



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department for the Deaf and Hard of Hearing
VAC Chapter Number:	22VAC20-30
Regulation Title:	Regulations Governing Interpreter Services for the Deaf and Hard of Hearing
Action Title:	Proposed
Date:	04/28/00

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Virginia Code §63.1-85.4.9 authorizes the Virginia Department for the Deaf and Hard of Hearing to promulgate regulations as may be necessary to carry out the powers and duties of the agency. Further, Virginia Code §63.1-85.4:1 authorizes the agency to charge a reasonable fee for the administration of quality assurance screening. Both of these provisions are discretionary. The Office of the Attorney General has provided a letter certifying that the agency has the statutory authority to promulgate this regulation and that it comports with applicable state and/or federal law.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Virginia Code §63.1-85.4.9 provides VDDHH with the authority to make, adopt, and promulgate regulations in order to carry out the agency's purpose and intent. Virginia Code §63.1-85.4:1 authorizes the agency to maintain a directory of qualified interpreters and to operate and charge fees for participation in a program of quality assurance screening. This regulation establishes the rules for the Directory and for the administration of the Virginia Quality Assurance Screening Program. The agency has received a letter from the Office of the Attorney General certifying that VDDHH has the authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The amendments to this regulation are necessary to ensure that citizens have full and easy access to the Directory of Qualified Interpreters and the Virginia Quality Assurance Screening Program. Also, those citizens who use the services of an interpreter screened in the VQAS program will have access to a grievance procedure under the proposed amendments. Currently, grievances are handled informally with a counseling meeting with the interpreter. Because of the nature of services provided by interpreters in serious, and often life-threatening, legal, medical and financial situations, these regulations and the proposed revisions are essential to the health, safety and welfare of Virginians who are deaf or hard of hearing.

Specific goals of the proposed amendments are:

1. To provide consumer access to a formal grievance procedure for situations involving violations of the Code of Ethics by Virginia Quality Assurance Screened Interpreters.
2. To provide clear consumer access to information about the Screening Levels awarded to interpreters under the Virginia Quality Assurance Screening Level.
3. To provide a cost-effective option for Virginia Quality Assurance Screening Candidates to select the extent of their participation in the screening process based on their area of skill and to establish fees for screening within the regulation.

4. To differentiate the skill level of the VQAS Level 1 by reclassifying this as a “Novice Interpreter Designation”. This is in response to consumer concerns about the inclusion of interpreters with VQAS Level 1 in the Directory of Qualified Interpreters. Code language defines a qualified interpreter as one who has a current screening level awarded by VQAS. Current regulations define the minimum requirement for a VQAS Level 1 as a score of 50%

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.

1. General language changes to improve clarity and reduce redundancy with Code language. This was identified as a need during regulatory review. Specifically, the agency is considering separating the current Skills Assessment, which requires candidates to participate in both interpreting and transliterating assessments, into two distinct assessments, allowing candidates to participate in any single Skills Assessment.
2. Inclusion of a clear statement of fees. Current regulations indicate that candidates will be notified of fees. The Department proposes including the fee structure in the regulations. The fee for the Code of Ethics Assessment will remain at \$20. The fee for each Skills Assessment will be \$60. Currently, the fee for the Code of Ethics is \$20 and the fee for the Performance Assessment, which includes both interpreting and transliterating, is \$80 to take both the Interpreting and the Transliterating Assessment or the Cued Speech Assessment.
3. Clarification of confidentiality provisions. While candidate scores will remain confidential, VQAS levels and designations awarded will be clearly noted as public information.
4. Replacement of VQAS Level 1 with a “Novice Interpreter Designation”. This is in response to consumer concerns about the inclusion of interpreters with VQAS Level 1 in the Directory of Qualified Interpreters. Code language defines a qualified interpreter as one who has a current screening level awarded by VQAS. Current regulations define the minimum requirement for a VQAS Level 1 as a score of 50%
5. Addition of provisions for a consumer input and grievance procedure. This is necessary to ensure that consumers who depend upon the services of VQAS interpreters have a formal mechanism for addressing complaints (based on violations of the Code of Ethics) against those interpreters. It will allow the agency to remove VQAS credentials from interpreters upon a finding of cause.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual

private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

There are several advantages to the public in the proposed amendments. First, the availability of a Consumer Grievance Process will provide consumers with recourse when a Virginia Quality Assurance Screened interpreter appears to violate the Code of Ethics. Under the current system, an interpreter could maintain their screening level, regardless of the egregiousness of any violations. Other advantages to consumers include the availability of Screening Level information. Previously, this information had been interpreted as being confidential but the clear statement included in the amendments will make this information available to the general public. Of advantage to the participants in the Virginia Quality Assurance Screening Program and to the agency is the opportunity for candidates to take either a transliterating or an interpreting assessment or both. Under the current system, candidates are required to take both assessments. In most cases, the candidate is much stronger in one skill area than in the other. By requiring candidates to participate in only one skill area assessment, the agency will reduce the burden on the candidates and on the agency because it is anticipated that most candidates will participate only in the screening in which they have the strongest skills. There are no identified disadvantages to the regulated community or the Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

