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September 1, 2020

The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
3 West, Miller Senate Office Building
Annapolis, MD 21401

The Honorable Maggie McIntosh, Chair
House Appropriations Committee
Room 121, House Office Building
Annapolis, MD 21401

Re: 2020 Joint Chairmen's Report Response, D11A04.01 - Governor's Office of the Deaf and Hard of Hearing, Ways to Protect and Serve Users of Sign Language Interpreting Services

Dear Chairs Guzzone and McIntosh:

The 2020 Joint Chairmen's Report (JCR) requested the Governor's Office of the Deaf and Hard of Hearing (GODHH) to provide a response on "ways to protect and serve users of sign language interpreting services."

Specifically, the JCR stated:

"Given the importance of quality interpreters to the deaf and hard of hearing community and the importance of the deaf and hard of hearing community to the State the committees request that ODHH submit a report describing: policy options that the State could implement to protect its deaf and hard of hearing residents from unskilled, fraudulent, or unethical interpreters; and a strategic plan that does not rest solely on the Registry of Interpreters for the Deaf, Inc. certifications to ensure an adequate pool of competent interpreters in the State."

GODHH has identified five different strategies that could be taken by the State to protect its Deaf and hard of hearing residents from unskilled, fraudulent, and/or unethical interpreters. In considering the five strategies which represent a continuum of varying degrees of approaches and complexity with evidently different levels of effectiveness. Those strategies range from a complex policy framework of legislation combined with regulatory oversight to minimal government involvement through the private right of action enabling victims to directly hold fraudulent and unqualified purveyors accountable through Maryland's judicial system.

States throughout the country have taken various approaches to addressing the issue of protecting Deaf and hard of hearing citizens from fraudulent and unqualified interpreters. Maryland can learn from those steps taken by other states and improve on those policy frameworks implemented by others.

GODHH identified basic elements of a policy framework which should be taken into consideration prior to determining which policy option could be utilized in the State of Maryland. Understanding those critical elements will allow the state to develop policy options in the best interest of Maryland, which is to protect its Deaf and hard of hearing residents from unskilled, fraudulent, or unethical interpreters.

Thank you for your support, and we look forward to working with you in meeting the ongoing needs of our 1.2 million Deaf and hard of hearing Marylanders.

Should there be any further questions, please do not hesitate to contact me at kelby.brick@maryland.gov or (443) 453-5761.

Sincerely,

A handwritten signature in blue ink that reads "Kelby Brick". The signature is written in a cursive, slightly slanted style.

Kelby Brick, Esq., CDI
Director, Maryland Governor's Office of the Deaf and Hard of Hearing

Attachment

Cc: Patrick J. Lally, Senior Executive Director, Governor's Coordinating Offices
Allison Mayer, Deputy Chief of Staff, Office of the Governor
Keiffer Mitchell, Chief Legislative Officer, Governor's Legislative Office
Mona Vaidya, Director, Governor's Office of Finance and Administration

BACKGROUND

Since 2015, GODHH has intensively studied policy frameworks across the country while interacting with customers, interpreters, regulators, and policy makers in various states. GODHH has also conferred with top academic experts and reviewed a variety of reports and recommendations. GODHH has also participated in discussions with diverse professional and consumer organizations as well as advocates over the years and attended numerous conferences. These steps enabled GODHH to assess the strengths and weaknesses of various policy options. This has accordingly allowed GODHH to identify common successful elements that should be considered in any policy option of protecting Deaf and hard of hearing customers from fraudulent and unqualified interpreters.

BEYOND MARYLAND

All states except Maryland have various degrees of standards protecting individuals from fraudulent and unqualified interpreters. Those standards encompass a wide variety of settings (employment, education, medical, legal and community among others), competence (requiring certification by a national body or developing their own testing protocol), and oversight authority (by an Office or Commission of the Deaf and Hard of Hearing or, less commonly, some other agency). Only Maryland has no specific laws or regulations in place to protect individuals from fraudulent and unqualified interpreters in any setting. There is, however, a Court Interpreter Program under the Maryland Administrative Office of the Court. This program administers a voluntary certification process to offer a registry of interpreters. There are no requirements that the court only use interpreters from this registry and we have received reports from constituents regarding fraudulent and unqualified interpreters working in the courtrooms who have been deemed "qualified" by the Court without any proper assessment or voir dire.

