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Chapter DHS 77

SERVICE FUND FOR PEOPLE WHO ARE DEAF, DEAFBLIND OR HARD OF HEARING

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Note: Chapter HFS 77 as it existed on November 30, 2002 was repealed and a new chapter HFS 77 was created effective December 1, 2002. **Chapter HFS 77 was renumbered to chapter DHS 77 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 77.01 Authority and purpose. This chapter is promulgated under the authority of s. 46.295 (6), Stats., for the purpose of implementing s. 46.295, Stats., by doing all of the following:

(1) Establishing criteria and procedures for providing reimbursement from the appropriations under s. 20.435 (6) (a) and (hs), Stats., to communication access services providers for deaf, deafblind or hard of hearing persons for the provision of communication access services.

(2) Providing prompt payment to communication access services providers for services rendered, whether or not an agency that requested those services makes final payment for them.

(3) Providing final payment for communication access services that are approved by the department and for which no other agency is financially responsible.

(4) Maintaining and providing a list of certified communication access services providers and verified interpreters.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

DHS 77.02 Applicability. This chapter applies to deaf, deafblind or hard of hearing persons in need of communication access services, to persons providing those services, and to individuals and city, town, village, county, state, federal and private agencies that request communication access services under s. 46.295, Stats.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

DHS 77.03 Definitions. In this chapter:

(1) "Agency" means any private or public organization.

(2) "Certification of interpretation" means a document issued by the registry of interpreters for the deaf that testifies to the proficiency of the holder in interpretation between American sign language and spoken English in both sign−to−voice and voice−to−sign.

(3) "Certification of transliteration" means a document issued by the registry of interpreters for the deaf that testifies to the proficiency of the holder in transliteration between English−based sign language and spoken English in both sign−to−voice and voice−to−sign.

(4) "Certified deaf interpreter" means a deaf or hard of hearing person who:

(a) Interprets in a broad range of settings in situations where a deaf consumer may benefit from the services of a deaf interpreter; and

(b) Holds a document issued by the registry of interpreters for the deaf that testifies to the holder's interpreting proficiency.

(5) "Certified deaf interpreter: provisional" means a deaf or hard of hearing person who has training and at least one year's interpreting experience and is awaiting certification from the registry of interpreters for the deaf.

(6) "Certified communication access services provider" or "certified provider" means a person who has been awarded a certificate of interpreting proficiency by the registry of interpreters for the deaf, inc., the national association of the deaf or national court reporters association or other nationally recognized certification organization.

(7) "Communication access services" means any assistance provided by a person trained to increase the ability of a deaf, deafblind or hard of hearing person to communicate with others.

(8) "Communication access services provider" or "provider" means a person who provides assistance to a deaf, deaf−blind or hard of hearing person that increases the ability of that person to communicate with others.

(9) "Communication technology" means a device used as a medium to transfer audible or text words from a person speaking or typing the words to a person using a device to perceive the words.

(10) "Comprehensive skills certificate" means a document issued by the registry of interpreters for the deaf that testifies to a person's proficiency in both transliterating and interpreting in both sign−to−voice and voice−to−sign.

(11) "Deaf, deafblind or hard of hearing person" means a person who, because of some pathological or functional cause, requires communication access services.

(12) "Department" means the Wisconsin department of health services or its designated administrative agency.

(13) "Emergency" means a situation in which the life, liberty, health or property of a deaf or hard of hearing person or a member of a deaf, deafblind or hard of hearing person's family is in immediate danger.

(14) "Final payment" means financial compensation by the department to a person or communication access services coordination agency providing communication access services and which the department will not seek to recover by billing a person or agency.

(15) "Level 3, 4 or 5 rating" means gradations of competency awarded by the national association of the deaf, with the highest number designating the holder's ability to master interpreting situations with minimal difficulty.

(16) "National association of the deaf" is an organization that promotes, protects, and preserves the rights and quality of life of deaf and hard of hearing individuals in the U.S. and certifies persons to be communication access services providers through its assessment and certification program.

(17) "National court reporters association" is an organization that advances the profession of those who capture and integrate the spoken word into a comprehensive and accurate information base for the benefit of the public and private sectors through ethical standards, testing and certification, educational opportunities,

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communications, government relations, research and analysis, and fiscal responsibility.

(18) "Non−profit organization" means an organization exempt from federal income taxation under 26 USC 501.

(19) "Real−time captioning" means technology that simultaneously processes spoken−word English into readable English.

(20) "Registry of interpreters for the deaf" means a national membership organization that tests and certifies persons who provide sign language interpreting and transliterating services for deaf and hard of hearing persons.

