

**BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION MEETING  
AGENDA**

**Friday, October 18, 2019, 10:00 a.m.  
Department of Professional and Occupational Regulation  
The Perimeter Center, Suite 200 – Board Room 1  
9960 Mayland Drive  
Richmond, Virginia 23233  
(804) 367-8519**

1. Call to Order
2. Emergency Evacuation Procedures
3. Approval of Agenda
4. Approval of Minutes:
  - June 17, 2019 – Board Meeting
  - September 4, 2019 – Public Hearing
  - September 6, 2019 – Public Hearing
  - September 9, 2019 – Public Hearing
  - September 11, 2019 – Public Hearing
  - September 23, 2019 – Stakeholder Meeting
5. Public Comment Period\*
6. Study of Sign Language Interpreters
7. Other Business
8. Conflict of Interest Forms/Travel Vouchers
9. Adjourn

**NEXT MEETING TENTATIVELY  
SCHEDULED FOR MONDAY, DECEMBER 9, 2019, 10:00 a.m., TRAINING ROOM 2**

\*Five-minute public comment, per person.

Persons desiring to participate in the meeting and requiring special accommodations or interpretative services should contact the Department at (804) 367-8519 at least ten days prior to the meeting so that suitable arrangements can be made for an appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

# BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION



REPORT TO THE

**Governor,**

**House Committee on General Laws,**

**Senate Committee on General Laws and Technology,**

**Joint Commission on Administrative Rules, and**

**Director of the Department of Professional and Occupational Regulation**

*Study of the Need to Regulate Sign Language Interpreters*

November 1, 2019



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DRAFT

## ACRONYMS AND DEFINITIONS

The following words and terms when used in this study shall have the following meanings unless the context clearly indicates otherwise:

“**ADA**” refers to the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.).

“**American Sign Language (or ASL)**” refers to a form of sign language developed in the US and used also in English-speaking parts of Canada. American Sign Language (ASL) is a visual language. With signing, the brain processes linguistic information through the eyes. The shape, placement, and movement of the hands, as well as facial expressions and body movements, all play important parts in conveying information. ASL is used predominantly in the United States and in many parts of Canada. ASL is accepted by many high schools, colleges, and universities in fulfillment of modern and “foreign” language academic degree requirements across the United States.

“**Assistive Technology**” generally refers to the equipment or devices used to facilitate communication or to provide alerts. This equipment can be an amplified telephone, a teletypewriter (TTY), a VideoPhone, or a personal amplification device. It includes alarm clocks with bed-shakers and flashing lamps to awaken someone who cannot hear sounds a regular clock generates. Individuals who are deaf, late-deafened and very hard of hearing must rely on this type of tactile / visual alert.

“**BEI (or Board for Evaluation of Interpreters)**” refers to a certification program developed by the Texas Office of Deaf and Hard of Hearing Services to ensure interpreters are proficient and to protect consumers by regulating the conduct of certified interpreters. An alternative to RID’s National Interpreter Certification, the BEI also offers specialty certifications for court interpreters and medical interpreters.

“**CART (or Communication access real-time translation)**” also called open captioning or real-time stenography, or simply real-time captioning, is the general name of the system that court reporters, closed captioners and voice writers, and others use to convert speech to text.

“**CDI (or Certified Deaf Interpreter)**” refers to RID certified interpreters who are deaf or hard of hearing and have demonstrated knowledge and understanding of interpreting, deafness, the Deaf community, and Deaf culture.

“**CPC**” refers to the Code of Professional Conduct for the Registry of Interpreters for the Deaf.

“**Cued speech**” is a visual representation of the English Language; a phonemic-based system which makes traditionally spoken languages accessible by using a small number of handshapes, known as cues (representing consonants), in different locations near the mouth (representing vowels) to convey spoken language in a visual format.

“**Deaf (or deafness)**” refers to the medical/audiological condition of not hearing, specifically anyone who cannot understand speech (with or without hearing aids and other devices) using

sound alone, denoted by a lowercase ‘d’. The uppercase Deaf refers to a particular group of deaf people who share a language – American Sign Language (ASL) – as well as a community and a culture.

“**DeafBlind (or Deaf-blindness)**” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

“**EIPA (or Educational Interpreter Performance Assessment)**” is a national exam developed by Boys Town National Research Hospital, designed to assess the proficiency of educational interpreters.

“**EPS**” refers to the Ethical Practices System for the Registry of Interpreters for the Deaf.

“**Fingerspelling**” is the representation of the letters of a writing system, and sometimes numeral systems, using only the hands.

“**Hard of hearing**” can denote a person with a mild-to-moderate hearing loss.

“**Interpreter**” refers to any person who facilitates communication between two or more parties using different languages or different forms of the same language and refers to sign language interpreters and oral and cued speech interpreters. *For the purposes of this study, the term will be used to identify an ASL interpreter, unless noted otherwise.*

“**LAN (or Language Access Network)**” is the national leader in video medical interpreting (VMI) for the healthcare industry.

“**Late-deafened**” has a variety of meanings but typically refers to hearing loss that occurs after childhood. Individuals who are late-deafened have generally obtained oral communication skills prior to their hearing loss.

“**Martti**” (or My accessible real-time trusted interpreter)” refers to a mobile phone app used to enhance access to LAN’s live interpreter services.

“**NAD**” refers to the National Association for the Deaf.

“**NIC (or National Interpreter Certification)**” is the national certification credential awarded to interpreters by the Registry of Interpreters for the Deaf.

“**RID**” refers to the Registry of Interpreters for the Deaf.

“**Signed Exact English**” is a system of manual communication that strives to be an exact representation of English vocabulary and grammar; refers to an entirely different form of communication than ASL.

“**Sign Language**” refers to the system of communication using visual gestures and signs, as used by deaf people. Sign language is not a universal language, however, as each country has its own sign language, and regions have dialects, much like the many languages spoken all over the world. Like any spoken language, ASL is a language with its own unique rules of grammar and syntax. Like all languages, ASL is a living language that grows and changes over time.

“**Tactile signing**” refers to a means of communication used by people with both a sight and a hearing impairment, typically using some form of signed language or code using touch.

“**Transliteration/transliterator**” refers to word-for-word translation, such as English to ASL and ASL to English.

“**VAD**” refers to the Virginia Association of the Deaf.

