

Publication date: March 16, 2011
Effective date: March 16 through August 12, 2011

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING :
PROCEEDINGS BEFORE THE : ORDER ADOPTING
DEPARTMENT OF REGULATION AND : EMERGENCY RULES
LICENSING :

ORDER

Order of the Department of Regulation and Licensing (the department) and the Sign Language Interpreters Council (the council), pursuant to 2009 Wisconsin Act 360, as implemented by s. 440.032, Stats., to create initial rules governing the professional conduct of individuals licensed as sign language interpreters, and for the treatment of state resident licensure exemption requests.

Analysis prepared by the Department of Regulation and Licensing.

FINDING OF EMERGENCY

2009 Wisconsin Act 360 created laws regulating the practice of sign language interpreting, and became effective on December 1, 2010. Under the act, codified at s. 440.032, Stats., individuals practicing as sign language interpreters must now be licensed by the department, and must comply with a code of professional conduct to be promulgated by the department. The new law also provides for exemptions from the licensure requirement under certain circumstances, and requires the council to promulgate rules establishing the criteria and procedures for granting state resident exemptions. As s. 440.032, Stats., is already in effect, an emergency rule is necessary to implement the law pending promulgation of a similar permanent rule.

ANALYSIS

Statutes interpreted:

Section 440.032, Stats.

Statutory authority:

Sections 227.24 (1) (a), Stats., and ss. 440.032 (6) (d) and (7) (b), Stats.

Explanation of agency authority:

The department is authorized under s. 440.032 (7) (b) Stats., to promulgate rules defining a code of ethics for the professional conduct of sign language interpreters licensed under s. 440.032, Stats. The council is authorized under s. 440.032 (6) (d) to promulgate rules establishing the criteria and procedures for granting exemptions under s. 440.032 (2) (c).

Related statute or rule:

There are no related statutes or rules other than those listed above.

Plain language analysis:

These emergency rules implement the statutory provisions created by 2009 Wisconsin Act 360, which are already in effect.

SECTION 1 creates ch. RL 200, "Authority and Definitions." Section RL 200.01 identifies the statutory authority under which chapters RL 200 to 202 are adopted. Section RL 200.02 provides the definitions of "advocate," "conflict of interest," "consumer," "family member," "interpreter," "interpreting situation," "interpreting," and "unlicensed interpreter" as those terms are used in chapters RL 200 to 202.

SECTION 2 creates ch. RL 201, "Unprofessional Conduct." Section RL 201.01 sets forth 25 different types of unprofessional conduct that are prohibited for individuals licensed as sign language interpreters.

SECTION 3 creates ch. RL 202, "State Resident Exemption." Section RL 202.01 establishes the criteria for a temporary or permanent exemption from the licensing requirement pursuant to s. 440.032 (2) (c) 2., Stats. Section RL 202.01 (1) defines the criteria for an exemption to provide interpreter services to a specific individual. Section RL 202.01 (2) defines the criteria for an exemption to provide interpreter services for a specified time period.

Section RL 202.02 (1) requires individuals requesting a state resident exemption to submit a written request to the council stating the rationale for the request and providing supporting documentation, if any.

Section RL 202.02 (2) provides a list of 12 items of information an unlicensed interpreter seeking an exemption under s. RL 202.01 (1) must include in his or her exemption request. Section RL 202.02 (3) provides a list of 10 items of information an unlicensed interpreter seeking an exemption under s. RL 202.01 (2) must include in his or her exemption request. Section RL 202.02 (4) provides three examples of supportive documentation that may be included with an exemption request, if appropriate.

Section RL 202.02 (5) allows the council to require an unlicensed interpreter seeking a state resident exemption to appear before the council to provide further information supporting the request.

Section RL 202.02 (6) provides that the council may not grant an exemption under s. RL 202.01 to unlicensed interpreters waiting to take a test given by, or for test results from, the National Association for the Deaf, Inc., or for certification by the Registry of Interpreters for the Deaf, or for verification by the Wisconsin Interpreting and Transliterating Assessment, or for other certification or verification required for licensure under s. 440.032 (3), Stats.

Fiscal estimate:

The department estimates that this rule will require staff time in the Division of Enforcement. The total on-going salary and fringe costs are estimated at \$47,400.

Agency contact person:

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TEXT OF RULE

SECTION 1. Ch. RL 200, AUTHORITY AND DEFINITIONS, is created to read:

RL 200.01 Authority. The rules in chapters RL 200-202 are adopted by the department and the Sign Language Interpreters Council pursuant to ss. 440.032 (6) (d) and 440.032 (7) (b), Stats.

