

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2011 JUN 30 PM 3:55

OFFICE OF THE
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Commission for the Deaf and Hard of Hearing (DHHR) TITLE NUMBER: 192

RULE TYPE: Legislative CITE AUTHORITY: WV Code §5-14A-9

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 01

TITLE OF RULE BEING AMENDED: FEES FOR QUALIFIED INTERPRETERS

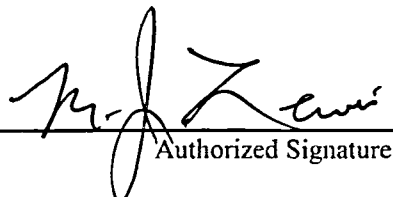
IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 29, 2011 AT 10:00 AM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Marissa Sanders	Roy Forman
Executive Director	Deputy Director
Commission for the	Commission for the
Deaf and Hard of Hearing	Deaf and Hard of Hearing
1900 Kanawha Blvd. E	1900 Kanawha Blvd. E
Building 6, Room 863	Building 6, Room 863
Charleston, WV 25305	Charleston, WV 25305
Marissa.M.Johnson@wv.gov	Roy.B.Forman@wv.gov
(304) 558-1031 phone	(304) 558-1675 phone
(304) 553-7384 video phone	(304) 205-0330 video ph
(304) 558-0937 FAX	(304) 558-0937 FAX

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: **FEES FOR QUALIFIED INTERPRETERS**

Type of Rule: X Legislative Interpretive Procedural

Agency: **Health and Human Resources**

Address: **One Davis Square**
Suite 303
Charleston, WV 25301

Phone Number: **304-558-1031** Email: **Marissa.M.Johnson@wv.gov**

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The use of sign language interpreters varies considerably among state agencies, as does the actual hourly rate each agency pays each interpreter. There is no central repository for gathering or maintaining this type of information for all state agencies, or even within individual state agencies. Therefore, it is impossible to determine the actual effects this measure will have on the costs and revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2011 Increase/Decrease (use "-")	2012 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	Unknown	Unknown	Unknown
Current Expenses	Unknown	Unknown	Unknown
Repairs and Alterations	Unknown	Unknown	Unknown
Equipment	Unknown	Unknown	Unknown
Other	Unknown	Unknown	Unknown
2. Estimated Total Revenues	Unknown	Unknown	Unknown

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Because the fee schedule listed in Legislative Rule 192-01 is a *minimum* hourly rate, each agency may pay individual interpreters as they see fit. Further, it is impossible to determine the number of hours contracted for interpreter services throughout state government. Therefore, the actual fiscal impact of this measure is unknown at this time.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

It is vital that the interpreter fee schedule be increased to reflect current costs of living and interpreter pay in surrounding states. Many agencies have experienced difficulty in hiring qualified interpreters because the rates paid, according to the fee schedule, are lower than many interpreters will accept. This has a detrimental effect on West Virginia's deaf and hard of hearing citizens and their equal access to employment, medical care, services, programs, and other activities.

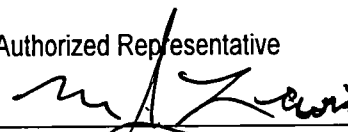
Date

6-30-2011

Agency

Department of Health and Human Resources

Authorized Representative


Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

**TITLE 192
LEGISLATIVE RULE
WEST VIRGINIA COMMISSION
FOR THE DEAF AND HARD OF HEARING**

**SERIES 1
FEES FOR QUALIFIED INTERPRETERS**

Statement of Circumstances Which Require This Rule

This rule was originally filed in 1997 and includes a fee schedule for qualified interpreters, pursuant to W. Va. Code §5-14A-9. The minimum hourly rates listed in the fee schedule were accurate in 1997, but are now significantly outdated and do not reflect the cost of living increases nor the advancements in the interpreting profession over the past fifteen years. In addition, the interpreter qualifications listed in the fee schedule have changed in recent years and need to be updated to reflect the qualifications which are currently available. Finally, with the filing of Legislative Rule 192-03 (Establishment of Required Qualifications and Ethical Standards for Interpreters and Translators) in 2009, Rule 192-01 needs to be updated to align the fee schedule with the new qualifications and standards. The proposed changes will ensure that interpreters are paid the "reasonable fee" to which they are entitled under W. Va. Code §5-14A-9. These changes will also make interpreting in West Virginia a more attractive profession, helping to address the severe shortage of qualified interpreters available to West Virginia's citizens who are deaf or hard of hearing.