“**VDDHH**” refers to the Virginia Department for the Deaf and Hard of Hearing, a statewide agency that promotes accessible communication so that persons who are Deaf and Hard of Hearing may fully participate in programs, services, and opportunities throughout the Commonwealth. VDDHH works in collaboration with government agencies, nonprofits, and national organizations to serve people with hearing loss.

“**Vlog**” means a video blog or video log, a form of blog for which the medium is video.

“**VRI**” refers to Video Remote Interpreting, which is a fee-based service that uses video conferencing technology to access an off-site interpreter to provide real-time sign language or oral interpreting services for conversations between hearing people and people who are deaf or have hearing loss.

“**VRID**” refers to the Virginia Registry of Interpreters for the Deaf.

“**VRS**” refers to **Video Relay Service**, which is a free, subscriber-based service for people who use sign language and have videophones, smart phones, or computers with video communication capabilities.

“**VQAS**” is the Virginia Quality Assurance Screening, an assessment administered by VDDHH to assess proficiency and skill levels of interpreters in the Commonwealth of Virginia and to provide feedback to enhance their professional growth.

## Background

At its March 4, 2019, meeting, the Board for Professional and Occupational Regulation (Board) considered a petition for regulation submitted by Traci D. Branch, the Chair of the Virginia Department for the Deaf and Hard of Hearing (VDDHH) Advisory Board. As reflected in the meeting minutes, VDDHH representatives summarized their reasons for requesting the study to determine the need to regulate sign language interpreters, stating that the legal requirement to provide a qualified interpreter under the Americans with Disabilities Act (ADA) is rather ambiguous, making it possible for individuals with minimal or no credentials to present themselves as qualified interpreters, posing great risk to the health and well-being of the Deaf and hard of hearing. Pursuant to § 54.1-310.1 of the *Code of Virginia (Code)*, the following report provides an analysis of whether the public interest warrants the regulation of ASL interpreters as proposed in the VDDHH request for a study.

### ***Statutory Authority***

Section 54.1-310 of the *Code* provides the statutory authority for the Board to study and make recommendations to the General Assembly on the need to regulate professions or occupations and, if so, the degree of regulation that should be imposed.

The Board is authorized to advise the Governor and the DPOR Director on matters relating to the regulation of professions and occupations. In addition, the General Assembly may request the Board conduct a study. The General Assembly is the body empowered to make the final determination of the need for regulation of a profession or occupation. The General Assembly is authorized to enact legislation specifying the profession to be regulated, the degree of regulation to be imposed, and the organizational structure to be used to manage the regulatory program (e.g., board, advisory committee, registry).

The Commonwealth's philosophy on the regulation of professions and occupations is as follows: ***The occupational property rights of the individual may be abridged only to the degree necessary to protect the public.*** This tenet is clearly stipulated in statute and serves as the Board's over-arching framework in its approach to all reviews of professions or occupations:

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgement is necessary for the protection or preservation of the health, safety and welfare of the public and (ii) any such abridgement is no greater than necessary to protect or preserve the public health, safety, and welfare. (*Va. Code* § 54.1-100)

Further statutory guidance is provided in the same *Code* section, which states the following conditions must be met before the state may impose regulation on a profession or occupation:

1. The unregulated practice of a profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

Pursuant to § 54.1-311 of the *Code*, if the Board recommends a particular profession or occupation be regulated, or suggests a different degree of regulation should be imposed on an already regulated profession or occupation, it shall consider the following degrees of regulation *in order*:

1. **Private civil actions and criminal prosecutions** – Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide stricter causes for civil action and criminal prosecution.
2. **Inspection and injunction** – Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may recommend more adequate inspection procedures and to specify procedures whereby the appropriate regulatory entity may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant the appropriate state agency the power to provide sufficient inspection and injunction procedures.
3. **Registration** – Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may recommend a system of registration.
4. **Certification** – When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may recommend a system of certification.
5. **Licensing** – Whenever adequate regulation cannot be achieved by means other than licensing, the Board may recommend licensing procedures for any particular profession or occupation.

Pursuant to subsection B of § 54.1-311 of the *Code*, in determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.
3. The number of states which have regulatory provisions similar to those proposed.
4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.
5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.
6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.
10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

### ***Application of Criteria***

In conducting studies, the Board assesses the criteria against the potential degrees of regulation, from least restrictive (registration) to most restrictive (licensure). The following outline delineates the characteristics of registration, certification, and licensure, and criteria applicable to each category if an evaluation indicates regulation is warranted.

**Registration.** Registration requires only that an individual file his name, location, and possibly background information with the State. No entry standard is typically established for a registration program.

RISK	Low potential, but consumers need to know that redress is possible.
SKILL & TRAINING	Variable, but can be differentiated for ordinary work and labor.
AUTONOMY	Variable.
APPLICABLE CRITERIA	Criteria 4, 5 and 6 must be met.

**Certification.** Certification by the state is also known as "title protection." No scope of practice is reserved to a particular group, but only those individuals who meet certification standards (defined in terms of education and minimum competencies which can be measured) may title or call themselves by the protected title.

RISK	Moderate potential, attributable to the nature of the practice, consumer vulnerability, or practice setting and level of supervision.
SKILL & TRAINING	Specialized; can be differentiated from ordinary work. Candidate must complete specific education or experience requirements.
AUTONOMY	Variable; some independent decision-making; majority of practice actions directed or supervised by others.
SCOPE OF PRACTICE	Definable in enforceable legal terms.
APPLICABLE CRITERIA	Criteria 1-6 must be met.

**Licensure.** Licensure is mandatory and constitutes the most restrictive level of occupational regulation. It generally involves the delineation in statute of a scope of practice which is reserved to a select group based upon their possession of unique, identifiable, minimal competencies for safe practice. In this sense, state licensure typically endows a particular occupation or profession with a monopoly in a specified scope of practice.

RISK	High potential, attributable to the nature of the practice.
SKILL & TRAINING	Highly specialized education required.
AUTONOMY	Practices independently with a high degree of autonomy; little or no direct supervision.
SCOPE OF PRACTICE	Definable in enforceable legal terms.
APPLICABLE CRITERIA	Criteria 1-6 must be met.

***Alternatives to Regulation***

In cases where the Board identifies a potential risk to an unregulated profession or occupation, but other criteria is insufficient to substantiate that registration, certification, or licensure are appropriate remedies, other recommendations may be warranted. In accordance with statute and Criteria 6 and Criteria 7, the Board must consider less restrictive means to protect the public's health, safety, and welfare, rather than interfering in the occupational property rights of individuals.

