sent: Monday, September 22, 2003 11:27 AM
To: dona.l.garippa@maine.gov
Subject: L.D. 909

Dear Committee Members,

I am writing in support of L.D. 909, "A Resolve To Establish the Committee to Investigate the Feasibility and Need for Regulation of Spoken Language Interpreters." I am an attorney in Portland. I have seen first hand how difficult it is for many people with a low proficiency in English (LEP) in the court system. Interpreters seem to frequently be provided for actual trials in the family law area. But in one case I had, serving as a guardian ad litem for two children, through the Volunteers Lawyers Project, I had an extremely difficult time finding an interpreter for the father in the case, who spoke virtually no English. It was suggested that I use one of the minor children, who was the subject of the contested custody matter, as the interpreter. I refused to do this for reasons that I hope are obvious to everyone. Eventually, I used an adult relative, although this was certainly not a great solution. I have observed LEP individuals in court, particularly on "domestic violence" court dates who did not really understand what was happening and no interpreters were provided for them.

I also handled a lawsuit against Maine Medical Center for not providing adequate interpreter and translation services for LEP individuals. This lawsuit resulted in an agreement between MMC and the federal Office of Civil Rights which sets forth the obligations of MMC toward LEP individuals. This has greatly improved LEP individuals' understanding of what is happening to them or their family members when using the services of MMC. They are also able to explain their medical conditions accurately and therefore are more likely to receive appropriate treatment.

A major area to consider when making regulations concerning interpreters and translators is to make certain that individuals are appropriately trained in areas such as the culture involved and confidentiality, as well as how to actually do the interpretation or translation. It is also important not to allow minors to interpret, except in very limited situations.

Thank you for your consideration of my comments.

Kim Matthews
86 Deering Run Drive
Portland, Maine 04103
878-2554

High-speed Internet access as low as \$29.95/month (depending on the local service providers in your area). Click here. <https://broadband.msn.com>

Garippa, Dona L

From: maria sanchez [incaroots@yahoo.com]
Sent: Monday, September 22, 2003 5:05 PM
To: lynn@lynnbromley.com; dona.l.garippa@maine.gov
Subject: L.D.909

Dear Committee Members:

We are advocates for the Hispanic community in Maine. Thank you for the opportunity to comment on L.D. 909, "A Resolve To Establish the Committee To investigate the Feasibility and Need for Regulation of Spoken Language Interpreters." We fully support L.D. 909 and would like to provide you with some recent first-hand observations regarding the need for interpreter and translator standards and regulations in Maine.

1) A pregnant woman, who speaks only Spanish, went to Maine Medical Center because she was very ill. The hospital did not offer her an interpreter and did not use an interpreter. Instead they used the woman's father who only spoke a little English to interpret. The hospital told her that everything was fine and sent the woman home. No written instructions were translated, and she could not read anything. The next day she lost the pregnancy.

2) The Portland Police Department used the friend of a victim of domestic abuse to interpret. They did not offer an interpreter and they did not ask any questions about his qualifications. As a result, she missed appointments and important information that jeopardized her safety.

3) DHS (where we frequently bring LEP individuals) never asks if we are qualified to interpret and they never offer an interpreter.

4) In the Social Security office in Portland, we asked if they have interpreters and they replied something to the effect of, "No, we don't have anyone here but we manage. It's easy to complete these forms. Anyone can do this." We explained that names are different in some countries and that individuals use their mother's name and their father's name. When someone gets married, the mother's name gets dropped and the husband's name is added. This is very confusing since LEP individuals don't know what to write as their last name. (This is a very hard concept to explain to providers. The common response from providers is, "We do it this way here and people are supposed to know." Our question is- How are individuals supposed to know what to do if they don't speak English and no one explains it to them in language they can understand??)

5) Children are interpreting and translating all the time for the papers from DHS.

6)Children must try to translate written information from the schools.


When we did testing, I called the Lewiston Schools trying to get my child enrolled. I told them repeatedly I could not understand and they still did not get an interpreter.

8)When we did testing in the courts it was the same situation where I was unable to obtain a protection from abuse Order because the courts told me they did not have interpreters or anyone to help me complete the paperwork.

Please feel free to contact us if you have questions about language accessibility needs of the Hispanic community in Maine.

Sincerely,
Maria Sanchez-Cron
Tengo Voz

as attachment inline text
Move to folder... [New Folder]

 Previous | Next | Back to Messages Save Message
ext

Check Mail Compose

Do you Yahoo!?

Yahoo! SiteBuilder - Free, easy-to-use web site design software <http://sitebuilder.yahoo.com>

List of Attendees for September 15, 2003 Sunrise Review Meeting

10:00 – 12:00 – Central Conference Room

1. Sandy Parker – Maine Hospital Association
2. Jan Wilkinson – Maine Medical Center—Inpatient Management Program
3. Dana Farris Gaya – Maine Medical center – Interpreter and Cross Cultural Services Coordinator
4. Ted Glessner – Administrator of the Administrative Office of the Courts in Portland
5. Dolly Hersom – Catholic Charities of Maine
6. Janice Jaffe – Research Professor of Romance Languages—Bowdoin College
7. Grace Valenzuela – Maine Public Schools