

**Report
Of the Commissioner of the Department of Professional and Financial
Regulation**

**To the Joint Standing Committee on Business, Research and Economic
Development**

Sunrise Review of L.D. 909

***“Resolve, Directing the Department of Professional and Financial
Regulation to Conduct a Sunrise Review for the Regulation of Spoken
Language Interpreters”***

January 15, 2004

***John Elias Baldacci
Governor***

***Robert E. Murray, Jr.
Commissioner***

I. Introduction

The State of Maine does not require spoken language interpreters to be licensed. LD 909 “*Resolve, Directing the Department of Professional and Financial Regulation to Conduct a Sunrise Review for the Regulation of Spoken Language Interpreters*” was the final product of a bill that originally provided for the creation of a legislative study group to assess the feasibility of creating a licensure program for the state of Maine. Because supporters of the original bill agreed that their ultimate goal was a regulatory program where none currently exists, the Legislature directed this Department conduct a sunrise review pursuant to 5 MRSA § 12015(3) and 32 MRSA § 60-K.

II. Sunrise Review

Pursuant to 5 MRSA § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated, or that proposes to expand existing regulation. Sunrise review is a systematic review of proposed new or expanded regulation undertaken to ensure that the purpose of the regulation is to protect the health, safety, and welfare of the public.

The sunrise review process consists of applying the evaluation criteria established by statute, 32 MRSA § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated, or whether current regulation should be expanded.

Under the law, the sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The Committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant’s answers to the evaluation criteria and report those findings back to the Committee; or
3. The Committee may request that the Commissioner establish a technical review committee to assess the applicant’s answers and report its finding to the Commissioner.

Copies of 5 MRSA § 12015(3) and a summary of the Sunrise Review process are included in Appendix A.

III. Charge from Legislature

LD 909 was intended by its legislative sponsors to focus attention on the lack of organized interpreter services for Maine citizens who speak little or no English. The concept of regulation of spoken language interpreters was thought to be one way to increase the quality and quantity of spoken language interpreters in Maine. The bill does not propose or recommend any particular method of regulation, but simply raises the question of whether a regulatory program of some kind is feasible now or in the future.

LD 909 was signed by the Governor on May 27, 2003 and became effective on September 13, 2003. A copy of the enacted bill is attached as Appendix B. The resolve directs that the Commissioner of the Department of Professional and Financial Regulation conduct a sunrise review to determine whether regulation of spoken language interpreters is warranted.

IV. Independent Assessment by Commissioner

The requirements for an independent assessment by the Commissioner are set forth in 32 MRSA § 60-K. The Commissioner is required to apply the specified evaluation criteria set forth in 32 MRSA § 60-J to all answers and information submitted to, or collected by, the Commissioner.¹ After conducting the independent assessment, the Commissioner must submit a report to the Committee setting forth recommendations, including any draft legislation necessary to implement the report's recommendations.

The Commissioner's report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment as to whether final answers to the evaluation criteria are sufficient to support some form of regulation. In addition, if there is sufficient justification for some form of regulation, the report must recommend an agency of State government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the report must reflect the least restrictive method of regulation consistent with the public interest.

V. Evaluation Criteria

As part of the independent assessment process, the Commissioner must review the responses to the evaluation criteria submitted by the applicant group and interested parties. In this instance, there is no discernable "applicant group" although a few interested parties testified in support of the bill. In light of these circumstances, the Commissioner solicited and received information from interest parties, including Catholic Charities Maine (CCM), Maine Department of Education (MDOE), Maine Hospital Association (MHA), and the Administrative Office of the Courts (AOC).

¹ In conjunction with analysis of written comments, the Department publicized and held a public meeting of interested parties at the Gardiner Annex on September 15, 2003 to allow attendees to supplement their written submissions and provide new information. The written submissions of interested parties and a list of participants at the public meeting are attached as Appendix C.

The Department's analysis is structured utilizing the evaluation criteria set forth in 32 MRS § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in the statute;
2. A summary of the responses received from the applicant group and interested parties; and
3. The Department's independent assessment of the response to the evaluation criteria.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Responses:

The responses of Catholic Charities Maine, the Administrative Office of the Courts, and Maine Medical Center offered anecdotal information on the approximate number of individuals used by the respective organizations in providing language interpretation services to clients. Catholic Charities has about 55 on-call interpreters, the Administrative Office of the Courts responded that it used 42 interpreters during Fiscal Year 2002, and Maine Medical Center responded that it uses about 65 community interpreters. No information was offered to show whether any overlap exists between the three groups of interpreters; however, Catholic Charities estimated that there may be 300 individuals providing language interpretation on an occasional or part-time basis. A representative of the Portland Public School ("PPS") system indicated the school system is required by federal law to provide language interpretation services to groups of 50 students who speak the same language. PPS uses parents and community volunteers to meet the needs of students.