ELEMENTS OF A SUCCESSFUL INTERPRETER POLICY

In identifying the best policy options for addressing fraudulent and unqualified interpreters, the following elements should be considered:

Oversight by office or agency with appropriate cultural and linguistic competency

Best practices indicate that professional licenses should be regulated by the governmental unit that has the relevant subject matter expertise. Nurses and social workers are governed by the Department of Health, attorneys by the Courts, and veterinarians by the Department of Agriculture. If there is oversight and regulation of interpreters, this should be done by the governmental unit with appropriate cultural and linguistic competency of this profession, including being led and staffed by professionals fluent in American Sign Language (ASL). In many states, including Maryland's neighboring states, the profession of sign language interpreters is overseen by their Office or Commission of the Deaf and Hard of Hearing.

State permit to work for compensation

To minimize the harm caused by unqualified and fraudulent interpreters, many states essentially require that a permit be granted before anybody can provide sign language interpreting services for compensation. Some of those permits are comprehensive, covering all settings, other permits are limited to specific settings. Such a requirement is usually labeled as a license or a registration requirement. Volunteer interpreters in settings, such as religious services that are not covered by civil rights laws, are usually exempt from this requirement.

Licensing or registration

The end result of the licensing or registration approaches are the same as it allows the state to identify those who meet minimum requirements for the permit to work for compensation. The process for each, however, is slightly different and not always uniformly applied across states. A license is typically an exclusive power or privilege granted by legislative authority to persons meeting established standards allowing them to engage in a given occupation or profession. A registration requirement is typically the process of documenting and maintaining records of persons who have complied with legal requirements for practice and enacted by a governmental unit.

Minimum credentials for high risk or specialty settings

Many states established a higher level of minimum credentials for high-risk or specialized settings (medical, legal, education, or those involving minors, etc.) as opposed to those standards suitable for generalist interpreting settings (such as community meetings or controlled one-on-one settings, etc.). Such credentials may include additional specialized training and higher skill sets, which are usually measured through additional testing and certifications. The requirement of a Deaf interpreter team to be implemented in specific settings for effective communication and safety reasons. A JCR was submitted in 2019 that suggested an incremental approach beginning with the credentialing of certain high-risk settings.

Enforcement procedures for handling complaints and violations

A policy framework addressing fraudulent and unqualified interpreters without enforcement procedures in place for handling complaints and violations is ineffective. Certain states have given enforcement authority to the Office or Commission of the Deaf and Hard of Hearing overseeing the profession while others have established an associated licensing board embedded within such an office or commission. In those approaches, states have established an administrative procedure for adjudicating such complaints and allegations of violations while others have assigned it to the state's attorney general's office. Such enforcement by government units lacking professionals with cultural and linguistic competence have been historically ineffective partially, as noted by certain states, and, because of this, a state could establish a private right of action allowing consumers to take action directly against fraudulent and unqualified interpreters.

Scope of work covered

Some states' policy framework covers only in-person interpreting services which would typically be limited only to in-state activities where all the parties, including the interpreter, are physically in the state. However, to expand the pool of available interpreters while closing a loophole that can be exploited by fraudulent and unqualified interpreters, an increasing number of states have taken steps to require oversight of all interpreting services that are provided in or through the state. This would include remote interpreting when providing services in, to, or from Maryland.

Reciprocity with other states

To allow for the exchange of professional services across state lines while expanding the availability of professional opportunities and services, states have authorized reciprocal agreements with similar situated states.

Waivers

States have allowed for waivers for special circumstances such as interpreters from out of state to work at a conference or event in the state that requires a larger pool of interpreters than is currently available, as well as waivers based on certifications and credentials.

Assessment of sign language interpreters

In order to separate qualified sign language interpreters from those who are fraudulent or unqualified, there must be an assessment process to ensure minimum standards in the field of interpreting, ethical decision making and interpreting skills. Most states have taken a much simpler process by requiring certification by the Registry of Interpreters for the Deaf, Inc. (RID), a national organization that has played a leading role in establishing a national standard of quality for interpreters and transliterators. This certification typically is accompanied with an internal alternative and provisional pathway for those who have not yet qualified for certification. A few states have taken it upon themselves to establish an infrastructure of implementing a diagnostic and proficiency screening instrument (typically known as a Quality Assurance Screening (QAS) system) designed to assess the knowledge, skills and abilities of interpreters and transliterators.

Professional ethical standards

Interpreters certified by RID must comply with the organization's Ethical Practice Systems (EPS) in adherence with a Code of Professional Conduct. The EPS focuses primarily on the process of mediation and adjudication of ethical complaints. Other states have taken steps to build a duplicate or parallel system of managing ethical complaints either separately or in conjunction with RID's EPS.