## **Study Methodology**

### ***Research Summary***

Though a precise count of the Deaf population in the United States is difficult to come by, estimates range anywhere from 500,000 to 1,000,000 Deaf persons (Seaborn, Andrews, & Martin, 2010; Olson & Swabey, 2017). Furthermore, it is estimated there are anywhere from 10,000,000 to 37,000,000 adults in the United States who have difficulty hearing (Olson & Swabey, 2017). The Deaf community in the United States is considered a linguistic and cultural minority, with its own language(s), beliefs, and traditions (Seaborn, Andrews, & Martin, 2010; Nicodemus, Swabey, and Moreland, 2014; Olson & Swabey, 2017). Though Deaf persons may prefer a number of different languages or modes of communication, this study is solely focused on the use and interpretation of American Sign Language (ASL) to and from English.

While various forms of sign language were in use throughout the eighteenth and nineteenth centuries, ASL was not formally recognized as a legitimate language until the 1960s, and did not gain widespread acceptance and awareness until the 1990s (Swaney & Smith, 2017). Contrary to prevalent misconceptions, ASL is in fact a separate language entirely distinct from English, and one of at least 138 documented sign languages across the world (Anderson, Riker, Gagne, Hakulin, Higgins, Meehan, & Wolf Craig, 2018). With its own unique grammar and vocabulary, ASL is articulated with hands, face, and body, and is “expressed and perceived in a modality different from spoken languages” (Nicodemus, Swabey, & Moreland, p. 4, 2014).

Research suggests that the difference in modalities actually makes learning and understanding ASL more difficult than learning a foreign spoken language, requiring upwards of nine years of continued learning merely to become proficient in ASL (Jacobowitz, 2005). At the same time, it is estimated that the average Deaf person in the United States has a 4<sup>th</sup> to 5<sup>th</sup> grade reading level in English (Seaborn, Andrews, & Martin, 2010; Hommes, Borash, Hartwig, & DeGracia, 2018). While Deaf and hard of hearing persons may develop lip-reading skills, it is estimated that somewhere between 20% and 40% of spoken English is accurately understood through lip-reading (Ebert & Heckerling, 1995; Hommes, Borash, Hartwig, & DeGracia, 2018). These differences and difficulties pose major risks and challenges to the Deaf community while creating significant implications for interpreters, especially in medical and legal settings (Seaborn, Andrews, & Martin, 2010; Hommes, Borash, Hartwig, & DeGracia, 2018).

Studies have shown that Deaf and hard of hearing persons, when compared to the general population, tend to have fewer doctor visits, participate in fewer preventive services, and exhibit disparities in disease outcomes (Hommes, Borash, Hartwig, & DeGracia, 2018). These results are often attributed to miscommunication stemming from the language barrier between English and ASL, leading Deaf Americans to identify healthcare as the most challenging setting in which to secure a qualified interpreter (Nicodemus, Swabey, & Moreland, 2014). Furthermore, the ASL interpreter—in most states—is the only professional allowed to operate in a medical setting and not required to be licensed or certified (Nicodemus, Swabey, & Moreland, 2014).

Similarly, Deaf persons in legal settings do not often possess the linguistic or adjudicative competence to participate adequately in their own legal defense (Seaborn, Andrews, & Martin,

2010). Studies and testimonies show that police often fail, through a misunderstanding or lack of awareness, to provide Deaf persons with an ASL interpreter before proceeding with questioning. In lieu of an interpreter, they may present the Miranda Warning in written form, which depending on the version, is written between a 4<sup>th</sup> and 9<sup>th</sup> grade reading level, rendering the warning incomprehensible to a great number of Deaf persons who read at the 4<sup>th</sup> grade level or lower (Seaborn, Andrews, & Martin, 2010). The failure to follow ADA procedures accordingly can deprive Deaf persons of their constitutional right to due process.

### ***Virginia Overview***

Much like the national figures, an accurate count of the deaf or hard of hearing population in Virginia is hard to approximate. This difficulty is largely attributed to issues with the U.S. Census, either because questions about hearing ability are not asked or because Deaf persons don't understand the questions or choose not to answer. According to VDDHH's 2012 Organizational Needs Assessment, conservative estimates (based on the overall 2010 Census projection) suggest there are more than 168,000 deaf or hard of hearing individuals in the Commonwealth of Virginia. In 2015, the University of Virginia's Demographic Research Group found that 3.2% of Virginians reported a hearing difficulty of some kind. Based on a 2018 U.S. Census estimate of Virginia's population that translates to 272,000 Virginians with at least some difficulty hearing.

The number of practicing ASL interpreters is similarly enigmatic. As it stands today, there are no legal or statutory requirements mandating that ASL interpreters hold any formal credential to offer services in Virginia. While the ADA requires that government agencies, businesses, and nonprofits provide effective communication through a *qualified* interpreter, the definitions of 'qualified' and 'effective' remain nebulous and subjective. For example, an individual with limited ability to interpret and sign ASL could market themselves as a qualified interpreter, leaving it to the discretion of the consumer or hiring entity as to whether or not to procure their services. ASL interpreters may choose to pursue national certification through RID, or demonstrate their qualifications through the VQAS screening, but both routes are strictly voluntary.

According to the directory of qualified interpreters maintained by VDDHH pursuant to § 51.5-113, there are 119 nationally certified interpreters in Virginia, along with 70 interpreters who have been evaluated through the VQAS assessment process. However, RID's Virginia directory lists 146 nationally certified interpreters. The discrepancy between the higher number of interpreters listed on RID's directory and the lower number on the VDDHH directory is likely due to RID-certified interpreters not having submitted their registration information to VDDHH, as explained by the director of VDDHH. In addition to these interpreters, there are hundreds of private, for-profit agencies that provide spoken-language foreign interpreting services along with uncertified ASL interpreters throughout the Commonwealth of Virginia.

During the study, the Board considered whether those individuals who provide sign language services to the public warrant further regulation beyond that currently offered through

the VDDHH registry, which is comprised of voluntary screening assessment and the private voluntary certification through RID.