(21) "Specialist certificate legal" means a document issued by the registry of interpreters for the deaf that testifies to the proficiency of a person in legal interpreting.

(22) "Transliterating services" means representing in letters or words English−based sign language and spoken English in both sign−to−voice and voice−to−sign.

(23) "Verified interpreter" means a person who has been awarded recognition as having a level 1 or 2 interpreting proficiency by the Wisconsin interpreting and transliterating assessment.

(24) "Wisconsin interpreting and transliterating assessment" means a program administered by the department to determine and verify the level of competence of communication access services providers who are not certified by the national registry of interpreters for the deaf, inc., the national association of the deaf or national court reporters association or other nationally recognized certification organization.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02; **correction in (12) made under s. 13.92 (4) (b) 6., Stats., Register November 2008 No. 635**.

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

(b) 1. Only in the following circumstances, when the department reimburses a communication access services provider under par. (a), the department shall reimburse the provider without subsequently billing the individual who or agency that requested the communication access services:

a. The individual or agency requesting communication access services is not required by state or federal law to provide those services;

b. No other source of funding is applicable; or

c. The department determines that undue hardship or potential harm to the individual or agency is caused by requiring the individual or agency to provide reimbursement for communication access services.

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

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

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

(3) CIRCUMSTANCES ELIGIBLE FOR REIMBURSEMENT. (a) *Priority circumstances.* In accordance with s. 46.295, Stats., and subject to s. DHS 77.06 (1), the department shall give priority to requests to pay fees charged by communication access services providers in the following circumstances, in the following order:

1. Emergencies.

2. Medical, mental health, alcohol and drug abuse, psychiatric or psychological services are needed.

3. In obtaining legal services and during civil court proceedings.

4. Matters involving law enforcement personnel.

5. Matters involving any federal, state, county or municipal agency.

6. Job−related appointments for deaf, deaf−blind or hard of hearing persons who are not clients of the Wisconsin department of workforce development's division of vocational rehabilitation.

7. Funerals and memorial services.

(b) *Non−priority circumstances.* The department may reimburse communication access services providers for services provided in connection with any of the following activities:

1. Communications involving financial matters.

2. Communications involving housing and shelter.

3. Meetings relating to the development of new programs, agencies or organizations to promote awareness of issues relating to deaf, deafblind or hard of hearing persons.

4. Meetings, workgroups or conferences sponsored by statewide, nonprofit organizations whose missions relate specifically to deaf, deafblind and hard of hearing persons. Final payment for the purposes specified under this subdivision is determined by the rates charged by individual communication access services providers and communication access services coordination agencies on a fee−for−service basis.

5. Meetings, workgroups or conferences sponsored by nonprofit organizations that do not receive federal funds, do not administer a statewide program, or whose mission is not specifically related to deaf or hard of hearing persons, but are serving the deaf or hard of hearing. Final payment for the purposes specified under this subdivision is determined by the rates charged by individual communication access services providers and communication access services coordination agencies on a fee−for−service basis.

6. Matters relating to the welfare of minor children of deaf, deafblind or hard of hearing parents, including meetings relating to day care or child care, attendance at parental support groups or parenting classes and meetings with schools meeting the criteria in sub. (1) (b).

7. After school activities for children that are temporarily not covered under federal laws while an alternate source of funding is being pursued.

8. Activities that people who are not deaf, deafblind or hard of hearing participate in without accommodations or technologies, including participation on boards of non−profit organizations and training sessions not specifically designated for deaf, deafblind or hard of hearing people when the sponsoring agency or organization is not required by federal or state law to provide those services.

9. Communications that may affect a person's ability to function safely or independently in the community.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

DHS 77.05 Requests for reimbursement of communication access services. (1) Any individual or any city, town, village, county, state, federal or private agency may request, in writing, that the department reimburse a communication access services provider to provide communication access services. Except in an emergency, a request shall be received by the department at least 2 weeks in advance of the time a provider is needed.

Note: Requests for reimbursement of communication access services shall be made to the Regional Coordinator for Deaf and Hard of Hearing Services. To find out which Regional Coordinator to contact, write or phone the Division of Disability and Elder Services, Office for the Deaf and Hard of Hearing, P.O. Box 7851, Madi-

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son, Wisconsin 53707, (608) 266−3118 for both voice and teletext typewriter (TTY). A map of the regions may also be viewed over the internet at: http://dhs.wisconsin.gov/sensory/staff/DSL−regions.htm.