**TITLE 192
LEGISLATIVE RULE
WEST VIRGINIA COMMISSION
FOR THE DEAF AND HARD OF HEARING**

**SERIES 1
FEES FOR QUALIFIED INTERPRETERS**

Brief Summary of Proposed Changes

The proposed changes to Legislative Rule 192-01 will align the fee schedule for qualified interpreters with current interpreter qualifications and new legislative rules (i.e., 192-03, Establishment of Required Qualifications and Ethical Standards for Interpreters and Transliterators, filed in 2009), and increase the minimum hourly rate to reflect today's market rates given cost of living increases and higher qualification standards in the interpreting profession.

The West Virginia Commission for the Deaf and Hard of Hearing (WVCDHH) proposes the following changes in summary:

- Adding new interpreter qualifications offered by the National Council on Interpreting, including: NIC, NIC Advanced, and NIC Master;
- Adding interpreter qualifications which will be offered by WVCDHH under Legislative Rule 192-01 including WVRIT Levels I through IV;
- Increasing the minimum hourly rate for all qualification levels, most by \$20 per hour.

The proposed changes to the fee schedule are as follows:

QUALIFIED INTERPRETER LEVEL	MINIMUM HOURLY RATE*
CSC, CT & CI, RSC, CDI-P, SC:L, SC:PA, OIC:C, NAD Level V, <u>NIC Master</u>	\$30.00 <u>\$50.00</u>
CI or CT, NAD Level IV, <u>NIC Advanced</u> , <u>WVRIT Level IV</u>	\$25.00 <u>\$45.00</u>
IC, TC, IC/TC, OIC:S/V, OIC:V/S, NAD Level III, <u>NIC</u> , <u>WVRIT Level III</u>	\$20.00 <u>\$40.00</u>
NAD Level II, <u>WVRIT Level II</u>	\$15.00 <u>\$25.00</u>
NAD Level I, <u>WVRIT Level I</u>	\$10.00 <u>\$20.00</u>
NON-CERTIFIED/NON-SCREENED	\$7.00 <u>\$15.00</u>
Assignments on weekends or between 10:00 PM - 7:00 AM	Hourly Rate plus \$3.00 <u>\$5.00</u> per <u>hour</u>
*If an interpreter works an assignment for more than one (1) hour without a team interpreter, then an extra \$5.00 <u>\$10.00</u> shall be added per hour.	

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**TITLE 192
LEGISLATIVE RULE
WEST VIRGINIA COMMISSION
FOR THE DEAF AND HARD OF HEARING**

OFFICE OF THE
SECRETARY OF STATE

**SERIES 1
FEES FOR QUALIFIED INTERPRETERS**

§192-1-1. General.

1.1. Scope. -- This legislative rule establishes fees for the services of qualified interpreters for a deaf person in certain legal proceedings.

1.2. Authority. -- W. Va. Code §5-14A-9.

1.3. Filing Date. -- May 30, 1997.

1.4. Effective Date. -- June 9, 1997.

1.5. Application. -- This rule applies to any court, department, board, commission, agency, licensing authority, political subdivision or municipality of the state which is required under the provisions of W. Va. Code §5-14a-1 et seq. to provide an interpreter in certain legal proceedings for an individual who is deaf.

1.6. Enforcement. -- This rule is enforced by the commissioner of the commission for the deaf and hard of hearing.

§192-1-2. Definitions.