### ***Application of Guidelines***

Section 54.1-310.1 of the *Code* directs the Board to perform an objective analysis and evaluation of certain a process proposals to regulate currently unregulated professions or occupations (Chapter 467 of the 2016 Acts of Assembly). Based on the statutory authority reviewed above and its *Guidelines for the Evaluation of Petitions for Regulation (2016)*, the Board completed the following in response to the VDDHH study request:

- *Review other jurisdictions which regulate sign language interpreters and research their laws/regulations pertaining to these occupations.*

The Board identified 16 jurisdictions which impose a mandatory licensing requirement on sign language interpreters:

- |            |                  |
|------------|------------------|
| ▪ Alabama  | ▪ Missouri       |
| ▪ Arizona  | ▪ Nebraska       |
| ▪ Arkansas | ▪ New Hampshire  |
| ▪ Idaho    | ▪ New Mexico     |
| ▪ Illinois | ▪ North Carolina |
| ▪ Iowa     | ▪ Puerto Rico    |
| ▪ Kentucky | ▪ Rhode Island   |
| ▪ Maine    | ▪ Wisconsin      |

The Board identified 35 jurisdictions, including Virginia, that regulate sign language interpreters to some degree other than mandatory licensing:

- |                        |                  |
|------------------------|------------------|
| ▪ Alaska               | ▪ New Jersey     |
| ▪ California           | ▪ New York       |
| ▪ Colorado             | ▪ Nevada         |
| ▪ Connecticut          | ▪ North Dakota   |
| ▪ Delaware             | ▪ Ohio           |
| ▪ District of Columbia | ▪ Oklahoma       |
| ▪ Florida              | ▪ Oregon         |
| ▪ Georgia              | ▪ Pennsylvania   |
| ▪ Hawaii               | ▪ South Carolina |
| ▪ Indiana              | ▪ South Dakota   |
| ▪ Kansas               | ▪ Tennessee      |
| ▪ Louisiana            | ▪ Texas          |
| ▪ Maryland             | ▪ Utah           |
| ▪ Massachusetts        | ▪ Vermont        |
| ▪ Michigan             | ▪ Virginia       |
| ▪ Minnesota            | ▪ West Virginia  |
| ▪ Mississippi          | ▪ Wyoming        |
| ▪ Montana              |                  |

- *Review Virginia’s relevant laws, regulations, and policies regarding sign language interpreters.*

The Board reviewed the following relevant portions of the Code of Virginia:

**Title 8.01 – Civil Remedies and Procedure**

*§ 8.01-384.1. Interpreters for deaf in civil proceedings;*

*§ 8.01-400.1. Privileged communications by interpreters for the deaf;*

*§ 8.01-406. Interpreters; recording testimony of deaf witness;*

**Title 19.2 – Criminal Procedure**

*§ 19.2-164.1. Interpreters for the deaf;*

**Title 51.5 – Persons with Disabilities**

*§ 51.5-106 through 51.5-115. Department for the Deaf and Hard-of-Hearing*

The Board reviewed the following relevant portions of the Virginia Administrative Code:

*22VAC20-20. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Assistive Technology Equipment;*

*22VAC20-30. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing; and*

*8VAC20-81. E. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.*

The Board reviewed the following document from the Supreme Court of Virginia:

*Serving Non-English Speakers in the Virginia Court System—Guidelines for Policy and Best Practice* (issued by the Office of the Executive Secretary of the Supreme Court of Virginia, November, 1, 2003).

- *Identify relevant national and state organizations for Deaf citizens and sign language interpreters and inform them of the study and the comment period.*

VDDHH distributed the Notice of Comment to approximately 200 individuals and organizations, including the Virginia Association for the Deaf and the Virginia Registry of Interpreters for the Deaf. In addition, VDDHH Outreach Contractors disseminated the Notice to members of their listserves, which include several thousand contacts. The

Board also contacted faculty members of Gallaudet University, a federally chartered private university for the deaf and hard of hearing.

- *Conduct a 14-day public comment period with four public hearings across the Commonwealth.*

The 14-day period for public comment began on September 2, 2019, and ended on September 16, 2019. The Board conducted public hearings on the following dates in the following locations: September 4, 2019, in Norfolk; September 6, 2019, in Fairfax; September 9, 2019, in Richmond; and September 11, 2019, in Roanoke.

An additional public stakeholders’ meeting was held September 23, 2019, in Richmond.

The Board published a Notice of Comment in the Virginia Register of Regulations, and VDDHH publicized the Notice as outlined in the preceding section.

### **Public Comment Synopsis**

The Board received 48 comments during the public comment period. The following chart provides detail on the total number of attendees and total number of commenters at the four public hearings:

<b>Location</b>	<b>Date</b>	<b># of Attendees</b>	<b># of Commenters</b>
Norfolk	September 4, 2019	15	11
Fairfax	September 6, 2019	8	8
Richmond	September 9, 2019	16	8
Roanoke	September 11, 2019	12	5
<b>Totals</b>		<b>51</b>	<b>32</b>

In addition to comments and testimony received at the four public hearings, the Board also received:

- Three written comments submitted via the Virginia Regulatory Town Hall;
- One Vlog, signed in ASL; and
- 15 written comments received by e-mail directly to the Board.

(The following three individuals are removed from the cumulative number of 48 commenters to avoid double-counting: Two Deaf consumers of interpreter services commented at hearings and sent e-mails; one interpreter commented at a hearing, via the Regulatory Town Hall, and sent an e-mail.)

Two e-mails received in support of regulation, specifically mandatory licensure, were from statewide organizations representing their membership: one from VAD and one from VRID.

The following chart provides details of all comments received either in favor of or against licensure:

<b>Source of Comments</b>	<b># of Comments in Favor of Licensure</b>	<b># of Comments in Opposition to Licensure</b>	<b># of Comments expressing concern about interpreter services without specific position on level of regulation</b>
Providers of Interpreting Services (26%)	5	3	2
Deaf Consumers (74%)	15	3	10
<b>Total (38)</b>	<b>20 (53%)</b>	<b>6 (16%)</b>	<b>12 (31%)</b>

Without any standardized qualifications in place, Deaf persons throughout Virginia report, in comments collected as part of this study, routine instances of poor and inaccurate interpretation, which can result in consequences ranging from minor inconveniences to potentially life-threatening situations. Although interpreters in public school settings are governed by the Virginia Department of Education, a number of comments expressed similar concern for the quality of education provided to Deaf students through the use of interpreters. Furthermore, public comments cite frequent instances of ASL interpreters demonstrating unprofessional and unethical behavior, particularly with regards to privacy and confidentiality. In addition to frequent experiences with unqualified interpreters, the Deaf community reported concern about the current lack of recourse for Deaf persons to report instances of unqualified or otherwise unprofessional interpreters, as well as a lack of accountability for those interpreters.