(2) (a) Within 5 working days after receipt by the department of a request for reimbursement of communication access services under sub. (1) and subject to the priority circumstances in s. DHS 77.04 (3) (a), the department shall grant or deny the request.

(b) If the request is granted, the department shall provide the individual or agency requesting the service with a list of certified communication access services providers and verified interpreters and real−time captioners so that the individual or agency may arrange communication access services.

(c) 1. If the request is denied, the department shall send the requestor within 48 hours after the action takes place a written notice of the reasons for denial and the procedure for requesting a hearing under ch. 227, Stats. Receipt of the notice is presumed within 5 calendar days of the date the department mailed the notice.

2. To request a hearing, an individual or agency shall file a written request with the department of administration's division of hearings and appeals within 30 calendar days after the date of the notice. A request is considered filed when received by the division of hearings and appeals. The division of hearings and appeals shall hold the hearing no later than 30 calendar days after receiving the request for the hearing unless both parties agree to a later date and shall provide at least 10 calendar days prior notification of the date, time and place for the hearing. The hearing examiner shall issue a proposed or final decision within 10 calendar days after the hearing. The denial shall remain in effect until a final decision is rendered.

Note: A hearing request should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707, 608−266−3096. Hearing requests may be delivered in person to that office at 5005 University Ave., Room 201, Madison, WI.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

DHS 77.06 Communication access services providers eligible for reimbursement. (1) PRIORITY CIRCUMSTANCE REIMBURSEMENT. In priority circumstances as specified under s. DHS 77.04 (3) (a), except as provided under sub. (3), the department may reimburse the following communication access services providers listed under s. DHS 77.09 (1):

(a) A person holding any of the following from the national registry of interpreters for the deaf:

1. A specialist certificate: legal for an appointment relating to legal services.

2. Certification of interpretation.

3. Certification of transliteration.

4. A comprehensive skills certificate.

(b) A person certified with a level 4 or 5 rating in sign language interpreting by the national association of the deaf.

(c) A certified deaf interpreter.

(d) A person verified by the Wisconsin interpreting and transliterating assessment as level 1 or 2 in interpreting or transliterating.

(e) A person certified in oral transliterating by the national registry of interpreters for the deaf.

(f) A person certified in real−time captioning by the national court reporters association.

(2) NON−PRIORITY CIRCUMSTANCE REIMBURSEMENT. In non−priority circumstances as specified under s. DHS 77.04 (3) (b), except as provided under sub. (3), the department may reimburse the following communication access services providers listed under s. DHS 77.09 (1):

(a) A person holding any of the following from the national registry of interpreters for the deaf:

1. Certification of interpretation.

2. Certification of transliteration.

3. A comprehensive skills certificate.

(b) A person certified with a level 3, 4, or 5 rating in sign language interpreting by the national association of the deaf.

(c) A certified deaf interpreter or certified deaf interpreter: provisional.

(d) A person verified by the Wisconsin interpreting and transliterating assessment as level 1 or 2 in interpreting or transliterating.

(e) A person certified in oral transliterating by the national registry of interpreters for the deaf.

(f) A person certified in real−time captioning by the national court reporters association.

Note: A description of the skills included under each category of certification and verification specified in subs. (1) and (2) is available from the Office for the Deaf and Hard of Hearing, P.O. Box 7851, Madison, Wisconsin 53707, 608−266−3118 for both voice and teletext typewriter (TTY). A description of the skills may also be viewed over the internet at: http://dhs.wisconsin.gov/sensory/WITA/desclevels.htm.

(3) EXCEPTIONS. The department shall reimburse communication access services providers in all situations where the department determines any of the following:

(a) The deaf, deafblind or hard of hearing person's method of communication is nontraditional or uses signs known only to family members or associates.

(b) The deaf, deafblind or hard of hearing person can understand only a particular noncertified or nonverified communication access services provider.

(c) The method of communication of the deaf, deafblind or hard of hearing person is based on a language other than English or American sign language.

(d) The deaf, deafblind or hard of hearing person's request for a specific communication access services provider is justified based on that provider's understanding of the subject matter, particular communication method, or unique suitability for a particular appointment as determined by the person or agency requesting communication access services.

(4) CANCELLING AN APPOINTMENT. (a) *Person or agency.* 1. Before canceling an appointment for which the department has approved reimbursement and for which a communication access services provider has been scheduled, the person who or agency that requested communication access services shall give the provider or communication access services coordination agency a minimum of 48 hours' notice.

2. When a person or agency that requested communication access services misses an appointment for which the department has approved reimbursement and does not give prior notification of the cancellation because of circumstances outside of the control of the person or agency, the department shall reimburse the communication access services provider or communication access services coordination agency for 2 hours of communication access services.