- a. The projected new costs to implement the amended regulation are minimal. In fact, depending upon candidate patterns of assessment taking once they are required to take the assessment in only one skill area, the cost to the state may be reduced. Currently, the fee for taking the two-part performance assessment is \$80 per candidate per attempt. Under the proposed regulation, the cost for a single assessment would be \$60. Because the agency anticipates that most candidates will opt to take only one skill area, the actual number of assessments receiving rating and diagnostics will be reduced. This in turn will reduce the costs to the agency. The program is funded through General Funds and Special Funds. There will be no unique one-time costs or additional on-going expenditures to implement these amendments.
- b. The proposed amendments would not have any fiscal impact on localities.
- c. Individuals seeking a screening level as a sign language interpreter or cued speech transliterator in Virginia will be impacted by this regulation.

d. VDDHH has active Virginia Quality Assurance Screening Candidates who would be impacted by this regulation.

e. The projected cost of this regulation for each affected constituent will vary. Candidates may take the Written Assessment as often as needed until they achieve a passing score (90%). Some candidates achieve this in one attempt while others require multiple attempts. Thus, the minimum cost for the first step in the process for each candidate would be \$20 (as it is under the current regulation). Under the proposed regulation, the projected cost for candidates participating in the Performance Assessment will actually be less than the current costs for those same candidates under the current regulation. As noted, VDDHH anticipates that the majority of candidates will elect to take only one Performance Assessment (either Interpreting or Transliterating), thus reducing the individual cost from the current \$80 to \$60. For the few candidates who are expected to take both Interpreting and Transliterating Assessments, the cost will increase from \$80 to \$120.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

22VAC20-30-10 Definitions

Terms deleted because they are no longer applicable or necessary to the regulation: "assessment team"; "closed screening"; "coordinator"; "panel"; and, "panelist."

Terms substantively amended:

- "Certified Interpreter" - amended to include interpreters with certification from the National Association of the Deaf;

Terms added:

- "National Association of the Deaf" - a certifying body;
- "Results Letter" - letter that includes candidate scores and levels awarded;
- "Scores" - explicitly defines the term to separate from levels.

22VAC20-30-20 Directory of Qualified Interpreters

Changes in this section are primarily editorial. The proposed regulation removes the language on the agency's interpreter coordination service which was descriptive and unnecessary.

22VAC20-30-30 Inclusion in Directory of Qualified Interpreters

Changes in this section include: the addition of certification from the National Association of the Deaf as a credential for interpreters listed in the Directory; and, a limitation of one year on inclusion in the Directory of interpreters with out-of-state credentials.

22VAC20-30-40 Appeal Procedure

The changes here are strictly editorial.

22VAC20-30-50 Notification of Intent to be screened.

The changes here update the VDDHH address and eliminate the unnecessary step of indicating the type of assessment to be taken.

22VAC20-30-70 Fee for screening

The changes in this section are substantive in that they clearly establish the fees within the regulation. Previously, the regulation noted that the agency would establish the fees but did not include the actual fees. The fees established are for each assessment administered. Also new to this section is a clear statement that fees are non-refundable but will be kept on account in case of cancellation.

22VAC20-30-80 Scheduling of screening dates

The changes here are strictly editorial.

22VAC20-30-90 Notifying and scheduling of candidates

The changes here are primarily editorial, eliminating the need for a registration form and clearly stating the information required for candidate registration.

22VAC20-30-100 VQAS Assessment Process

This section includes significant substantive changes, as follows:

- New language is added to define and describe the two primary assessments offered, the Code of Ethics Assessment and the Skills Assessment, as well as the specific areas of skills assessments that may be available - Sign Language Interpreting, Sign Language Transliterating, Sign Language Receptive and Cued Speech Transliterating. The Sign Language Receptive Skills Assessment has not previously been available
- This section also establishes the format for administration of all Skills Assessments as videotape. Previously the regulations provided for live panel ratings, however, based on candidate feedback, cost factors and the advice of a psychometrician, the agency has elected to eliminate this option.
- The language describing the awarding of screening levels has been edited for clarity.
- A key change in this section is the replacement of VQAS Level I with a Novice Interpreter designation. This change is made in response to concerns from consumers and interpreters. The newly designated Novice Interpreters will not be eligible for inclusion in the Directory of Qualified Interpreters.