RL 200.02 Definitions. As used in chapters RL 200-202:

- (1) “Advocate” means an individual who provides assistance to an individual who is deaf, deaf-blind, or hard of hearing and may provide counsel, personal opinions, advice, and assist an individual in making personal decisions.
- (2) “Conflict of interest” means a conflict, either actual or perceived, between the private interests, whether personal, financial, or professional, and the official or professional responsibilities of an interpreter, deriving from a specific interpreting situation.
- (3) “Consumer” means any individual or entity that is part of the interpreting situation, including individuals who are deaf, deaf-blind, hard of hearing, and hearing.
- (4) “Family member” means the spouse, child, grandchild, grandparent, aunt, uncle, brother, sister, parent, step-parent, step-child, step-brother, step-sister, foster child or first cousin of the interpreter.
- (5) “Interpreter” means an individual who provides sign language interpreter services, for compensation, and who is licensed under s. 440.032 (3), Stats.
- (6) “Interpreting situation” means any instance of an interpreter performing interpreting services for consumers.
- (7) “Interpreting” means rendering accurate and equivalent messages using sign language to facilitate cultural and linguistic communication.
- (8) “Unlicensed interpreter” means an individual who uses sign language to facilitate cultural and linguistic communication who is not licensed under s. 440.032 (3), Stats.

SECTION 2. Chapter RL 201, UNPROFESSIONAL CONDUCT, is created to read:

RL 201.01 Unprofessional conduct is prohibited. Unprofessional conduct includes:

- (1) Conduct in the practice of sign language interpretation which evidences a lack of knowledge or ability to apply professional principles or skills.
- (2) Failing to notify the department in writing within 30 days of any certification, verification, or membership required for licensure being revoked, suspended, expired, or invalidated. This may include certification, verification, or membership by or in National Association of the Deaf, Registry of Interpreters for the Deaf, Inc., Wisconsin Interpreting and Transliterating Assessment or any other certification determined to be substantially similar to certification by the National Association of the Deaf or Registry of Interpreters for the Deaf, Inc. by the department.
- (3) Failing to notify the department in writing within 30 days of being convicted of any crime.
- (4) Violating the terms of any disciplinary order of the department.
- (5) Disclosing any aspect of a confidential communication facilitated by the interpreter unless one of the following conditions apply:
 - (a) All parties to the confidential communication consent to the disclosure.
 - (b) A court determines that the disclosure is necessary for the proper administration of justice.
- (6) Failing to convey the content of communications accurately, using language most readily understood by consumers, accounting for their requests or needs regarding language preferences, and correcting errors discreetly and expeditiously.
- (7) Failing to facilitate communication in a way that allows for meaningful and equitable access to communication that will support the full interaction and independence of consumers.

- (8) Discriminating in the provision of services on the basis of the race, color, national origin, gender, religion, age, disability, or sexual orientation of any party to an interpreting situation.
- (9) Providing services when not competent to do so due to physical, mental, or emotional incapacity.
- (10) Providing services while the interpreter's ability to provide such services is impaired by alcohol or other drugs.
- (11) Providing services which are inconsistent with the interpreter's skill levels or for which the interpreter is not qualified to perform services given the language used, communication mode and setting, or consumer needs.
- (12) Failing to monitor the accuracy of the message, and correct such message as necessary, while functioning as a team member.
- (13) Failing to request deaf interpreters, when necessary to fully convey the message or to address exceptional communication challenges such as may arise from cognitive disabilities, emerging or limited language proficiency, lack of formal instruction or language, or the use of foreign sign language.
- (14) Failing to obtain the consent of all parties to an interpreting situation before allowing an intern to observe or participate in an assignment.
- (15) Performing services in situations that involve an actual or perceived conflict of interest unless there is disclosure to all participants and agreement to proceed with the conflict of interest or perceived conflict of interest. Interpreters may not proceed to perform services if the party for whom the services are being provided may not have the mental capacity to appreciate the actual or perceived conflict of interest.
- (16) Performing services for a family member.
- (17) Performing services for an individual when the interpreter is the legal guardian for the individual.
- (18) Assuming dual or conflicting roles in interdisciplinary settings.
- (19) Using confidential interpreted information for personal, monetary, or professional gain, or for the benefit of professional affiliations or entities.
- (20) Providing counsel, advice, personal opinions, or acting as an advocate while functioning as an interpreter or as an interpreting team member.
- (21) Being convicted of any state or federal crime which substantially relates to the practice of sign language interpreting.
- (22) Failing to maintain ethical business practices whether in private practice or as an employee of an agency or other entity.
- (23) Failing to accurately represent the interpreter's qualifications, such as certification, education, and experience, failing to provide documentation of the interpreter's qualifications when requested, or failing to ensure that the interpreter's qualifications are accurately represented by any agencies or entities that contract for or schedule the interpreter's services.
- (24) Engaging in any harassing, intimidating, or coercive business tactics.
- (25) Failing to comply with continuing education requirements as mandated for its members by the Registry of Interpreters for the Deaf, Inc., the National Association of the Deaf, or their successors, or any other certifying organization that the department determines to be substantially equivalent to the Registry of Interpreters for the Deaf, Inc., the National Association of the Deaf, or their successors.