A number of comments received throughout the study expressed opposition to the potential licensure of sign language interpreters. The most frequently cited cause for concern was the possibility of “pricing out” qualified interpreters from an already limited pool of interpreters. Other comments included the potential to pass on increased costs of interpreter services not only to state agencies, businesses, and other organizations, but to the Deaf community as well.

## **Evaluation**

The following is an evaluation of the results obtained by utilizing the principles contained in the *Guidelines for the Evaluation of Petitions for Regulation (2016)*. In consideration of subsection B of § 54.1-311 of the *Code*, in determining the proper degree of regulation, if any, the Board shall determine the following:

1. *Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.*

Sign language interpreters may pose a risk to the health, safety, and welfare of the public if interpretation is performed incorrectly or unethically. Based on evidence

obtained during the study, the level of risk appears moderately high, especially in educational, medical, and legal situations.

2. *The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.*

Of the 48 total comments received during the public comment period, 28 were from Deaf consumers of interpreter service, and 10 were from interpreters. Some individuals made multiple comments. There were 14 Deaf consumers in favor of licensure, in addition to the Virginia Association of the Deaf. Ten Deaf consumers who commented did not take a position on licensure specifically, but expressed concern for the need for improving current conditions in interpreting services.

3. *The number of states which have regulatory provisions similar to those proposed.*

The Board obtained summary information from the 16 jurisdictions across the country with mandatory licensing requirements governing sign language interpreters. Furthermore, a majority of states throughout the country maintain certification requirements for interpreters providing services in legal, medical, and educational settings.

Currently, the Virginia courts system relies on VDDHH to locate and procure qualified interpreters. The *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* require educational interpreters to hold or be working toward national certification or other specified qualifications (*Section 8 VAC 20-81-40 E*). However, interpreters have years to obtain their national certification while practicing in schools with minimal or no supervision. The Department of Education's minimum qualifications to practice in the Commonwealth of Virginia are VQAS Level III, which requires 80 percent accuracy in interpretation. In the Commonwealth of Virginia, there are currently no requirements for interpreters in medical settings.

The State of Colorado, while not requiring licensure for interpreters, amended its deceptive trade practice laws to require anyone advertising as a *qualified* sign language interpreter to be nationally certified through RID or a successor organization and to make the corresponding credentials readily available for immediate inspection.

4. *Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.*

Although the majority of the population may not require the services of sign language interpreters, deaf and hard of hearing individuals have an essential need for such services. Estimates range anywhere from 168,000 to 272,000 Deaf citizens in Virginia, with VDDHH alone fielding approximately 200 requests for interpreters per month from state agencies, courts, and non-profit organizations. Virginia is considered to have a shortage of qualified interpreters, according to VDDHH and the Deaf community. Consumers and agencies who need an interpreter's services are able to access VDDHH's directory of qualified interpreters via the agency's website, which is a registry of interpreters who maintain voluntary RID national certification or who have obtained VQAS Level I-IV. It is incumbent upon Deaf consumers to find and secure interpreters for personal use. Medical settings, employers, and other private-public organizations are required to provide interpreter services in accordance with the ADA.

5. *Whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession of each occupation, as evidenced by established and published codes of ethics.*

The Registry of the Interpreters for the Deaf, along with the National Association of the Deaf, co-authored an ethical code of conduct for interpreters. According to RID and NAD:

“A code of professional conduct is a necessary component to any profession to maintain standards for the individuals within that profession to adhere. It brings about accountability, responsibility, and trust to the individuals that the profession serves.”

One of the frequent complaints Deaf consumers reported with ASL interpreters is with a lack of professionalism and awareness of ethical conduct, particularly with regards to privacy and confidentiality.

6. *Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that they have met minimum qualifications.*

VDDHH maintains a Directory of Qualified Interpreters and coordinates interpreter services as mandated by the Code of Virginia (§ 51.5-113). The Directory includes contact information for qualified interpreters in Virginia who meet the statutory definition of a qualified interpreter.

Pursuant to § 51.5-113 of the *Code*, a qualified interpreter shall hold at least one of the following credentials in order to be listed on the VDDHH registry:

1. Certification from any national organization whose certification process has been recognized by VDDHH; or
2. A current screening level awarded by the VQAS program of VDDHH; or
3. A screening level or recognized evaluation from any other state when (i) the credentials meet the minimum requirements of VQAS and (ii) the credentials are valid and current in the state issued.

According to VDDHH's VQAS assessment screening, a qualified interpreter ranges from Level I (demonstrates ability to convey a minimum of 50% of the total message and is not recommended for placement without supervision) to Level IV (demonstrates ability to convey 95% of the total message and is not recommended for life-threatening situations, legal in nature or surgical situations).

The majority of the population likely has little to no awareness or understanding of what qualified, competent ASL signing or interpretation looks like. Far from simply signing exact English, ASL encompasses a multitude of hand signs, eye movements, and facial expressions that typically involve at least nine years of continued study to gain proficiency (Jacobowitz, 2005). Furthermore, the VQAS screening is primarily intended as an assessment to provide feedback to encourage further professional development, and it is explicitly *not* a credential or a certification of any kind.

Video remote interpreting (VRI) and video relay service are among the technological advances that are used in lieu of a live interpreter. However, public comments from Deaf citizens cite unreliable and inconsistent performance in using this method of interpretation. Examples were provided where relay service connection was lost during a surgical procedure; in another instance VRI was utilized on a personal smartphone in an ER setting. The interpreters hired through VRI are often working from other states and Deaf citizens have no means to verify the interpreter's qualifications. Hospitals and doctor's offices are increasingly opting for VRI over live interpreters, although feedback received from Deaf citizens unanimously agreed that they find live interpreters more reliable.

According to commenters, many hospitals have contracts in place with interpreters or interpreting agencies who may not be VDDHH screened or RID certified.

When interpreters are provided in certain situations, the Deaf community has no assurance that these interpreters have met minimum qualifications through RID or VDDHH. Furthermore, they have no recourse for complaints unless the interpreters are voluntarily certified by RID.

7. *Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.*

The Registry of Interpreters for the Deaf (RID), along with the National Association of the Deaf (NAD), co-authored a code of professional conduct for interpreters (NAD-RID Code of Professional Conduct, 2005). Both organizations advocate high standards of professionalism and ethical conduct for interpreters. According to RID and NAD:

“A code of professional conduct is a necessary component to any profession to maintain standards for the individuals within that profession to adhere. It brings about accountability, responsibility and trust to the individuals that the profession serves.”