2.1. CDI-P (Certified Deaf Interpreter-Provisional). -- A certification level assigned by the RID to individuals who are deaf or hard of hearing and who have demonstrated a minimum of one (1) year experience working as an interpreter, completion of at least eight (8) hours of training on the RID Code of Ethics, and eight (8) hours of training in general interpretation as it relates to the interpreter who is deaf or hard of hearing. Provisional certification is valid until one (1) year after the certified deaf interpreter examination is made available. Individuals with provisional certificates are required by the RID to take and pass the certified deaf interpreter examination in order to remain certified as a deaf interpreter. The certified deaf interpreter is designed to replace the RSC which is no longer offered. Individuals with a provisional certificate are recommended for a broad range of assignments where an interpreter who is deaf or hard of hearing would be beneficial.

2.2. CI (Certificate of Interpretation). -- A certification level assigned by the RID to individuals who are fully certified interpreters and have demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign. The interpreter's ability to transliterate is not considered in this certification. Individuals who have a CI are recommended for a broad range of interpreting assignments.

2.3. CI and CT (Certification of Interpretation and Certificate of Transliteration). -- A certification level assigned by the RID to individuals who have demonstrated competence in both interpretation and transliteration and have the same flexibility of job acceptance as holders of the CSC. Holders of the CI and CT can be used for a broad range of interpretation and transliteration assignments.

2.4. Commission. -- West Virginia commission for the deaf and hard of hearing.

2.5. Commissioner. -- The commissioner of the commission for the deaf and hard of hearing.

2.6. CSC (Comprehensive Skills Certificate). -- A certification level assigned by the RID to individuals who have demonstrated the ability to interpret between American Sign Language and spoken English and to transliterate between spoken English and an English-based sign language. The CI and CT are replacements for the CSC. The CSC examination was offered until 1995. Individuals who have a CSC can be used for a broad range of interpreting and transliterating assignments.

2.7. CT (Certificate of Transliteration). -- A certification level assigned by the RID to individuals who are fully certified in transliteration and have demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign. The transliterator's ability to interpret is not considered in this certification. Individuals who have a CT can be used for a broad range of transliteration assignments.

2.8. Deaf. -- The hearing of an individual is nonfunctional for the ordinary purposes of life.

2.9. IC (Interpretation Certificate). -- A partial certification level assigned by the RID to individuals who have demonstrated the ability to transliterate between American Sign Language and spoken English. Individuals who have an IC received scores on the CSC examination which prevented the awarding of full CSC certification or partial IC/TC certification. (The IC is no longer offered by the RID.)

2.10. IC/TC (Interpretation/Transliteration Certificate). -- A partial certification level assigned by the RID to individuals who have demonstrated ability to transliterate between English and a signed code for English, and the ability to interpret between American Sign Language and spoken English. Individuals who have an IC received scores on the CSC examination which prevented the awarding of full CSC certification. (The IC/TC is no longer offered by the RID.)

2.11. Level I (Novice). --The NAD certification level for a novice interpreter who has good and clear signing skills, but may not know the appropriate sign for everything needed. The interpreter might finger spell more than is necessary, might demonstrate considerable lag time, express deletions to keep up with interpreting and/or have difficulty in sign-to-voice situations.

2.12. Level II (Intermediate). -- The NAD certification level for an intermediate interpreter who has more skills in interpreting than a novice interpreter. In comparison to a Level I interpreter the Level II interpreter might demonstrate a larger sign vocabulary and use considerably less fingerspelling. The Level II interpreter might keep up a bit better, but might still lag behind farther than is comfortable, deleting more than is acceptable. The Level II interpreter might do well voice-to-sign, but clearly show difficulty in sign-to-voice. The interpreter demonstrates skills that would be adequate for some one-to-one interpreting situations.

2.13. Level III (Generalist). -- The NAD certification level for a generalist interpreter. --The Level III interpreter has a good sign vocabulary but might have some problems in sign-to-voice.

2.14. Level IV (Advanced). -- The NAD certification level for an advanced interpreter who does very well in voice-to-sign interpretation and demonstrates little difficulty in sign-to-voice interpretation. The Level IV interpreter might demonstrate oddities in sign style and choice of signs used but demonstrates the skill necessary for just about any interpreting situation.

2.15. Level V (Master). --The NAD certification level for a master interpreter who very rarely demonstrates difficulty in any interpreting situation.

