

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Note: Chapter HFS 77 as it existed on November 30, 2002 was repealed and a new chapter HFS 77 was created effective December 1, 2002.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 (1) (da) 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; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; correction in (1) under s. 13.92 (4) (b) 7., Stats., Register November 2015 No. 719; correction in (1) under s. 13.92 (4) (b) 7., Stats., Register July 2018 No. 751; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register September 2022 No. 801.

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) "Communication access services" means a service that ensures individuals who are deaf, deafblind or hard of hearing can communicate effectively with others. Communication access services include sign language interpretation, tactile communication, and captioning.

(3) "Communication access services provider" or "provider" means a trained individual who facilitates communication on behalf of individuals who are deaf, deafblind, or hard of hearing.

(4) "Deaf, deafblind or hard of hearing person" means a person with some degree of hearing loss who requires communication access services to effectively communicate with others.

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

(6) "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.

(7) "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.

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; CR 22-019: r. (2) to (6), renum. (7), (8) to (2), (3) and am., r. (9), (10), renum. (11) to (14) to (4) to (7) and, as renumbered, am (4), r. (15) to (24) Register May 2023 No. 809, eff. 6-1-23.

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 (1) (hs), Stats., to pay for communication access services for deaf, deafblind or hard of hearing persons in accordance with the requirements of this chapter.

(b) 1. When the department pays for a communication access services provider under par. (a), the department shall pay the provider without subsequently billing the individual or agency that requested the communication access services if any of the following apply:

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.

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

(c) Payment for communication access services under this chapter is contingent upon the availability, or projected availability, of funds in the appropriations under s. 20.435 (6) (a) and (1) (hs), Stats.

(2) COMMUNICATION ACCESS SERVICES PROVIDERS ELIGIBLE FOR PAYMENT. Except as provided in s. DHS 77.06 (3), the department may pay communication access services providers on the list of providers maintained by the department under s. DHS 77.09 (1).

(3) CIRCUMSTANCES ELIGIBLE FOR REIMBURSEMENT. (a) *Priorities 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.

(b) *Non-priority circumstances.* Subject to the availability, or projected availability, of funds, 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 non-profit organizations that do not receive state or federal funds.
5. Activities that people who are not deaf, deafblind or hard of hearing participate in without accommodations.
9. Communications that may affect a person's ability to function safely or independently in the community.
10. Initial interview for deaf, deaf-blind or hard of hearing persons who are not clients of the Wisconsin department of workforce development's division of vocational rehabilitations. Employment-related accommodations, including self-employment, are not eligible.
11. Funerals and memorial services.

History: CR 99-009: cr. Register November 2002 No. 563, eff. 12-1-02; corrections in (1) (a) and (c) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; correction in (1) (a) and (c) under s. 13.92 (4) (b) 7., Stats., Register November 2015 No. 719; correction in (1) (a), (c) under s. 13.92 (4) (b) 7., Stats., Register July 2018 No. 751; correction in (1) (a), (c) made under s. 13.92 (4) (b) 7., Stats., Register September 2022 No. 801; CR 22-019: am. (1) (a), (b) 1. (intro.), a., b., 2., (c), (2), renum. (3) (a) 6., 7., to (3) (b) 10., 11., and as renumbered am. 10., am. (3) (b) (intro.), r. (3) (b) 4., renum. (3) (b) 5. to (3) (b) 4. and am., r. (3) (b) 6., 7., renum. (3) (b) 8. to (3) (b) 5. and am. Register May 2023 No. 809, eff. 6-1-23.

DHS 77.05 Requests for payment 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 pay 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, Madison, 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: www.dhs.wisconsin.gov/odhh/Staff/index.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 circumstances in s. DHS 77.04 (3) (a) and (b), 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 communication access services providers so that the individual or agency may arrange for 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; CR 22-019: am. (title), (1), (2) (a), (b) Register May 2023 No. 809, eff. 6-1-23.

DHS 77.06 Communication access services providers eligible for payment. (1) **PAYMENT.** The department may provide payment to communication access services providers listed under s. DHS 77.09 (1).

(2) **EXCEPTIONS.** The department shall pay communication access service providers in any situation when it determines that 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.

Note: This exception includes a request for a Sign Support Provider for individuals who are deafblind.

(3) **CANCELLING AN APPOINTMENT.** (a) *Person or agency.* 1. Before canceling an appointment for which the department has approved payment 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 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 payment and does not give prior notification of the cancellation because of circumstances outside of the control of the person or agency, the department shall pay the communication access services provider 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).

(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; CR 22-019: am. (title), (1) (title), renum. (1) (intro.) to (1) and am., r. (1) (a) to (f), (2), r. (2) (intro.), (a) to (c), renum. (3) (d), (4) (a) 1., 2. to (2), (3) (a) 1., 2. and am., r. (4) (a) 3., renum. (4) (b) to (3) (b) Register May 2023 No. 809, eff. 6-1-23.

DHS 77.07 Payment policies. (1) **RATES.** The department shall pay for communication access services providers according to licensure, certification and specialized skills, with the credentials requiring the most skill receiving the highest rates of pay.

(2) **PAYMENT POLICIES.** (a) To be eligible for department payment, an individual or agency that provides communication access services providers shall provide to the department any necessary documentation or forms to be added to the list of approved vendors.

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 communication access services be paid 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 by obtaining the prior approval of his or her supervisor.

History: CR 99-009: cr. Register November 2002 No. 563, eff. 12-1-02; CR 22-019: am. Register May 2023 No. 809, eff. 6-1-23.

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 (1) (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; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register July 2011 No. 667; correction in (3) under s. 13.92 (4) (b) 7., Stats., Register November 2015 No. 719; correction in (3) under s. 13.92 (4) (b) 7., Stats., Register July 2018 No. 751.

DHS 77.09 List of communication access services providers. (1) The department shall maintain a list of communication access services providers. To be included in the list, a person or agency shall provide documentation of licensure, certifications and any specialized training. The list shall include the following information for each person:

- (a) Name.
- (b) Address and telephone number.
- (c) Licensure, certifications and any specialized training.

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 www.dhs.wisconsin.gov/odhh/Interpreting/InterpreterDirectory.htm.

Note: Sign language interpreters must be licensed by the Department of Safety and Professional Services and a captionist must be certified by the National Court Reporters Association to be added to this list.

Note: Communication access service agencies shall provide the names of all providers and their respective credentials.

(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; CR 22-019: am. (title), (1) (intro.), r. and recr. (1) (c), r. (1) (d) Register May 2023 No. 809, eff. 6-1-23; correction in (1) (intro.) made under s. 35.17, Stats., Register May 2023 No. 809.

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, over the phone, or video-phone with the department. The grievance shall be addressed to the department's division of public health and shall be received by the administrator's office of the division of public health within 45 days after the date of the department's action or decision.

Note: To file a grievance, write or phone Director, Office for the Promotion of Independent Living, Division of Public Health, P.O. Box 7851, Madison, Wisconsin 53707, 608-261-7823. Written grievances may be submitted by email to amber.mullett@dhs.wisconsin.gov. 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; CR 22-019: am. Register May 2023 No. 809, eff. 6-1-23.