Department assessment:

Given that the interested parties have not proposed a specific regulatory program, this assessment will focus on general topics relevant to whether the information presented by the interested parties justifies the creation of a licensing program for a profession that is not presently regulated by the State or whether additional information is needed before such a determination can be made.

Information provided by commenter indicates that between 57 and 150 different languages and dialects are spoken in Maine today. Little information was offered to show locations of concentrations of non-English speakers, although Portland and

Lewiston are anecdotally mentioned as centers for some percentage of non-English speaking individuals. The only other information offered was an estimate that roughly 300 individuals may be providing some level of spoken language interpreting service.

Information submitted by legal and medical service providers indicates that there is a small concentration of interpreters working in conjunction with Maine Medical Center and the Administrative Office of the Courts primarily in the greater Portland area.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Responses:

The interested parties agree that an individual must have specialized language and communication skills in order to provide high quality spoken language interpretation services. Catholic Charities Maine asserts that such interpreters must be fluent in English and at least one other language; be knowledgeable in the role of an interpreter and the Interpreter Code of Ethics, and trained in modes of interpretation including consecutive, simultaneous, and sight translation, as well as knowledge of specialized terminology including legal and medical terminology in two languages.

Department assessment:

There is little doubt that a spoken language interpreter must speak English and another language. It is also evident that spoken language interpreters should have some specialized training in the ethical standards that require an interpreter to remain neutral in the manner in which critical information is communicated. Interpreters must also understand the importance of confidentiality rules that apply to their communications. The Department did not receive information regarding the existence of training programs for spoken language interpreters although Catholic Charities Maine indicated that it has developed an in-house training component for its interpreters.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.

Responses:

The Chair of the National Limited English Proficiency (LEP) Advocacy Task Force submitted a written comment stating concern that Maine providers of critical services in hospitals, courts, police stations, housing authorities and schools “commonly fail to provide qualified language assistance to limited English proficient (LEP) individuals legally entitled to equal access and meaningful participation in such programs and activities. This lack of trained interpreters may place LEP individuals at risk in life-threatening medical situations.

The Director of the Administrative Office of the Courts has indicated his office concurs that an individual’s lack of understanding of his or her legal rights in legal proceedings and medical consequences in medical settings without the assistance of a spoken language interpreter is clearly a problem but did not present information that would indicate that potential harm to the public would increase in the absence of a regulatory program for spoken language interpreters. He did state that he would be more concerned about inadequate skill of a spoken language interpreter rather than about the overall number of such interpreters.

The National LEP Advocacy Task Force representative opines that generally hospitals and school systems act to provide spoken language interpreters only in anticipation of the filing of a complaint by the Federal Government. Although the Maine Department of Education takes a neutral position on whether regulation is necessary, it agrees that schools and hospitals may be pushed to meet the needs of its students and patients by threatened legal action on federal grounds.

An attorney working in the judicial setting related some of her experiences working with individuals with low English proficiency. In one case, she served as a guardian ad litem for two children in a custody case brought involving the children’s father who did not speak English. Rather than use one of the children to interpret for the father, an approach that she deemed inappropriate, she located an adult relative to interpret. The commenter also represented the plaintiffs in a lawsuit brought against Maine Medical Center for failure to provide adequate interpreting services in violation of Federal law.

In addition, situations of failure to provide adequate spoken language interpretation were described anecdotally by advocates working with the Hispanic community in Maine involving local police departments, Maine Medical Center, the Department of Human Services, and the Portland Social Security Office.

The Maine Hospital Association opposes regulation of spoken language interpreters because there are currently no nationally accepted minimum standards applicable to this group of individuals and no generally applicable test of competency.

Department Assessment:

Sunrise review is typically triggered when an organized group of unregulated individuals petitions the Legislature for a new licensing program. Under those circumstances, evidence of consumer complaints against individuals within the unlicensed profession

that relate to the quality of service to the public is an important factor to be taken into account when the Legislature evaluates the public need for a new licensure program. In the context of sunrise review to evaluate the public need for regulation of spoken language interpreters, no information about complaints filed against individual interpreters for incompetent or unskilled spoken language interpreting services was received.