2.16. NAD. -- National Association of the Deaf.

2.17. Non-Certified/Non-Screened. -- Interpreters who are learning sign language and not yet certified or licenced.

2.18. OIC:C (Oral Interpreting Certification: Comprehensive). -- A certification level assigned by the RID to individuals who demonstrate the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard of hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard of hearing. (The OIC:C is no longer offered by the RID.)

2.19. OIC:S/V (Oral Interpreting Certificate: Spoken to Visible). --A partial certification level assigned by the RID to individuals who have demonstrated the ability to transliterate a spoken message from a person who hears to a person who is deaf or hard of hearing. This individual received scores on the OIC:C examination which prevented the awarding of full OIC:C certification. The OIC:S/V is no longer offered.

2.20. OIC:V/S (Oral Interpreting Certificate: Visible to Spoken). -- A partial certification level assigned by the RID to individuals who have demonstrated the ability to understand the speech and silent mouth movements of a person who is deaf or hard of hearing and to repeat the message for a hearing person. An individual with an OIC:V/S certificate received scores on the OIC:C examination which prevented the awarding of full OIC:C certification. (The OIC:V/S is no longer offered by the RID.)

2.21. Qualified Interpreter. -- An interpreter certified by NAD or RID, or,, an interpreter whose qualifications are otherwise demonstrated and accepted by the commissioner as proving a level of interpretative skills suitable to the situation and the individual using the interpretive services.

2.22. RID. -- Registry of Interpreters for the Deaf.

2.23. RSC (Reverse Skills Certificate). -- A certification level assigned by the RID to individuals who have demonstrated the ability to interpret between American Sign Language and English-based sign language or transliterate between spoken English and a signed code for English. Individuals with an RSC certificate are deaf or hard of hearing and under interpretation/transliteration is rendered in American Sign Language, spoken English, a signed code for English or written English. Holders of the RSC are recommended for a broad range of interpreting assignments where the use of an interpreter who is deaf or hard of hearing would be beneficial. (The RID no longer offers an RSC and is developing standards for a replacement CDI certificate.)

2.24. SC:L (Specialist Certificate: Legal). -- A certification level assigned by the RID to individuals who have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. Generalist certification and documented training and experience are prerequisites for this certificate. Holders of an SC:L can be used for a broad range of assignments in a legal setting.

2.25. SC:PA (Specialist Certificate: Performing Arts). -- A certification level assigned by the RID to individuals who have demonstrated specialized knowledge in performing arts interpretation. Individuals with an SC:PA can be used in a broad range of assignments in the performing arts. (The SC:PA is no longer offered by the RID.)

2.26. TC (Transliteration Certificate). -- A partial certification level assigned by the RID to individuals

who have demonstrated the ability to transliterate between spoken English and a signed code for English. Individuals with a TC received scores on the CSC examination which prevented the awarding of full CSC certification or IC/TC certification. (The TC is no longer offered by the RID.)

§192-1-3. Fees Established.

3.1. Each interpreting assignment and interpreter's experience is different, and fees may vary. The appointing authority and interpreters are encouraged to agree on terms prior to the interpreting assignment.

3.2. The minimum hourly rates for various classes of interpreters are set forth in Table 192-1-A of this rule.

3.3. The total fee shall be determined based on the following:

3.3.1. Interpreters shall be paid for a minimum of two (2) hours regardless of the actual time required for the assignment;

3.3.2. Time spent over two (2) hours shall be paid in quarter ($\frac{1}{4}$) hour increments, rounded to the nearest fifteen (15) minutes;

3.3.3. Travel time shall be included as part of the minimum two (2) hours, but shall be counted separately if the total time required for the assignment exceeds two (2) hours;

3.3.4. The fee for an interpreter shall include reimbursement for reasonable and necessary expenses incurred, such as mileage, lodging and meals according to the usual and customary standards of the appointing agency;

3.3.5. Interpreters shall provide the appointing authority with an advance estimate of travel time and other anticipated expenditures;

3.3.6. The appointing authority shall provide an estimate of the time required for the assignment and shall specify a methodology for determining the additional time required by the assignment;