22VAC20-30-110 Validity period

Editorial changes only.

22VAC20-30-120 Appeal Procedure

In addition to editorial changes to clarify the language, this section adds a clear statement that appeals will be granted only on the basis of environmental or technical factors which influenced a candidate's performance.

22VAC20-30-130 Confidentiality

The amendments in this section clarify that the materials and candidate scores are confidential. Any Screening Level or Novice Interpreter designation will be public information.

22VAC20-30-140 Consumer Grievance Procedure.

This is a new section, establishing a consumer grievance procedure. The procedure established in this section encourages resolution between the parties before formal action. It provides for a formal complaint to be filed within 30 days of any incident allegedly involving a violation of the Code of Ethics. The agency will provide a complaint form which includes the tenets of the Code of Ethics. Once a complaint is received, the Department may determine whether the alleged incident would be a violation of the Code of Ethics and, if so, will forward the complaint to a panel of three individuals including a consumer who is deaf or hard of hearing, a qualified interpreter and a VDDHH staff member. The panel will be charged with receiving testimony, determining if a violation of the Code of Ethics has occurred, determining the impact of the violation and recommending sanctions. The panel is limited to 4 actions: removal of the interpreter from the Directory; voiding the interpreter's contract with the agency; requiring that the interpreter receive additional training; or, suspending or revoking the current VQAS level.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The proposed revisions are intended to make the regulations less burdensome and intrusive on interpreters while providing greater protection to the rights of consumers.

By stipulating that a candidate may participate in a single Skills Assessment, the Department is, in fact, lessening the burden on many candidates and responding to public input during the earlier NOIRA period. The majority of past participants in VQAS have achieved either a level in only one of the two areas tested (Interpreting or Transliterating) or a higher level in one area than in another. Allowing a candidate to participate in only one Skills Assessment will reduce the burden on the candidate and will reduce the burden on the program, resulting in a shorter waiting period for a candidate to participate in and receive results from an assessment. This action has the added benefit of potentially lowering costs to candidates, as a single assessment under the proposed fee schedule will be less expensive than the current fee for the combined assessment.

The agency has considered providing the grievance procedures through agency policy and procedures as opposed to regulation. This alternative was rejected because of the nature of the program. Many interpreters depend upon the VQAS screening level as professional credentials and their income depends upon those credentials. In order to avoid any appearance of arbitrary and capricious disciplinary action, the agency believes that regulation is needed

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The agency posted notice of the NOIRA Comment Period on the Internet and mailed notices to more than 100 groups and individuals in the state. The Virginia Registry of Interpreters for the Deaf, the statewide professional organization representing interpreters, elected not to provide formal comment. The Virginia Association of the Deaf, a consumer organization, also chose not to comment. Anecdotal comments indicated support for the proposals. Only one formal comment was received, and the commenter was supportive of the proposals. It is important to note that an earlier NOIRA, which included consideration of a program of maintenance of levels awarded under VQAS, was withdrawn when the majority of commenters opposed the maintenance component.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency has studied the language in the existing regulation and is offering language amendments which will enhance the clarity of the regulation and make it more easily understandable to affected individuals.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The next Periodic Review on this regulation is scheduled to begin June 15, 2003. The agency has established the following goals for this regulation:

1. To provide a mechanism which ensures that only Code-defined qualified interpreters are listed in the Statewide Directory of Qualified Interpreters.
2. To provide a framework for screening interpreters and transliterators that allows for maximum participation in a cost-effective manner.
3. To provide an effective mechanism for resolution of consumer complaints against VQAS screened interpreters.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1)

strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The impact of the proposed revisions on families is positive and minimal.

- The provisions for VQAS encourage economic self-sufficiency, self-pride and the assumption of responsibility for oneself by providing qualified candidates with a recognized, though generally not mandated, credential. A VQAS Screening Level is required for interpreters who provide services in state government, Virginia Courts and Virginia Public Schools. In many instances, an interpreter's rate of pay is directly tied to the VQAS Screening Level they possess. In addition, by providing diagnostic feedback, VQAS provides candidates with information to assist them in improving their skills and, thus, their earning potential.
- The addition of a formal grievance procedure will ensure that families have recourse when a VQAS screened interpreter violates the Code of Ethics.
- The opportunity to take only one skills assessment will enhance program efficiency and, potentially, reduce the costs to participants.
- In addition, the overall clarification of language will provide more clear information to families who are impacted by or interested in the regulation in general.