

BOARD FOR PROFESSIONAL & OCCUPATIONAL REGULATION



STUDY OF THE NEED TO REGULATE THE SIGN LANGUAGE AND TRANSLITERATOR INDUSTRY

Virginia

DPOR
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Background

At its meeting on March 3, 2008, the Board for Professional and Occupational Regulation considered a request from Elizabeth Moore, Chair of the Advisory Board of the Virginia Department for the Deaf and Hard of Hearing (VDDHH). In a letter dated February 14, 2008, the VDDHH Advisory Board requested a study of whether the sign language and transliterator industry needs to be regulated. (Interpreters transmit spoken English into sign language, while transliterators transmit spoken English into one of several English-oriented varieties of manual communications.) The Board for Professional and Occupational Regulation (the Board) agreed to conduct the study.

VDDHH estimates one percent of the population is deaf, with 60,000 to 70,000 deaf individuals in Virginia. Ten percent of the population self-reports they are hearing impaired. VDDHH fields approximately 500 requests for interpreters per month, with the ability to accommodate 98 percent of these inquiries. There are 165 nationally certified interpreters in the Commonwealth.

The Americans with Disabilities Act (ADA) requires accommodations be made for deaf and hearing impaired individuals, as outlined in the ADA Title III Technical Assistance Manual:

“A public accommodation is required to provide auxiliary aids and services that are necessary to ensure equal access to the goods, services, facilities, privileges, or accommodations that it offers, unless an undue burden or a fundamental alteration would result.”

According to the U.S. Department of Labor’s Bureau of Labor Statistics (BLS), interpreters and translators held approximately 41,000 jobs in 2006. In addition, BLS notes the following significant points related to the industry:

- About 22 percent of interpreters and translators are self-employed.
- Interpreting/translating work is often sporadic, with many of these workers employed part-time.
- In addition to requiring fluency in at least two languages, many interpreters and translators need a bachelor’s degree. Many also complete job-specific training programs.
- Job outlook for interpreters and translators varies by specialty.

VDDHH’s mission is to reduce the communication barriers between persons who are deaf or hard of hearing and those who are hearing, including family members, service providers, and the general public. Services offered by VDDHH include:

- VA Relay and the Technology Assistance Program (TAP), which provide access to telecommunication services and assistive technology for Virginians who are deaf, hard of hearing, DeafBlind or speech impaired.
- Outreach and Library Services, including training, workshops and community education.
- Interpreter Services program, which includes a Directory of Qualified Interpreters and Interpreter Services Coordination. The Directory is mandated by the *Code of Virginia* and contains contact information for interpreters in the Commonwealth who meet the statutory definition of a qualified interpreter. VDDHH disseminates the Directory to consumers and service providers to assist in securing qualified interpreters for various assignments.
- The Virginia Quality Assurance Screening (VQAS) is administered by VDDHH in accordance with “Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.” VQAS 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. According to VDDHH, Virginia is in need of qualified interpreters, as witnessed by an increasing demand for services from consumers.

VDDHH’s Regulation 22VAC20-30-10 includes the following terms:

"Deaf" refers to any person who has a hearing loss such that with or without amplification is unable to receive information in an auditory fashion and whose primary means of receiving communication is through visual input such as lip reading, sign language, finger spelling, cued speech, reading or writing.

"Hard of hearing" refers to any person who has a hearing loss such that hearing is difficult but the understanding of spoken communication through the ear alone, with or without a hearing aid, is not precluded.

"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 interpreter/transliterators and oral and cued speech transliterators. When the term is used to specifically identify an interpreter who interprets using ASL, this text will so indicate.

"Interpreting (ASL)" means the specific process of interpreting ASL vocabulary, structure, and grammatical components and does not include oral or cued speech

transliterating or forms of manual communication using an English-based structure. The term is used specifically herein when discussing components of the VQAS assessment process.