However, not all interpreters in the Commonwealth of Virginia are required to be certified by RID or screened as a qualified interpreter by VDDHH (which is not an official credential) and therefore are not subject to this Code of Professional Conduct.

Moreover, while RID reports receiving an average of five complaints per month against RID-certified ASL interpreters in the Commonwealth of Virginia, the process and outcome are kept confidential, per RID bylaws. VDDHH does not handle complaints; however if there are complaints against an RID-certified interpreter, VDDHH can refer them to RID.

Currently, in the Commonwealth of Virginia, there is no reporting mechanism to file complaints against ASL interpreters not certified by RID. There are no statistics available to how many sign language interpreters are practicing in the Commonwealth at large. The Deaf community and VDDHH both indicate there is a shortage of qualified interpreters, particularly in rural areas.

8. *Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.*

Existing statutes require the courts to coordinate with VDDHH to procure an interpreter from the VDDHH directory for criminal and civil proceedings. Additionally, Department of Education regulations require sign language interpreters for public school settings, although they are only required to hold a Level III VQAS screening (demonstrated ability to convey 80% of total message). An area where commenters noted current laws appear particularly inadequate is health care settings, which require skilled interpreters with advanced technical knowledge.

9. *Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.*

Providing interpreter services cannot be practiced without some level of specialized education and training. It is estimated that it takes an average of nine years to become proficient in ASL (Jacobowitz, 2005). Public comments received from both Deaf consumers and professional interpreters also expressed the need to “grandfather” in existing interpreters should licensing become a requirement. “Lay” interpreters or individuals not providing services for compensation also would be impractical to regulate.

10. *Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.*

The Americans with Disabilities Act requires some form of service be provided to deaf and hard of hearing individuals to ensure “effective communication.” During public hearings, commenters provided examples when relying on the expert knowledge of sign language interpreters, especially in medical, legal, and educational situations, is detrimental when the interpreter has no specialized skill, training, or experience for those particular settings. The competency of the interpreter affects not only the Deaf consumer but also the other party to the conversation in such settings such as the health

## **Analysis**

Pursuant to § 54.1-100 of the *Code*, in determining whether regulation of a profession is warranted for the exclusive purpose of protecting the public interest, the Board shall determine whether the following are true:

1. *The unregulated practice of a profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;*

Based on evidence obtained during the study, the level of risk of harm to the public appears to be moderately high

2. *The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;*

The knowledge, skills, and abilities necessary to provide sign language interpreter services are different than ordinary work or labor.

3. *The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability.*

The Virginia Quality Assurance Screening (VQAS) administered by VDDHH is designed to assist developing professionals to identify their strengths and weaknesses in their knowledge and skills of interpreting, in order to assist them in their growth in interpreting competence. Despite its name, however, the assessment does not assure quality or minimum competence, and VQAS is not a credential.

The national association representing sign language interpreters (RID) administers a voluntary certification program that can be used by the public as an assurance of initial and continuing professional and occupational ability. However, public accountability and enforcement of professional standards of conduct are lacking.

4. *The public is not effectively protected by other means.*

Based on evidence obtained during the study, the level of risk of harm to the public appears to be moderately high. Public comment overwhelmingly expressed concern about the existing registration approach administered by VDDHH, indicating the current standards for “qualified” interpreters to appear on the directory are inadequate. Although interpreters may be RID certified and pay dues to renew membership, membership is strictly voluntary in Virginia.

VDDHH offers VQAS screenings for qualification assessment, but as previously stated these qualifications are intended to help interpreters improve their competency rather than serve as an official credential. VDDHH’s purpose is to provide interpreters to state agencies, the courts, and non-profit organizations, not to provide Deaf individuals with interpreter services or to oversee individual interpreters. Additionally, the agencies procuring the services and the Deaf individual receiving the services have no input into the specific qualifications of the interpreter assigned by VDDHH.

The public does not appear to be adequately protected with the existing level of regulation.

## Application of Criteria for Regulation

1. *Risk for Harm to the Consumer - The unregulated practice of the profession or occupation will harm or endanger the public health, safety or welfare. The harm is recognizable and not remote or dependent on tenuous argument. The harm results from: (a) practices inherent in the occupation, (b) characteristics of the clients served, (c) the setting or supervisory arrangements for the delivery of services, or (d) from any combination of these factors.*

The typical functions of an ASL interpreter involve providing interpreting services for the Deaf community, whether for personal use or in a formal public setting. It requires a thorough understanding of American Sign Language, which is considered a foreign language and should not be considered the English language. It also requires an awareness of the difference in modalities between the two languages, which requires the use of hands, face, and body (Nicodemus, Swabey, & Moreland, 2014).

Based on evidence obtained during the study, the level of risk of harm to the public appears to be moderately high. During the course of the study, 20 comments received during the public hearing favored licensure. Seven comments expressed concern for current conditions but did not take a position on licensure. The Board received public comments with multiple reports of specific harm to the public during this study. Specifically, there were reports of harm in the educational, medical, and legal arenas, stemming from a lack of specialized training and experience in a particular field.

Risk of harm results from a combination of the following:

- a. Disparity in levels of education and training;
  - b. Deaf citizens not having a complaint mechanism recourse; and
  - c. Interpreters practice autonomously with little or no supervisory oversight.
2. *Specialized Skills and Training - The practice of the profession or occupation requires specialized education and training, and the public needs assurance of competence.*

Although there are no specific requirements to enter the profession, courses in ASL are offered as foreign-language classes in colleges and high schools across the country. Four-year degrees in ASL studies are also available. However, ASL interpreters require specialized education and training and considerable experience.

In Virginia, Liberty University offers a BA in ASL and Interpreting which requires 45 core hours, including such classes as:

- Theory and Application of Fingerspelling and Numbers

- Deaf Studies
- Intro to Interpreting
- Sociocultural Linguistic Processing
- English to ASL Interpreting I, II
- ASL to English Interpreting I, II
- Function and Ethics in Current Trends
- Practicum Internship

In addition, there are multiple two-year degrees in ASL available in Virginia as well as career certificate programs.

There does not appear to be any specific training programs required for ASL Interpreters. It is estimated that it takes nine years to gain proficiency in ASL (Jacobowitz, 2005). Moreover, interpreters in medical and legal settings require awareness of specialized terminology.