3.3.7. If the appointing authority cancels the assignment at least twenty-four (24) hours prior to the scheduled time, and the estimated time for the assignment is no more than one (1) day, then the appointing authority is not required to pay a fee;

3.3.8. If the appointing authority cancels the assignment less than twenty-four (24) hours prior to the scheduled time, and the estimated time for the assignment is no more than one (1) day, then the appointing authority shall pay the interpreter fifty percent (50%) of the anticipated total fee;

3.3.9. If the appointing authority cancels the assignment on the day of the assignment and the estimated time for the assignment is no more than one (1) day, then the appointing authority shall pay the interpreter one hundred percent (100%) of the anticipated total fee;

3.3.10. If the appointing authority cancels the assignment at least forty-eight (48) hours prior to the scheduled starting time of the assignment and the estimated time for the assignment is for more than one (1) day, then the appointing authority is not required to pay the interpreter;

3.3.11. If the appointing authority cancels the assignment at least twenty-four to forty-eight (24-48)

hours prior to the scheduled starting time of the assignment and the estimated time for the assignment is for more than one (1) day, then the appointing authority shall pay the interpreter fifty percent (50%) of the anticipated total fee;

3.3.12. If the appointing authority cancels the assignment less than twenty-four (24) hours prior to the scheduled starting time of the assignment, and the estimated time for the assignment is for more than one (1) day, then the appointing authority shall pay the interpreter one hundred percent (100%) of the anticipated total fee;

3.3.13. If the client does not appear ("no show"), and the interpreting assignment is scheduled for two (2) hours or less, Section 3.3.1 of this rule applies;

3.3.14. If the client does not appear ("no show"), and the interpreting assignment is scheduled for more than two (2) hours, Sections 3.3.7, 3.3.8, 3.3.9, 3.3.10, 3.3.11 and 3.3.12 of this rule apply;

3.3.15. For day-long conferences and long meetings, the appointing authority shall have more than one (1) interpreter available and shall alternate interpreters every twenty to thirty (20-30) minutes in order to promote effective interpretation and protection of interpreters from the development of physical problems such as carpal tunnel syndrome.- The appointing authority shall pay each interpreter for the entire time required by the assignment;

3.3.16. Interpreters with an NAD of Level III, IV, or V certificate or an RID CSC or CI/CT certificate shall be used in legal and mental health settings due to the intense nature of the assignment, and shall be paid accordingly;

3.3.17. Interpreters with an RID RSC or CDI-P certificate shall be used in legal and mental health settings when the deaf consumer does not demonstrate fluency in American Sign Language or a signed system; and

3.3.18. An educational interpreter shall receive two (2) weeks of severance pay if the student for whom he or she interprets drops out, unless the interpreter is reassigned to another student.

§192-1-4. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule who desire a contested case hearing to determine any rights, duties, interests, or privileges, shall do so in a manner prescribed in W. Va. Division of Health Procedural Rules, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64 CSR 1.

Table 192-1-A. Minimum Fees.

QUALIFIED INTERPRETER LEVEL	MINIMUM HOURLY RATE*
CSC, CT & CI, RSC, CDI-P, SC:L, SC:PA, OIC:C, NAD Level V, <u>NIC Master</u>	\$30.00 <u>\$50.00</u>
CI or CT, NAD Level IV, <u>NIC Advanced</u> , <u>WVRIT Level IV</u>	\$25.00 <u>\$45.00</u>
IC, TC, IC/TC, OIC:S/V, OIC:V/S, NAD Level III, <u>NIC</u> , <u>WVRIT Level III</u>	\$20.00 <u>\$40.00</u>
NAD Level II, <u>WVRIT Level II</u>	\$15.00 <u>\$25.00</u>
NAD Level I, <u>WVRIT Level I</u>	\$10.00 <u>\$20.00</u>
NON-CERTIFIED/NON-SCREENED	\$ 7.00 <u>\$15.00</u>
Assignments on weekends or between 10:00 PM - 7:00 AM	Hourly Rate plus \$3.00 <u>\$5.00</u> per <u>hour</u>
*If an interpreter works an assignment for more than one (1) hour without a team interpreter, then an extra \$5.00 <u>\$10.00</u> shall be added per hour.	