Confidentiality requirements

Various states, as well as RID, recognize interpreted information as confidential communications and prohibit the release of such confidential information. Interpreters must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. This allows for the free flow of information between parties such as between doctor and patient, attorney and client, employer and employee, and other critical relationships.

Provision of list of licensed or, otherwise, approved interpreters for public use

Most states that require a permit to work in the field of interpreting, whether through licensing or registration, require the provision of a list of such licensed or otherwise approved interpreters for public use to allow consumers to distinguish qualified interpreters from potentially fraudulent or unqualified interpreters.

Vendors of interpreting services

Those involved in establishing a policy framework for interpreters need to determine whether to enact accountability measures to ensure vendors who provide sign language interpreting services to contractors achieve quality standards. This ensures that vendors assign appropriate and qualified interpreters to customers who may otherwise be unable to directly screen and evaluate individual interpreters.

Provisional or alternative pathways to ensure diversity in the profession

States have established provisional or alternative pathways to ensure diversity in the profession as well as expanding the pool of qualified interpreters beyond those that are established by RID. This is discussed in more details later in this document. This has been recognized as an approach to overcoming systemic barriers that may artificially limit the pool of qualified and skilled interpreters.

Recognition of Certified Deaf Interpreters (CDI) as specialized professionals

Most sign language interpreters are individuals who can hear, otherwise known as hearing interpreters. The profession has become strengthened by the development of Deaf interpreters as specialized professionals in critical settings such as legal, medical (including mental health), broadcast settings, and those involving Deaf and hard of hearing minors. Accordingly, more states have adjusted their policy framework to recognize the specific skill set that are brought by Deaf interpreters that achieve effective communications.

Development of interpreting education programs and professional development opportunities

Various states have supported robust interpreter education programs, as well as professional development programming for experienced interpreters. The Community College of Baltimore County (CCBC) at Catonsville and Frederick Community College currently contain the only interpreter education programs in the state. Such education and development have been recognized as critical in ensuring a robust pool of qualified and skilled interpreters adequate in meeting the needs of interpreting services.

Regulatory flexibility

Some state legislatures have enacted a broad legislative framework while allocating regulatory authority to the Office or Commission of the Deaf and Hard of Hearing or its associated Licensing Board. Maryland would need to determine to what degree it grants regulatory authority to a government unit such as GODHH. Flexibility allows the government unit to respond to new developments without going through the legislative process. This allows for a more nimble process that recognizes emerging developments, such as the creation or cessation of specific certifications by third parties, as well as increasing improvements in oversight of ethical practices.

Scope of certifications

If there is a policy framework that utilizes a third party certification or testing process, the scope of the interpreting work should be limited to those outlined in the certification or test. For example, a RID Transliteration Certificate (TC) only qualifies the certification holder to perform transliteration work, as opposed to a RID National Interpreter Certification (NIC) which qualifies the certification holder for a broader “range of interpretation and transliteration assignments.” Similarly, the Educational Interpreter Performance Assessment (EIPA) has separate tests for elementary and secondary grades, as well as tests in ASL and tests in modalities and languages other than ASL. A person with a top rating in the elementary EIPA ASL test is not necessarily qualified to provide interpreting in the secondary grades, and a successful policy framework should address those kinds of distinctions.

POLICY OPTIONS FOR ADDRESSING FRAUDULENT AND UNQUALIFIED INTERPRETERS

Now that elements of a policy framework addressing fraudulent and unqualified interpreters have been identified, the State would need to determine which approach would most effectively achieve specific objectives. Different strategies will depend on the specific elements or objectives that need to be addressed. The following approaches represent a continuum of strategies that can be utilized to address this critical issue. GODHH takes no position on which approach is most appropriate or effective for Maryland.

Option one: legislation authorizing a full licensing board or registration requirement

Enact a comprehensive bill that establishes a licensing board managed by GODHH and outlines the recognized certifications and alternative pathways that are to be adopted. The legislation could direct GODHH to:

- 1) Conduct all business activities of the Board to assist the Board in the performance of its duties and functions, including application review, license issuance, license renewal, license reinstatement, licensing fees, complaint processing, maintenance of all files, and scheduling logistics of board meetings;
- (2) Provide information about the licensure process to the public, including Deaf and hard of hearing consumers;
- (3) Provide technical assistance about the licensure process to applicants and other interested parties;
- (4) Promote the profession of American Sign Language interpreting, including the provision of workshops and training for public awareness and professional development;
- (5) Develop regulations as the Board and the Director sees fit;
- (6) Any other tasks assigned by the Board and the Director.