RID offers a national examination that is required to obtain its private certification. In addition, the Texas Department of Health and Human Services administers its own BEI exam for certification.

*3. Autonomous Practice - The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.*

Sign language interpreters exercise independent judgment and autonomy on all assignments, which sometimes involve critical or emergency situations.

RID offers a sign language Interpreter Insurance program through DHH Insurance, LLC, which is a division of C.H. Insurance Brokerage, Inc. This insurance program is a comprehensive plan that includes Professional Liability/Errors and Omissions, General Liability, and Personal Property coverage to RID members at a discounted rate of \$350 annually. In addition to its RID insurance program, DHH Insurance, LLC provides coverage to independent sign language interpreter agencies as well. This insurance program provides Commercial and Professional Liability/Errors and Omissions coverage.

*4. Scope of Practice - The scope of practice is distinguishable from other licensed, certified and registered professions and occupations.*

The scope of practice for sign language interpreters is distinguishable from any other licensed, certified, and registered professions and occupations. Sign language interpreters must have the knowledge, skills and abilities necessary to effectuate proper sign language services.

*5. Economic Impact - The economic costs to the public of regulating the occupational group are justified. These costs result from restriction of the supply of practitioners, and the cost of operation of regulatory boards and agencies.*

ASL interpreters on average earn annually roughly \$59,012 nationally and \$57,760 in Richmond, according to ZipRecruiter.

Though fees may vary, the cost for state agencies utilizing interpreter services procured through VDDHH is \$50/hour for a minimum of two hours; travel costs may be included. It is advised by VDDHH that two interpreters always be present whenever interpreting services are needed.

Given the reported instances of harm, the benefits of an increased level of regulation appear to justify any related economic costs. More rigorous standards for the existing registry, for example, rather than mandatory licensing, may decrease the risk of harm with least restriction on practitioner supply.

- 3. Alternatives to Regulation - There are no alternatives to State regulation of the profession or occupation which adequately protect the public. Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.*

Based on evidence obtained during the study, the level of risk of harm to the public appears to be moderately high. The public appears inadequately protected at the present time with the existing level of regulation, the VDDHH registry as it currently operates. VDDHH is authorized by the *Code* to maintain a Directory of Qualified Interpreters and to coordinate interpreter services for state agencies, courts, and nonprofits to assist in securing qualified interpreters for various assignments.

More transparent disclosure concerning VQAS and its purpose may be helpful for consumers who rely on non-RID certified interpreters. The VQAS assessment is not intended as a competency credential, and yet any screening level qualifies an individual to appear on the VDDHH Directory, which appears misleading.

The Virginia Consumer Protection Act also could be amended to offer consumers of interpreter services a mechanism to pursue claims against incompetent or unscrupulous practitioners.

- 4. Least Restrictive Regulation - When it is determined that the State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation*

*consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Professional and Occupational Regulation.*

Based on evidence obtained during the study, the level of risk of harm to the public appears to be moderately high. The public does not appear to be adequately protected at the present time with the existing level of regulation (registry by VDDHH).

Based on comments received during this study, minimum competency verification for sign language interpreters is needed, as well as specific criteria for interpreters practicing in medical and legal settings. Commenters also expressed concerns regarding inadequate current requirements governing educational interpreters who serve the needs of Deaf students.

A more robust registry may be sufficient to address the risk of harm, or a certification program administered by VDDHH may be warranted. Although VDDHH does not currently receive complaints involving interpreters listed in the Directory, the agency does place individuals on the registry based on a review of qualifications, and its regulations provide an avenue for appeal. A similar procedure could be implemented to receive and adjudicate complaints by VDDHH through the regulatory process.

The General Assembly may also wish to codify certain prohibited acts by sign language interpreters, such as willful improper or dishonest conduct, and establish penalties for violations.

## **Conclusion**

Virginia currently regulates sign language interpreters through a registry maintained by VDDHH, which makes a Directory of Qualified Interpreters available to local and state agencies, the courts, non-profit organizations and the public. Consumers also may contact RID directly to secure a nationally certified interpreter from the private membership organization.

According to public comment received during the course of the study, it appears there may be many unqualified or underqualified interpreters practicing in the Commonwealth of Virginia, particularly in settings that require advanced technical knowledge such as legal and medical environments. Furthermore, based on the minimal skill levels required by DOE regulations for interpreters in educational settings, the potential exists for Deaf students to receive incomplete or partial information, according to commenters.

Based on evidence obtained during the study, the level of risk of harm to the public appears to be moderately high. The public does not appear to be adequately protected at the present time without a higher level of regulation for interpreters than the existing VDDHH registry. A more robust registry may be sufficient to address the risk of harm, or a certification program

administered by VDDHH may be warranted. The General Assembly may also wish to codify certain prohibited acts by sign language interpreters, such as willful improper or dishonest conduct, and establish penalties for violations.

DRAFT

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## APPENDIX A

### Relevant Portions of the *Code of Virginia*

#### § 54.1-310. Powers and duties of Board.

- A. The Board shall have the following powers and duties:
1. Provide a means of citizen access to the Department.
  2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
  3. Monitor the policies and activities of the Department and have the right of access to departmental information.
  4. Advise the Governor and the Director on matters relating to the regulation of professions and occupations.
  5. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) necessary to carry out its responsibilities.
  6. Evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated for consideration as to whether such profession or occupation should be regulated and, if so, the degree of regulation that should be imposed. Whenever it determines that the public interest requires that a profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly next convened a regulatory system accompanied by comprehensive regulations necessary to conduct the degree of regulation required.
- B. Upon the regulation of a profession or occupation as set forth in subsection A, the Board shall have the power and duty to promulgate supplemental regulations necessary to effectuate the purposes and intent of this chapter and to establish regulatory boards to administer the system of regulation and the regulations recommended by the Board and approved by the General Assembly.

1979, c. 408, § 54-1.25; 1984, cc. 720, 734; 1988, c. 765.

#### § 54.1-310.1. Petitions for regulation; review by Board; report.

- A. Any professional or occupational group or organization, any person, or any other interested party that proposes the regulation of any unregulated professional or occupational group shall submit a request to the Board no later than December 1 of any year for analysis and evaluation during the following year.