SECTION 3. Chapter RL 202, STATE RESIDENT EXEMPTION, is created to read:

RL 202.01 State residents may request an exemption from the sign language interpreter licensure requirement pursuant to s. 440.032 (2) (c) 2., Stats., for one of two purposes:

(1) To provide services to a specific individual. Unlicensed interpreters applying for a temporary or permanent exemption under this subsection shall demonstrate that the individual to whom services will be provided and for which the exemption is being requested cannot reasonably obtain services from an interpreter licensed under s. 440.032 (3), Stats., to meet his or her needs due to specific language requirements, cultural requirements, or physical, mental, or emotional conditions.

(2) To provide services for a specific period of time. Unlicensed interpreters applying for a temporary or permanent exemption under this subsection shall demonstrate that it is not possible to obtain a sign language interpreter license under s. 440.032 (3), Stats., and the existence of a need to provide sign language interpretation services.

RL 202.02 (1) Unlicensed interpreters requesting an exemption under either s. RL 202.01 (1) or (2) shall submit a written request to the Council stating the rationale for such request, and provide any documentation that supports the request.

(2) A request submitted pursuant to s. RL 202.01 (1) shall specify all of the following:

(a) Information to support that the criteria stated in s. RL 202.01 (1) has been met.

(b) The identity of the individual to whom services will be provided.

(c) The duration of the exemption being requested.

(d) The setting(s) for which the exemption is requested

(e) The unlicensed interpreter's educational and training background.

(f) Where, when, and from whom the unlicensed interpreter learned sign language.

(g) The unlicensed interpreter's knowledge of sign language and deaf culture.

(h) Any other special training or experience of the unlicensed interpreter in working with persons who are deaf, deaf/blind, or hard of hearing, or with persons with other disabilities.

(i) The unlicensed interpreter's experience with interpreting.

(j) The unlicensed interpreter's knowledge of the code of ethics for sign language interpreters.

(k) The unlicensed interpreter's relationship to and how long the unlicensed interpreter has known the individual for whom services will be provided.

(l) Where, if applicable, the unlicensed interpreter is employed.

(3) A request submitted pursuant to s. RL 201.01 (2) shall specify all of the following:

(a) Information to support that the criteria stated in s. RL 201.01 (2) above has been met.

(b) The duration of the exemption being requested.

(c) The setting(s) for which the exemption is requested.

(d) The unlicensed interpreter's educational and training background.

- (e) Where, when, and from whom the unlicensed interpreter learned sign language.
 - (f) The unlicensed interpreter’s knowledge of sign language and deaf culture.
 - (g) Any other special training or experience of the unlicensed interpreter in working with persons who are deaf, deaf/blind, or hard of hearing, or with persons with other disabilities.
 - (h) The unlicensed interpreter’s experience with interpreting.
 - (i) The unlicensed interpreter’s knowledge of the code of ethics for sign language interpreters.
 - (j) Where, if applicable, the unlicensed interpreter is employed.
- (4) Documentation to support the request for exemption may include, if appropriate, the following:
- (a) Letter of support from the individual receiving services or their legal guardian.
 - (b) Medical documentation for the individual receiving services.
 - (c) Letter of support from a teacher or other school personnel.

(5) The Council may, in its discretion, request an appearance before the Council by the unlicensed interpreter requesting the exemption to provide further information in support of the request.

(6) The Council may not grant an exemption under s. RL 202.01 (2) for unlicensed interpreters who are waiting to take a test for the National Association for the Deaf, Inc., or for the results of such test, or for certification by the Registry of Interpreters for the Deaf, or for verification from the Wisconsin Interpreting and Transliterating Assessment, or for other certification or verification required for licensure under s. 440.032 (3), Stats.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect upon publication in the Wisconsin State Journal, pursuant to s. 227.24 (1) (a), Stats.

Dated: _____ Agency: _____
Secretary
Department of Regulation and Licensing