



Oregon

John A. Kitzhaber, Governor

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DATE: January 14, 2011

TO: Hearing Attendees and Commenters --
Oregon Administrative Rules chapter 333,
division 2 – “Registry Enrollment, Qualification and
Certification of Health Care Interpreters (HCI)

FROM: Jana Fussell, Hearing Officer

cc: David Cardona, Coordinator
Health Care Interpreter Program
Office of Multicultural Health and Services

SUBJECT: Presiding Hearing Officer’s Report on Rulemaking Hearing and Public
Comment Period

Hearing Officer Report

Date of Hearing: December 20, 2010

Purpose of Hearing: To receive testimony regarding the Oregon Health Authority’s proposed amendment and repeal of rules in OAR chapter 333, division 2 related to registry enrollment, qualification and certification of health care interpreters

Hearing Officer: Jana Fussell

Testimony Received: No oral testimony was received at the hearing.

Other Comments: One individual and one company submitted written comments to the Division within the period allotted for public comment. These comments are briefly summarized as follows:

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Maria Michalczyk, RN, MA

Ms. Michalczyk expressed concern about delays in implementation of the health care interpreter law and subsequent "administrative rework". She wrote that: "I hope this is the last time that we continue to work on rules and laws, it truly feels like we are stalling rather than believing that our limited English speaking patients deserve professional and competent interpreters." Ms. Michalczyk stated that it is not clear "what the recertification period is and is this for Qualified and/or Certified?" She also opined that it is not clear how and when Oregon will accept national certification and stated that she supports recognizing those who have taken a national certification and granting them state certification. While happy to see fees dropped, Ms. Michalczyk questioned how the process will be self sufficient, which she opined was the intent of the original law.

Ms. Michalczyk's written comments are attached to this report as "Exhibit 1."

Agency Response:

The Authority appreciates Ms. Maria Michalczyk's concerns and fully understands her frustration on delaying the implementation of the Health Care Interpreter (HCI) law. However, in the opinion of the Oregon Health Authority (the Authority) and, more importantly in the opinion of the Governor-appointed Oregon Council on Health Care Interpreters, the Oregon Administrative Rules 333-002 adopted in 2006 were dated and needed to be reviewed, amended or repealed in order for the Authority to fully implement the HCI Law. For example, the old rules required the Authority to create their own testing instruments for language proficiency in English and in six foreign languages. In addition, the rules also required the Authority to create a certification test in six different languages. After completing a fiscal impact analysis of this test development process, and a national scan to identify entities that may have created these tests in the period between the time the rules were adopted, the Authority concluded that it would save the State of Oregon nearly \$2 million and take significantly less time to amend the rules to allow the Authority to contract with vendors already conducting foreign language qualification and certification testing. A Language Testing Qualification Task Force carefully reviewed vendors using qualification scores for each vendor, and the Task Force ultimately recommended the ACTFL testing services and Language Line University as approved language proficiency testing centers. The Authority has contracted with this testing center and they are ready to begin testing once the new rules are operational, which we anticipate happening in February 2011.

In addition, the Authority identified the National Board of Certification for Medical Interpreters as the only national organization at this time that had produced a certification test in Spanish that had been tested, piloted, and validated under strict quality standards and controls and has been operational and available to the public for one year. Thus, after a careful consideration, the Authority decided to grant them funds

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on 12/21/2010 to create five additional tests in Cantonese, Korean, Mandarin, Vietnamese and Russian. The Authority will recognize those HCIs who have National Certification credentials, as long as they meet OAR standards and they pay their state registration fees. Currently, the Authority only recognizes the National Board of Certification for Medical Interpreters' certification test. The Authority reserves the right to approve additional HCI Certification tests as they become available.

Once the Authority adopts the new rules it will be able to move forward without delays. The Authority, however, reserves the right to revise the Oregon Administrative Rules or the Oregon Revised Statute at any time in the future.

In regard to how often the interpreter would need to qualify it is clearly stated in the administrative rules that the qualification step (language proficiency testing) for the six languages required by law shall be valid for 2 years and they are non-renewable. They must move forward to Certification. Qualification Testing, however, shall be renewed every 2 years for languages of limited diffusion. Certification is valid for 3 years.