This ramps up the policy making process quickly and cements protection behind statutory authority. This approach is consistent with the process of establishing other licensing boards under various departments such as the Department of Health and the Department of Natural Resources.

The details of the legislation could be restrictive as any changes as a result of development in the field, such as new or lapsed certifications, would require the statute to be amended and updated.

Alternatively, legislation similar to what has been done in Pennsylvania and West Virginia could require interpreters interested in providing services in the state register with GODHH. Interested interpreters would be required to submit certain proof of certification or other credentialing standards to document that they meet educational, skill, and ethical standards.

GODHH could also be authorized to establish reciprocity with other states that share similar credential requirements while investing in alternative pathways to RID certification.

Option two: legislation requiring GODHH to regulate interpreters

In lieu of comprehensive legislation that establishes a licensing board, existing statute could be amended to direct GODHH to utilize its regulatory authority under State Government Article § 9-2402 of the Annotated Code of Maryland to issue regulations to protect and serve users of sign language interpreters. The enactment of such legislation could direct GODHH to engage directly with experts and stakeholders in developing a regulatory framework and go through the state's established rule-making process.

This approach also provides regulatory flexibility while enabling maximum input of stakeholders, including interpreters and consumers, in the rule-making process. This is a more common approach taken by other states and allows legislatures to take advantage of state expertise on interpreters that reside in GODHH. GODHH could also be authorized to establish reciprocity with other states that share similar credential requirements while investing in alternative pathways to RID certification.

The regulatory process could take as little as a few months to complete or it could take much longer, depending upon suggestions and input by stakeholders and other interested parties.

Option three: regulations developed and overseen by the State GODHH (without legislative requirement)

This option is similar to option two above but would allow the executive branch to impose the regulatory framework on their own timeline. This regulatory framework could be subject to change due to natural changes in administrations. This unpredictability could create confusion for stakeholders.

Option four: develop an in-state assessment or contract with Texas BEI, whether authorized by law or regulations

Separately or in conjunction with any of the above, the state could develop its own Quality Assurance Screening (QAS) or purchase a license from the State of Texas' Board for Evaluation of Interpreters (BEI) Certification Program.

QAS primarily serves as an in-state assessment program designed to screen the knowledge and skills of interpreting among developing professionals to help them identify their strengths and weaknesses. QAS is not an explicit credential or a certification of any kind, which does not assure quality or minimum competence. QAS is simply a tool to help developing interpreters identify where they are in their sign language skill level and does not assess knowledge of required ethical decision-making in the field.

The states who intend to utilize QAS undertake efforts from the ground up. To establish QAS validity and reliability, collective efforts include conducting focus group meetings and collecting feedback as appropriate from interpreters, raters, diagnosticians, consumers, stakeholders, and school divisions on the assessment process with perceived strengths, weaknesses, opportunities and threats.

This approach may be used as an informal tool for public entities to identify interpreters' skill level through a directory list as coordinated by a state agency. This will require a uniform and consistent understanding of the varying skills of interpreters across the state and that the directory is not intended as a list of approved and qualified interpreters. Whether or not to utilize individuals with QAS rests at the discretion of the procurer, unless otherwise authorized by law or regulations.

The second approach under this policy option involves licensing the BEI program, which is similar to QAS, except there are additional requirements pursuant to the licensing contract agreement. BEI is responsible for testing and certifying the skill level of individuals seeking to become certified interpreters. Texas reported roughly \$700,000 in state expenditures to initially establish the BEI program. The program permits other states to utilize its diagnostic tool and charges an annual licensing fee that includes the shipment of exams, technical assistance, and program preparation. The annual licensing fee depends upon the population size, which in Maryland's case, may be approximately \$14,000. To date, four states (Texas, Missouri, Michigan, and Illinois) have utilized BEI as a diagnostic tool to ensure interpreters meet minimum standards as established by the state.

States who purchase the BEI license may reserve the right to establish exam fees to partially offset the costs of evaluators/raters. The BEI program requires an exam be conducted onsite for individuals seeking to be certified, which also involves staff time for preparation and supervision as well as other significant duties.