"Transliterate" means to accurately convey messages without personal interjection between two or more parties using different forms of the same language, such as written or spoken English and a manually-coded form of English or cued speech.

The Virginia Department of Education oversees regulation of interpreters in the Commonwealth's public schools (Kindergarten through grade 12).

Statutory Authority

Section 54.1-310 of the *Code of Virginia (Code)* provides the statutory authority for the Board for Professional and Occupational Regulation (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 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 it is clearly found that such abridgement is necessary for the preservation of the health, safety and welfare of the public. (*Code of Virginia* § 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 a 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 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 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.

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.

Criteria

Based on the principles of professional and occupational regulation established by the General Assembly, the Board has adopted the following criteria to guide evaluations of the need 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.
2. **Specialized Skills and Training** - The practice of the profession or occupation requires specialized education and training, and the public needs assurance of competence.
3. **Autonomous Practice** - The functions and responsibilities of the practitioner require independent judgment and the members of the occupational group practice autonomously.
4. **Scope of Practice** - The scope of practice is distinguishable from other licensed, certified and registered professions and occupations.
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.
6. **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.
7. **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.

Application of Criteria

In the process of evaluating the need for regulation, the criteria are applied differently, depending upon the level of regulation which appears most appropriate for the occupational group. The following outline delineates the characteristics of licensure, certification, and registration and specifies the criteria applicable to each level.

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.

APPLICATION OF 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.

APPLICATION OF CRITERIA: Criteria 1-6 must be met.

Licensure. Licensure confers a monopoly upon a specific profession whose practice is well defined. It is 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.
APPLICATION OF THE CRITERIA: Criteria 1 - 6 must be met.

Alternatives to Professional and Occupational Regulation

When a risk or potential risk has been demonstrated but it is not substantiated that licensure, certification, or registration are appropriate remedies, other alternatives may be warranted. These alternatives should always be considered as less restrictive means of addressing the need to adequately protect the public health, safety, and welfare than restricting the occupational property rights of individuals.

Inspections and injunctions, disclosure requirements, and the strengthening of consumer protection laws and regulations are examples of methods for protecting the public that do not require the regulation of specific occupations or professions.

Methodology

The Board utilized its *Guidelines for the Evaluation of the Need to Regulate Professions and Occupations*, as well as the following *Sign Language Interpreters and Transliterators Study Methodology* adopted June 2, 2008:

- Review other jurisdictions which regulate sign language interpreters and transliterators and research their laws/regulations pertaining to these occupations.
- Review information from VDDHH regarding the sign language interpreter and transliterator industries and relevant laws/regulations.
- Identify relevant national and state trade organizations (for both practitioners and users of these services), as well as Virginia practitioners, and inform them of the study and the comment period.
- Conduct a 60-day public comment period with five public hearings across the Commonwealth.

- Research efforts by the Office of the Executive Secretary of the Supreme Court of Virginia for the establishment of guidelines for interpretation services for the deaf and hard of hearing in Virginia’s court system.

Summary of Research and Analysis

The Board utilized the study criteria contained in its *Guidelines for the Evaluation of the Need to Regulate Professions and Occupations* and the *Sign Language Interpreters and Transliterators Study Methodology* adopted June 2, 2008. In addition, the Board utilized the criteria contained in §§ 54.1-100 and subsection B of §§ 54.1-311 of the *Code of Virginia*.

During the study, the Board considered whether those individuals who provide sign language and transliterator services to the public warrant further regulation beyond that currently offered by VDDHH.

The following is a summary of the results obtained by utilizing the *Sign Language Interpreters and Transliterators Study Methodology*.

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

The Board identified statutes and/or regulations in 36 jurisdictions which regulate industry practitioners to any degree: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin.

- *Review information from VDDHH regarding the sign language interpreter and transliterator industries and relevant laws/regulations.*

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

- § 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;
- § 19.2-164.1. Interpreters for the deaf; and
- Chapter 15 of Title 51.5 of the *Code of Virginia*, Department for the Deaf and Hard-of-Hearing.