- B. The Board shall review the request only when filed with a statement of support for the proposed regulation signed by at least 10 members of the professional or occupational group for which regulation is being sought or at least 10 individuals who are not members of the professional or occupational group.
- C. The request shall include, at a minimum, the following information:
1. A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in the Commonwealth, and an estimate of the number of practitioners in each group;
  2. A definition of the problems to be solved by regulation and the reasons why regulation is necessary;
  3. The reasons why registration, certification, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen;
  4. The benefit to the public that would result from the proposed regulation;
  5. The cost of the proposed regulation; and
  6. A description of any anticipated disqualifications on an applicant for certification, licensure, or renewal and how such disqualifications serve public safety or commercial or consumer protection interests.
- D. Upon receipt of a request submitted in accordance with the requirements of subsection C, the Board shall conduct an analysis and evaluation of any proposed regulation based on the criteria enumerated in § [54.1-311](#).
- E. The Board may decline to conduct a review only if it:
1. Previously conducted an analysis and evaluation of the proposed regulation of the same professional or occupational group;
  2. Issued a report not more than three years prior to the submission of the current proposal to regulate the same professional or occupational group; and
  3. Finds that no new information has been submitted in the request that would cause the Board to alter or modify the recommendations made in its earlier report on the proposed regulation of the professional or occupational group.
- F. The Board shall submit a report with its findings on whether the public interest requires the requested professional or occupational group be regulated to the House Committee on

General Laws, the Senate Committee on General Laws and Technology, and the Joint Commission on Administrative Rules no later than November 1 of the year following the request submission.

2016, c. [467](#).

**§ 54.1-311. Degrees of regulation.**

A. Whenever the Board determines that a particular profession or occupation should be regulated, or that a different degree of regulation should be imposed on a regulated profession or occupation, it shall consider the following degrees of regulation in the order provided in subdivisions 1 through 5. The Board shall regulate only to the degree necessary to fulfill the need for regulation and only upon approval by the General Assembly.

1. Private civil actions and criminal prosecutions. -- Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.

2. Inspection and injunction. -- Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may promulgate regulations consistent with the intent of this chapter to provide more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant to the appropriate state agency the power to provide sufficient inspection and injunction procedures.

3. Registration. -- Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may implement a system of registration.

4. Certification. -- When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may implement a system of certification.

5. Licensing. -- Whenever adequate regulation cannot be achieved by means other than licensing, the Board may establish licensing procedures for any particular profession or occupation.

B. In determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

3. The number of states which have regulatory provisions similar to those proposed.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.
  5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.
  6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.
  7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.
  8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.
  9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.
  10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.
- 1979, c. 408, § 54-1.26; 1988, c. 765.

**§ 8.01-384.1. Interpreters for deaf or hard of hearing in civil proceedings.**

In any civil proceeding in which a speech-impaired person or a person who is deaf or hard of hearing is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court shall appoint an interpreter for any speech-impaired person or person who is deaf or hard of hearing who requests this assistance.

Interpreters for the deaf and hard of hearing in these proceedings shall be procured through the Department for the Deaf and Hard-of-Hearing.

Any person who is eligible for an interpreter pursuant to this section may waive the use of an interpreter appointed by the court for all or a portion of the proceedings. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The compensation of interpreters appointed pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury or may, in the discretion of the court, be assessed as a part of the cost of the proceedings.

The provisions of this section shall apply in both circuit courts and district courts.

1982, c. 444; 2019, c. [288](#).

**§ 8.01-400.1. Privileged communications by interpreters for the deaf (Supreme Court Rule 2:507 derived in part from this section).**

Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

1978, c. 601.

**§ 8.01-406. Interpreters; recording testimony of deaf witness (Supreme Court Rule 2:604 derived from this section).**

Interpreters shall be sworn truly so to do. In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf individual and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings.

Code 1950, § 8-295; 1977, c. 617; 1978, c. 601.

**§ 19.2-164.1. Interpreters for the deaf (Supreme Court Rule 2:507 derived in part from this section).**

In any criminal case in which a deaf person is the accused, an interpreter for the deaf person shall be appointed. In any criminal case in which a deaf person is the victim or a witness, an interpreter for the deaf person shall be appointed by the court in which the case is to be heard unless the court finds that the deaf person does not require the services of a court-appointed interpreter and the deaf person waives his rights. Such interpreter shall be procured by the judge of the court in which the case is to be heard through the Department for the Deaf and Hard-of-Hearing.

The compensation of an interpreter appointed by the court pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury as part of the expense of trial. Such fee shall not be assessed as part of the costs.

Any person entitled to the services of an interpreter under this section may waive these services for all or a portion of the proceedings. Such a waiver shall be made by the person upon the record after an opportunity to consult with legal counsel. A judicial officer, utilizing an interpreter obtained in accordance with this section, shall explain to the deaf person the nature and effect of any waiver. Any waiver shall be approved in writing by the deaf person's legal counsel. If the person does not have legal counsel, approval shall be made in writing by a judicial officer. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The provisions of this section shall apply in both circuit courts and district courts.

Whenever a person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf person and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings.

1982, c. 444; 1985, c. 396; 1995, c. [546](#); 1996, c. [402](#).

### **Relevant Portions of the Virginia Administrative Code:**

**22VAC20-20** Chapter 20. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Assistive Technology Equipment  
(<https://law.lis.virginia.gov/admincode/title22/agency20/chapter20/>)

**22VAC20-30** Chapter 30. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing  
(<https://law.lis.virginia.gov/admincode/title22/agency20/chapter30/>)

**8VAC20-81-40.** Special Education Staffing Requirements.

Relevant sections include:

E. Educational interpreting services.  
(<https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section40/>)

1. The qualification requirements for personnel providing interpreting services for children who are deaf or hard of hearing are as follows:
  - a. Personnel providing educational interpreting services for children using sign language shall:
    - (1) Have a valid Virginia Quality Assurance Screening (VQAS) Level III; or
    - (2) Have a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia

Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.

- b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
  - c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.
2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with the following criteria:
- a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or
  - b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.
3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:
- a. Personnel providing educational interpreting services for children using sign language shall hold:
    - (1) A valid Virginia Quality Assurance Screening (VQAS) Level III; or
    - (2) A passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.
    - (3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.

- (4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.
- b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.
- (1) Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.
- (2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.
- c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.
4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.

**Statutory Authority**

§§ [22.1-16](#) and [22.1-214](#) of the Code of Virginia; 20 USC § 1400 et seq.; 34 CFR Part 300.