Note: The Department is not the ultimate payor in cases where the Department bills another entity for communication access services such as those described in s. DHS 77.08 (2).

3. When a person or agency that requested communication access services misses an appointment for which the department has approved reimbursement and does not provide notice to the communication access services provider or communication access services coordination agency because of circumstances within the control of the person or agency for the third time, the department may elect not to approve subsequent requests from that person for reimbursement.

(b) *Communication access services provider.* A communication access services provider who needs to cancel an appointment shall notify the person or agency that requested communication access services at least 24 hours before the time of the appointment.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

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

(2) REIMBURSEMENT POLICIES. (a) To be eligible for department reimbursement, an agency that provides communication access services providers shall provide to the department proof that the agency is exempt from federal income taxation and does not charge a fee to the consumer or the communication access services coordination agency that contacts the agency supplying providers.

Note: The proofs and confirmations in par. (a) ensure that the agency is not required by federal or state law to provide communication access services.

(b) A state employee who is a certified communication access services provider or verified interpreter may, if no other provider is available, be reimbursed for assignments completed after normal working hours, while on vacation or during leave without pay. The state employee shall demonstrate that there is no conflict of interest in accepting a reimbursed interpreting assignment by obtaining the prior approval of his or her supervisor. The state employee shall be reimbursed at rates charged by individual providers or communication access services coordination agencies on a fee−for−service basis.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

DHS 77.08 Billing and collections. (1) Services provided under this chapter are subject to the provisions of ch. DHS 1 for ability to pay, billing and collection purposes.

(2) The department shall bill any federal, state, county, municipal or private agency for requested communication access services reimbursed by the department if the department determines that the agency is required under state or federal law to provide communication access services to a deaf or hard of hearing person or if the agency is not required to provide communication access services but agrees to pay for the services.

(3) The department shall deposit all monies collected under this section into the appropriation under s. 20.435 (6) (hs), Stats.

(4) If any agency identified under sub. (2) does not pay a bill, the bill shall be referred to the department's bureau of fiscal services for collection.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register November 2008 No. 635.**

DHS 77.09 List of certified communication access services providers and verified interpreters. (1) The department shall maintain a list of certified communication access services providers and verified interpreters and real−time captioners. To be included in the list, a person shall provide documentation of his or her certification or of training and skills to the department. The list shall include the following information for each person:

(a) Name.

(b) Address and telephone number.

(c) Certification or verification level.

(d) Expiration date of each certification or verification.

Note: Communication access services providers wishing to be included in the list should contact the Office for the Deaf and Hard of Hearing by mail at P.O. Box 7851, Madison, WI 53707, by fax at 608−264−9899, or in person at 1 West Wilson Street in Madison. The list is also available at http://dhs.wisconsin.gov/sensory/WITA/terpdirectory.htm.

(2) After providing 10 calendar days notice, the department may exclude from the list under sub. (1) a communication access services provider for cause. A provider may appeal the department's decision. To request a hearing, a provider shall file a written request with the department of administration's division of hearings and appeals within 30 calendar days after the date of the department's notice. A hearing request is considered filed when received by the division of hearings and appeals. The division of hearings and appeals shall hold the hearing no later than 30 calendar days after receiving the request for the hearing unless both parties agree to a later date and shall provide at least 10 calendar days prior notification of the date, time and place for the hearing. The hearing examiner shall issue a proposed or final decision within 10 calendar days after the hearing. The denial shall remain in effect until a final decision is rendered.

Note: A hearing request should be addressed to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707, or faxed to the Division at 608−266−3096. Hearing requests may be delivered in person to that office at 5005 University Ave., Room 201, Madison, WI.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02.

DHS 77.10 Grievances. If an individual providing communication access services under this chapter or an individual or agency receiving communication access services under this chapter is dissatisfied with any action or decision of the department relating to communication access services, the individual or agency may file a grievance, in writing or orally, with the department. The grievance shall be addressed to the department's division of disability and elder services and shall be received by the administrator's office of the division of disability and elder services within 45 days after the date of the department's action or decision.

Note: To file a grievance, write or phone Administrator, Division of Disability and Elder Services, P.O. Box 7851, Madison, Wisconsin 53707, 608−266−2000 voice or 608−266−7376 TTY. Grievances may also be filed in person at 1 West Wilson Street in Madison.

History: CR 99−009: cr. Register November 2002 No. 563, eff. 12−1−02; correction made under s. 13.93 (2m) b. 1., Stats., Register December 2004 No. 588.