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

- Chapter 20 of 22VAC20 - Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Assistive Technology Equipment;
- Chapter 30 of 22VAC20 - Regulations Governing Interpreter Services for the Deaf and Hard of Hearing; and
- Chapter 80 of 8VAC20 - 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 Supreme Court of Virginia, November 1, 2003.
- *Identify relevant national and state trade organizations (for both practitioners and users of these services), as well as Virginia practitioners, 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.

- *Conduct a 60-day public comment period with five public hearings across the Commonwealth.*

The 60-day period for public comment began on October 13, 2008, and ended on December 12, 2008. The Board conducted public hearings on the following dates in the following locations: October 17, 2008, in Hampton; October 20, 2008, in Richmond; October 24, 2008, in Roanoke; November 7, 2008, in Arlington; and November 10, 2008, in Fishersville. (The Board attempted unsuccessfully to secure a venue in Stanton, where the Virginia School for the Deaf and the Blind is located, and subsequently identified a suitable venue nearby Fishersville). The Board published a Notice of Comment in the *Virginia Register of Regulations*, and VDDHH publicized the Notice as outlined in the preceding section.

The following chart provides detail on the number of attendees at each of the five public hearings:

Location	Date	# of Attendees	# of Speakers
Hampton	October 17, 2008	1	1
Richmond	October 20, 2008	2	2
Roanoke	October 24, 2008	1	1
Arlington	November 7, 2008	1	1
Fishersville	November 10, 2008	1	1
Gross Totals (total number of attendees and speakers at each hearing)		6	6
Net Totals (total number of attendees and speakers at each hearing after eliminating those individuals who attended and/or spoke at more than one hearing)		6	6

The written comments and the testimony received at the public hearings can be categorized as follows:

Source of Comments	# of Comments in Favor of Regulation	# of Comments in Opposition to Regulation	# of Comments Expressing Ambivalence Regarding Regulation
Providers of Interpreters and Transliterator Services	4	3	0
Consumers of Interpreting and Transliterating Services (including advocates for consumers of these services)	6	0	3

- *Research efforts by the Office of the Executive Secretary of the Supreme Court of Virginia for the establishment of guidelines for interpretation services for the deaf and hard of hearing in Virginia's court system.*

The Board reviewed the Court's publication, *Serving Non-English Speakers in the Virginia Court System - Guidelines for Policy and Best Practice*, issued by the Office of the Executive Secretary on November 1, 2003.

In particular, Section 6: Visual Modes of Communication – Interpreting for the Deaf and Hard of Hearing includes the following:

“The Code of Virginia requires courts to procure interpreters through the Virginia Department for the Deaf and Hard of Hearing (VDDHH) in criminal and civil cases (§§ 19.2-164.1, 8.01-384.1). On behalf of state courts, the Office of the Executive Secretary and VDDHH enacted a Memorandum of Understanding to provide clear guidance and instructions to courts on the provision of qualified interpreters for the deaf and hard of hearing (see Appendix I). Among other provisions, the Memorandum of Understanding stipulates that VDDHH will secure and the Office of the Executive Secretary will compensate *only* interpreters who have earned a full certification from the RID.”

- *In addition, staff attempted to obtain information from the Virginia Department of Agriculture and Consumer Services (VDACS) concerning complaints received regarding the sign language and transliterator industry.*

The Board sent a letter dated November 13, 2008, to the VDACS Consumer Protection Division Director requesting complaint information regarding the sign language interpreter and transliterator industry. In a reply dated November 21, 2008, VDACS indicated the Office of Consumer Affairs received no complaints to date relating to the industry.

The following is a summary of the results obtained by utilizing the principles contained in the *Guidelines for the Evaluation of the Need to Regulate Professions and Occupations*.