Fee reductions were necessary for several reasons:

1. The Health Care Interpreter shall pay the Authority a nominal fee for each of the steps toward certification. The HCI also shall pay fees directly to vendors for language proficiency testing and for certification. The Authority will accept their results and will issue a letter of qualification or a letter of certification to the HCI.
2. Under the previous rules, the HCI would have paid the authority \$300 for the application fees for qualification and \$300 for the application fees for certification. In addition, the HCI would have paid to the approved testing center their fees which are an additional \$250 for qualification testing and \$250 for certification testing. The Authority believes that in the scenario described above, the HCI may have suffered a great financial impact since the majority of HCI are self-employed and their business in general is very slow at this time. Therefore, the Authority decided to lower the application fees to minimize the fiscal impact on the livelihood of the health care interpreters.
3. The Authority is researching the utilization of the Medicare Reimbursement Program to offset costs. In addition the Authority will receive modest registration fees from HCI.

Telelanguage Inc.

The author of this testimony reviewed Telelanguage's experience establishing a baseline of skills for health care interpreters that are addressed in training courses and assessments and questioned why, in these economically difficult times, the state would "duplicate what was already done by Telelanguage?" It is stated that: "We also have developed training, testing and certification not just for the 8 languages that the State is proposing to develop for \$500000.00 but for all languages that we provide for the medical facilities in the State of Oregon which comes to over 170." The author opined that many providers in Oregon were not aware of the proposed rule changes and recommended "reconsideration of this policy and having another hearing involving all parties."

Telelanguage Inc.'s written comments are attached to this report as "Exhibit 2."

Agency Response:

The Authority appreciates Telelanguage Inc., for their commitment to test and to train their own interpreters. However, like Telelanguage Inc., there are many other interpreting services, companies, hospitals, clinics, counties, health care providers, etc., in the State of Oregon that had decided to create testing instruments and training programs without using a common denominator of standards.

Oregon Revised Statutes 409.615 through 409.625 was approved in 2001 to create standards of practice for the Healthcare Interpreters Professionals that govern the profession. The Oregon Council on Health Care Interpreters, the advisory body for the Authority, has provided their recommendations to the Oregon Administrative Rules 333-002, which are being reviewed at this time so the Authority can meet national standards of practice and be able to fully implement the HCI law.

The work that the Oregon Health Authority and the Office of Multicultural Health and Services has been doing during the last ten years in regard to the HCI law has been made available to the public at all times by the Office of Multicultural Health and Services and the Health Care Interpreter Certification Program in the following ways: on their webpage, in their bulletins boards, and in their multiple meetings with stakeholders and presentation made to the public by members of the staff.

In addition to notices regarding the proposed rulemaking and information on the public hearing that were posted on the web, the Office of Multicultural Health and Services weekly newsletter sent the announcement to hundreds of stakeholders throughout the State of Oregon, including local media, the Oregon Medical Association, The Hispanic

Nurses Association, Language Line Services, CTS Language Link, and Health Care Interpreters, amongst many others. The Oregon Health Authority conducted due diligence to inform the public about the public hearing on the amendment of OARs 333-002. Thus, in an effort to avoid any further delays on the implementation of the health care interpreter's law, the Authority respectfully declines the request for postponement of the implementation of the HCI law and to hold a separate public hearing for this matter.

Brittany A SANDE - Notice of Permanent Rulemaking -OAR chapter 333, division 2-"Registry Enrollment, Qualification and Certification of Health Care Interpreters (HCI)"

From: "Maria Michalczyk" <cmichalc@pcc.edu>
To: <brittany.a.sande@state.or.us>
Date: 12/19/2010 6:00 PM
Subject: Notice of Permanent Rulemaking -OAR chapter 333, division 2-"Registry Enrollment, Qualification and Certification of Health Care Interpreters (HCI)"

OHA, Public Health Division
Brittany Sande, Administrative Rules Coordinator
800 NE Oregon Street, Suite 930
Portland, Oregon 97232

Dear Ms. Sande,

I am writing to respond to the revision of the OAR Chapter 333 Division 2, Registry Enrollment, Qualification and Certification of Health Care Interpreters. Due to my work schedule I am not able to attend the hearing but below are some thoughts regarding the revised OARs.

