

## MICHIGAN STRENGTHENS ITS CERTIFICATION REQUIREMENTS FOR SIGN LANGUAGE INTERPRETERS

Under the Americans with Disabilities Act ("ADA")<sup>1</sup>, health care providers have an obligation to provide the deaf and hard of hearing with auxiliary aids needed to access and understand aural information and to engage in effective communication.<sup>2</sup> Auxiliary aids include, among other things, qualified interpreters. Under federal law, a "qualified interpreter" is defined as an interpreter who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary.<sup>3</sup> In a proactive effort to ensure Michigan interpreters are qualified interpreters, on February 15, 2013, the Michigan Department of Civil Rights, Division on Deaf and Hard of Hearing ("DDHH") issued new rules regarding certification of qualified interpreters for deaf and hard of hearing individuals.<sup>4</sup>

These new rules, which became effective in March 2013, clarify the requirements of state legislation passed in 2007 and set forth the certification requirements interpreters must meet before they are able to work in Michigan. Under the new rules, interpreters must be certified either through the national registry of interpreters for the deaf, or through the state, by passing a new state exam.<sup>5</sup> The new state exam, called the Michigan Board for Evaluation of Interpreters test ("MI-BEI"), contains three levels. Passing the lowest level (standard level 1) certifies interpreters to interpret for non-complex, low-risk matters that are not related to health care, mental health, legal, government, employment or finance.<sup>6</sup> The second level (standard level 2) must be passed to be able to interpret in moderately complex environments or for medium-high risk matters, including issues related to health care (with medical endorsement), government, employment or finance.<sup>7</sup> Passing the highest level (standard level 3) certifies an interpreter to interpret for high-risk matters, including legal issues (with legal endorsement) and providing services to individuals who are both deaf and blind (with deaf-blind endorsement).<sup>8</sup> The endorsements noted above are required two years after the promulgation of the rules and may be achieved through completion of continuing education credits in the appropriate subject matter.<sup>9</sup>

In 2007, Michigan passed the Deaf Person's Interpreter's Act. This Act defines a "qualified interpreter" as "a person who is certified through the national registry of interpreters for the deaf or certified through the state by division."<sup>10</sup> Originally under the Act, interpreters only needed to pass a "quality assurance" examination that consisted of a sign language performance exam, as well as exams on deaf culture and a professional code of ethics. The new rules require an interpreter to pass some level of the new MI-BEI test to be certified through the state and to be listed on the Michigan online interpreter system (<http://www6.dleg.state.mi.us/interpreter/>).<sup>11</sup>

The new rules contain exceptions to the MI-BEI level requirements. In the case of a life threatening emergency, when all reasonable efforts to locate a qualified interpreter within a 60-mile radius have been exhausted, a qualified interpreter who does not meet the MI-BEI level requirement may be used if such use is in the best medical or legal judgment of the authority responsible for appointing an interpreter. Additionally, during a state or national emergency, a person facilitating communication between a deaf or hard of hearing individual and an emergency responder is exempt from the certification requirements and may interpret until a qualified interpreter may be found.

Also set forth in the new rules are the requirements for the use of video remote interpreting ("VRI").<sup>12</sup> An interpreter providing interpretation services through VRI must be a qualified interpreter, and deaf and hard of hearing individuals should not be compelled to use VRI in place of an onsite interpreter.<sup>13</sup> VRI may be used in emergency situations if an onsite interpreter is not able to be located in a 60-mile radius after exhausting all reasonable resources, if there is an immediate need for intake, an immediate need for triage or an immediate need to consult with deaf or hard of hearing family members while the patient is being stabilized.<sup>14</sup> The rules also list specific situations where VRI is not to be used, unless it is requested by a deaf or hard of hearing individual.<sup>15</sup> These situations include:

- An initial meeting with a specialist;

- Highly sensitive communications (for example, diagnosis of a serious illness);
- Eye exams;
- Patient transport;
- With a deaf or hard of hearing child;
- With a deaf or hard of hearing person with a cognitive limitation;
- With a deaf or hard of hearing person with a secondary disability (for example, low vision);
- With a deaf or hard of hearing person with an injury or illness that impedes his/her ability to view the screen;
- With a deaf or hard of hearing person who indicates by sign or facial expression that communication is not being achieved;
- When consistent and continuous communication cannot be achieved due to equipment failure or poor connectivity; or
- During surgery, under the influence of consciousness-altering drugs or medication, child birth or end of life event.

Additionally, the rules state that VRI cannot be used to interpret at a proceeding for mental health treatment for an individual under the age of legal consent.<sup>16</sup>

The new rules can be viewed [here](#).

## BEST PRACTICES/PRACTICAL TAKEAWAYS

Prior to hiring a company or individual to provide interpreter services, health care providers should request assurances and include representation language in any agreements with interpreter service providers that the interpreters are appropriately certified in the State of Michigan. If the interpreter's Michigan certification is premised on his or her passage of the MI-BEI, the health care provider will want to require that the interpreter has passed at least the second level of the exam.

If you have any questions or would like additional information about this issue, please contact Laura Napiewocki at 586-753-0459 or [lnapiewocki@hallrender.com](mailto:lnapiewocki@hallrender.com), Andrea Anantharam at 248-457-7822 or [aanantharam@hallrender.com](mailto:aanantharam@hallrender.com), Tina Torossian at 248-457-7806 or [ctorossian@hallrender.com](mailto:ctorossian@hallrender.com) or your regular Hall Render attorney.

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<sup>1</sup> Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1991). as amended thereafter.

<sup>2</sup> 28 C.F.R. § 36.303(c).

<sup>3</sup> 28 C.F.R. § 36.104.

<sup>4</sup> Michigan Administrative Code - R393.5001

<sup>5</sup> R393.502

<sup>6</sup> R393.5023

<sup>7</sup> R393.5024

<sup>8</sup> R393.5025

<sup>9</sup> R393.5028

<sup>10</sup> MCL 393.502(f)

<sup>11</sup> R393.5003(y)

<sup>12</sup> R393.5055

<sup>13</sup> R393.5055(1) & (2)

<sup>14</sup> R393.5055(6)

<sup>15</sup> R393.5055(8)

<sup>16</sup> R393.5055(10)