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.*

The sign language and transliterator industry may pose a risk to the health, safety or welfare of the public if interpretation or transliteration is performed incorrectly. However, based on evidence obtained during the study, the level of risk to the public appears low. Furthermore, according to VDACS, the Office of Consumer Affairs (OCA) received no complaints to date relating to the sign language interpreter and transliterator industry.

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.*

The written comments and the testimony received at the public hearings can be categorized as follows:

Source of Comments	# of Comments in Favor of Regulation	# of Comments in Opposition of Regulation	# of Comments Expressing Ambivalence Regarding Regulation
Providers of Interpreting and Transliterating Services	4	3	0
Consumers of Interpreting and Transliterating Services (including advocates for consumers of these services)	6	0	3

Of the sixteen total comments received during the comment period, seven were from providers of interpreting and transliterating services, and nine were from consumers of those services. Of the nine comments from consumers, six favored regulation and three expressed ambivalence regarding the need for regulation.

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

Based on a review of information available via the Internet, the Board identified statutes and/or regulations for 36 jurisdictions regulating the sign language and transliterator industry. Summary information regarding regulation, in any form, from the following jurisdictions was obtained: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin.

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 a majority of the population may not require the services of the sign language interpreting and transliterating industry, deaf and hearing

impaired individuals have a need for such services. VDDHH estimates one percent of the population is deaf, with 60,000 to 70,000 deaf individuals in Virginia. VDDHH fields approximately 500 requests per interpreters per month, with the ability to accommodate 98 percent of these inquiries. However, according to VDDHH, Virginia is in need of qualified interpreters, based on an increasing demand for services from consumers.

Further, the Americans with Disabilities Act requires some form of service be provided to deaf and hearing impaired individuals to ensure “effective communication.”

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.*

The Registry of Interpreters for the Deaf (RID), along with the National Association of the Deaf (NAD), co-authored an ethical code of conduct for interpreters. Both organizations uphold 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.”

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.*

Pursuant to § 51.5-113 of the *Code of Virginia*, a qualified interpreter shall hold at least one of the following credentials:

1. Certification from any national organization whose certification process has been recognized by VDDHH; or
2. A current screening level awarded by the VQAS 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.

VDDHH has a Directory of Qualified Interpreters and Interpreter Services Coordination as mandated by the *Code of Virginia*. The Directory includes

contact information for interpreters in Virginia who meet the *Code* definition of a qualified interpreter.

Technology may be eliminating the need for an interpreter or transliterator to be physically present in the same location with the parties who need such services. Telecommunications device for the deaf (TDD), video remote interpreting and video relay service are among the technological advances that mitigate the need for an interpreter to be physically present. Consumers may benefit from increased access to interpretation/transliteration services as technology advances further (depending on availability of high-speed Internet connections).

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 an ethical code of conduct for interpreters. Both organizations uphold 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.”

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

No evidence of harm to individual consumers was found during the course of the study indicating deficiencies in existing laws. As of November 21, 2008, the Office of Consumer Affairs (OCA) of VDACS received no complaints relating to the sign language interpreter and transliterator industry. Further, no comments received during the public hearings indicated specific examples of public harm. Finally, the VDDHH Directory of Qualified Interpreters VDDHH serves as a screening mechanism to ensure certain credentials are satisfied.

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.*

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. The Board is aware of no reported specific instances of harm to the health, safety and welfare of the public.

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.” There could be a detrimental effect on third parties relying on the expert knowledge of sign language interpreters and transliterators, especially in medical, legal, and educational situations. Any detrimental effect may be mitigated in purchase transactions requiring written documents (such as purchasing a house or car).

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 low. During the public comment period, there were nine consumer responses. Six favored regulation and three expressed ambivalence as to the need for regulation. Further, no comments received during the public hearing indicated specific examples of public harm.

As of November 21, 2008, the Office of Consumer Affairs (OCA) of VDACS received no complaints relating to the sign language interpreter and transliterator industry.