In Texas, the BEI program covers payroll expenses for staff and a group of raters responsible for screening individuals who seek to be certified. Texas allocated roughly \$200,000 for four BEI staff and \$150 for a group of three to four raters per each time the applicant takes the exam. In Missouri, two staff have been assigned to oversee the BEI program and the evaluation costs increased to help partially offset various expenses including roughly \$17,000 for two-day basic rater training session, \$12,568 for trainers, \$4,000 travel and accommodations, and offsite training location. Additional expenses may include, but are not limited to testing materials, recording equipment, supplies, overhead, internet, and travel expenses for raters such as per diem, lodging, and transportation.

An additional significant duty of BEI staff is to support the BEI advisory council charged with the responsibility to provide oversight of the BEI program, including monitor policies and procedures, make appropriate recommendations, and investigate complaints. Enforcement of BEI varies from state to state and is limited to the pool of interpreters that possess such certification.

Option five: private right of action as authorized by law

In lieu of or in conjunction with a licensing or regulatory framework, the State can provide consumers of interpreting services an express private right course of action against fraudulent and unqualified interpreters. An authorizing statute will need to incorporate specific elements that clearly defines fraudulent and unqualified interpreters, such as recognizing specific certifications and alternative pathways. A private right of action could also hold vendors of fraudulent and unqualified

interpreters liable for the service rendered. Legislation could establish an escalating ladder of fines for repeat violations or identify such as a summary offense as defined in law.

This approach will provide consumers a recourse against fraudulent and unqualified interpreters. This would relieve pressure on the state to ensure compliance and enforcement while providing stakeholders additional enforcement tools. However, if the private right course of action is not within a specific licensing framework that clearly defines qualified interpreting services, such an approach could potentially be burdensome on consumers and expose such consumers to the possible risk of retaliation on the part of fraudulent or unqualified interpreters.

REGULATORY FRAMEWORK OF NEIGHBORING STATES

Neighboring states have utilized a combination of the above policy options incorporating most of the various elements identified. They are outlined here in additional details to provide Maryland with a baseline.

West Virginia

West Virginia Commission for the Deaf and Hard of Hearing requires eligible interpreters to register with them after satisfying specific training or certification requirements. Without meeting such requirements, interpreters cannot work in the state of West Virginia. The authorizing statute covers all settings.

Pennsylvania

Similar to West Virginia, the Pennsylvania Office of the Deaf and Hard of Hearing requires eligible interpreters to register with them after satisfying specific training or certification requirements. Without meeting such requirements, interpreters cannot work in the state of Pennsylvania. The authorizing statute covers all settings.

Delaware

Interpreters in educational settings must receive a permit from the state and can only apply for a permit after earning a bachelor's degree and holding either a national certification by RID or is a certified member of RID as an EIPA credentialed interpreter with 4+. The state has been working on developing a comprehensive framework for licensing interpreters to work in all settings.

Virginia

Virginia Department for the Deaf and Hard of Hearing (VDDHH) manages a comprehensive Virginia Quality Assurance Screening (VQAS) for prospective sign language interpreters. VDDHH also maintains a Directory of Qualified Interpreters and coordinates sign language interpreter services for state agencies and Virginia Courts for quality control. Interpreters are also required to possess national RID certification or meet alternative criteria through EIPA or VQAS.

STRATEGIC PLAN THAT DOES NOT REST SOLELY ON RID'S CERTIFICATIONS TO ENSURE AN ADEQUATE POOL OF COMPETENT INTERPRETERS IN THE STATE

As outlined above, there are alternatives to assessing interpreting skills that do not rest solely on RID's certification. The RID certification, however, is the sole national accreditation widely depended upon across most, if not all, states in the country. Alternatives include the licensing of BEI from the state of Texas or the development of a state QAS. Such alternatives are most effective if tied to a strong regulatory framework that clearly delineates qualifications of interpreters as shown in options one through three. For instance, those states that have their own QAS without a regulatory framework have noted increases in fraudulent and unqualified interpreters who have stated that they have tested for the state QAS without explaining that such QAS does not qualify them to provide interpreting services. QAS merely indicates the interpreter's current level of skills.

However, many states do allow for the provisional or alternative pathway of qualifying interpreters through a provisional licensure or work permit. In lieu of requiring certification, emerging interpreters can satisfy a rigorous criteria that include evidence of passing with an acceptable score on an examination of both ethics and professional knowledge, such as the Knowledge Exam by the Center for the Assessment of Sign Language Interpretation, and passing with a minimum skill of sign language fluency, whether through a state QAS or a third party assessment such as the American Sign Language Proficiency Interview (ASLPI) through Gallaudet University or receiving appropriate credentials from an interpreter education program such as the one at CCBC. It is important to note that such pathways are typically offered in addition to, and not in lieu of, a RID requirement pathway.