#1. I would hope that the state can make sure that the actual certification and qualification of interpreters actually happens without just one more modification of administrative rules. As you might know this law was passed in 2001 and has yet to be implemented and as such requiring more time and expense to the state to revise administrative rules. Had the law been implemented in a proper amount of time we would not be going through even more administrative rework. I urge all state leaders to get this law implemented.

#2. It is not clear to me what the recertification period is and is this for Qualified and/or Certified? It appears to be three years but how it is imbedded into to the OARs it is not exactly clearly spelled out.

#3. It is not clear to me how and when Oregon will accept national certification. Is it the expectation that those who have taken a national certification have to retake the Oregon certification? I think this needs to be clear. My personal opinion is that Oregon needs to recognize those who have taken a national certification. It is not the fault of those interpreters who have waited at least 10 years for implementation of a law here in Oregon and I would suggest Oregon respect those who have take a national cortication and grant them state certification.

#4. I am happy to see the fees being dropped but I worry how this process will be self sufficient, as was the intent of the original law. Senator Gordly had specifically placed language in the law to ensure that this process would be self sufficient and not an additional drain on state funding.

I hope this is the last time that we continue to work on rules and laws, it truly feels like we are stalling rather than believing that our limited English speaking patients deserve professional and competent interpreters. Many patients and providers have endured poor interpreters, leading to incorrect diagnosis and treatment. Needless to say this is a strain on the patients but also to our communities as we all try to grapple with the mistakes made by inappropriate interpreting and ultimately spending healthcare dollars that we simply do not have.

Thank you and I am hopeful this will mean actual implementation of the law that was conceived in 1999.

Maria Michalczyk, RN, MA

Subject: Notice of Permanent Rulemaking -OAR chapter 333, division 2 -"Registry Enrollment, Qualification and Certification of Health Care Interpreters (HCI)"

The Oregon Health Authority, Public Health Division is proposing to permanently amend and repeal Oregon Administrative Rules in chapter 333, division 2 related to registry enrollment, qualification and certification of health care interpreters. These rules need to be adopted in order for the Authority to implement the rules to meet National

Standards of Practice of Health Care Interpreters and to enable the Authority to contract with testing centers in order for the state of Oregon to be in compliance with the **qualification** portion of the rule (testing language proficiency of interpreters) and to work towards contracting with a national testing center(s) to implement the **certification** portion of the rule.

You are being invited to review the proposed rules and to comment on them. **If you wish to present oral testimony, a public hearing will be held in Portland, Oregon at 800 NE Oregon St, Room 1D, on December 20, 2010 at 11:00 a.m. (see hearing notice). You may also file written comments before 5:00 p.m. on December 22, 2010** to the Public Health Division Rules Coordinator at the following address:

Wednesday, December 22, 2010

Telelanguage Inc.
514 SW 6th Ave 4th Floor
Portland, OR 97204

Oregon Health Authority
Public Health Division
800 NE Oregon St Suite 930
Portland, OR 97232

To Whom It May Concern:

Telelanguage has established a baseline of skills for health care interpreters that are addressed in training courses. The assessments during the training and post-training are designed to measure these skills with an oral and a written skills assessment. These assessments have been reviewed by subject matter experts (“content experts”) on health care interpretation and assessment to ensure that the skills assessed represent the specific skills necessary to perform health care interpretation.

Since companies like Telelanguage have been internally certifying interpreters for over two decades (Telelanguage) we have invested tremendous amount of resources, first hand knowledge and time into creating screening, evaluation, training, testing and continuing education for all interpreters working for our company. We have utilized the best educators and professors in the language industry to create interpreter training and testing materials.

Why would the state duplicate what was already done by Telelanguage?
Especially during time times of economic downturn and the state has no extra money to spend.

The interpreter certification is very important that's why we as a company have been doing it since 1991 and have not had a single incident that is related to our interpreters training and education.

We also have developed training, testing and certification not just for the 8 languages that the State is proposing to develop for \$500000.00 but for all languages that we provide for the medical facilities in the State of Oregon which comes to over 170.

We have been in consultation with many of our medical providers in Oregon about the cost for the language services that still big concern For the interpreters and of course the cost will be. Many providers in Oregon were not aware of the new amendment and they feel not involved in process. We highly recommend reconsideration of this policy and having another hearing involving all parties.

Teledanguage Inc.
514 SW 6th Ave 4th Floor
Portland, OR 97204
503-535-2175