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 be a sign language interpreter or transliterator are different than ordinary work or labor. It is noteworthy that spoken foreign language interpreters are not regulated in

Virginia.

The Virginia Quality Assurance Screening (VQAS) is administered by the Virginia Department for the Deaf and Hard of Hearing (VDDHH) in accordance with "Regulations Governing Interpreter Services for the Deaf and Hard of Hearing."

The public appears to be adequately protected at the present time without a state-mandated regulatory program.

- 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*

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. Further, the national association representing the industry (RID) also administers a certification program. Both of these programs can be used by the public as an assurance at initial and continuing professional and occupational ability.

- 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 low. Information provided by VDACS indicated no consumer complaints. While six of the nine consumer comments during the public hearing favored regulation, the other three comments expressed ambivalence. The public appears to be adequately protected at the present time without a state-mandated regulatory program.

Application of Criteria

- 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.*

Based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, six of the nine consumer comments received

during the public hearing favored regulation. The other three comments expressed ambivalence to the need for regulation. Further, the information provided by VDACS indicated no complaints received in its Office of Consumer Affairs. The Board received no reports of specific harm to the public during this study.

2. *Specialized Skills and Training* - *The practice of the profession or occupation requires specialized education and training, and the public needs assurance of competence.*

The Registry of Interpreters for the Deaf (RID), along with the National Association of the Deaf (NAD), co-authored the ethical code of conduct for interpreters. Both organizations uphold high standards of professionalism and ethical conduct for interpreters.

VQAS 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. According to VDDHH, Virginia is in need of qualified interpreters, as witnessed by an increasing demand for services from consumers.

VDDHH maintains a Directory of Qualified Interpreters and Interpreter Services Coordination as mandated by the *Code of Virginia*. The Directory includes contact information for interpreters in Virginia who meet the statutory definition of a qualified interpreter. Pursuant to § 51.5-113, a qualified interpreter shall hold at least one of the following credentials:

1. Certification from any national organization whose certification process has been recognized by VDDHH; or
2. A current screening level awarded by the VQAS 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.

VDDHH disseminates the Directory to consumers and service providers to assist in securing qualified interpreters for various assignments.

Both of these programs can be used by the public as an assurance of initial and continuing professional and occupational ability.

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

Members of the sign language and transliterator industry exercise independent judgment. VDDHH reports that there are 165 nationally certified interpreters in

Virginia. The members of the industry listed in the VDDHH's Directory of Qualified Interpreters and Interpreter Services Coordination practice autonomously.

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

The scope of practice for the sign language and transliterator industry is analogous to spoken foreign language interpreters, who are not regulated in Virginia. Members of the sign language and transliterator industry must have the knowledge, skills and abilities necessary to effectuate proper sign language and transliterator 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.*

Based on evidence obtained during the study, the level of risk of harm to the public appears to be low. During the course of the study, the Board received no specific complaints of harm to the health, safety or welfare of the public.

Further, as noted previously in the report, as of November 21, 2008, the Office of Consumer Affairs (OCA) of VDACS received no complaints relating to the sign language interpreter and transliterator industry. Of the nine consumer responses (which included advocates for the deaf and hard of hearing impaired community), six favored regulation and three expressed ambivalence as to the need for regulation.

- 6. *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 low. The public appears adequately protected at the present time without a state-mandated regulatory program. VDDHH is mandated by the *Code of Virginia* to maintain a Directory of Qualified Interpreters and to coordinate interpreter services. VDDHH disseminates the Directory to consumers and service providers to assist in securing qualified interpreters for various assignments.

- 7. *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 low. The public appears to be adequately protected at the present time without a state-mandated regulatory program.

Conclusion

Based on evidence obtained during the study, the level of risk of harm to the public appears to be low. The public appears to be adequately protected at the present time without a state-mandated regulatory program. Consumers in need of sign language or transliterator services can access the Directory provided by VDDHH or look for a provider with RID certification to secure a qualified individual.