The Department did receive information about lawsuits filed by LEP advocates and the Federal Office of Civil Rights against various agencies and institutions in Maine, including Maine Medical Center, the City of Portland, and the City of Lewiston, for failure to make required interpretation services available for their non-English speaking patients. However, these lawsuits focused on the quantity of services provided and were filed against the institution legally responsible for providing access to interpreter services, rather than on individual interpreters for the quality of their services.

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Responses:

The AOC commented that many interpreters receive training and practice the use of languages in which they interpret to maintain proficiency.

MDOE noted that Maine Medical Center and Catholic Charities Maine maintain voluntary training programs for individuals they call on for interpreting services.

MHA noted that there had been an attempt to organize a Maine interpreter and translator association to develop standards of practice, but that effort was not successful and no organized professional association exists in Maine today.

Department Assessment:

Information submitted by interested parties indicates that although there are several advocacy groups working on behalf of non-English speaking individuals in Maine and across the country, there is no organized professional association of interpreters practicing spoken language interpretation that would be effective in speaking on behalf of the profession itself.

It is also evident that the force of Federal law in this area has been instrumental in causing hospitals and public school systems in the state to respond to the specific needs of LEP individuals in that particular locality.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Responses:

Although DOE and MMC indicated initially that they neither support nor oppose regulation of spoken language, both organizations state that to the extent regulation of any kind would eliminate unskilled interpreters, the public would benefit.

AOC notes that if regulation results in additional training and testing, the costs associated with those activities would be passed on to those who pay for the services through higher rates.

MHA asserts that licensing fees would increase costs to the consumer and potentially decrease the supply of interpreters. In addition, if regulation were to be imposed, the ATT Language Line, a national telecommunications service that supplies services of spoken language interpreters to many hospitals as well as organizations including Catholic Charities Maine and others, would be lost as a resource if it were required to obtain a Maine license.

CCM notes that unregulated spoken language interpreters can cause harm to the public and increase state health expenditures because recipients of pool interpreting services may not understand, and thus may not comply with medical instructions.

Department Assessment:

It is difficult to draw inferences from available information. Although non-English speaking individuals living in Maine require assistance from interpreters when they interface with school, court and medical personnel, it is also apparent that provisions have been made to make that assistance available. There is little doubt; however, that state regulation of this category of interpreter would result in additional cost to the licensee as well as higher costs to agencies and organizations that would be required to provide interpreter services using only interpreters licensed by the state.

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Responses:

CCM states that regulation phased in over time would allow interpreters ample time to prepare to meet a state standard.

MHA and AOC note that any regulation would diminish the provider pool because not all interpreters currently providing service would qualify.

Department Assessment:

In general, imposing licensing requirements typically results in a decrease in licensee numbers. The result may decrease the availability of services to the public in the area of spoken language interpretation. A decrease in the availability of services caused by imposing license requirements on the target group, in the absence of compelling documented safety issues and concerns, does not result in a net benefit to the public.

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

None submitted on this criterion.

Department Assessment:

The Department notes that Title VI of the 1964 Civil Rights Act and other related federal laws have been invoked successfully in Maine to cause effective programs of interpreter services to be developed to meet the needs of critical populations that require special services in medical and legal settings. Similarly, the 1964 Civil Rights Act has been used in law suits to cause public school systems to address the special needs of students in those systems who do not speak English.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Responses:

None were submitted on this criterion.

Department Assessment:

LD 909 as originally drafted would have created a study group to consider the feasibility of creating a regulatory program for spoken language interpreters. The lack of responses

to this criterion is understandable given the change in focus from the original bill to the enacted bill that requires this sunrise review. It is premature to discuss the various methods of regulation that might be appropriate in this case.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Responses:

CCM submitted information that Washington State's Department of Health and Social Services Language Testing and Certification Program provides bilingual certification and testing services to ensure quality services to LEP populations in that state.

Department Assessment:

The Department is not aware of any state that licenses and regulates the activity of spoken language interpreters. The Certification Program administered by the State of Washington requires employees of the Department of Human and Social Services in bilingual positions serving LEP constituents to obtain certification. The program is not a state licensing program in the sense that it would require all spoken language interpreters in the state to become licensed.

There are, however, subject matter based voluntary certification programs for spoken language interpreters. For example, the Consortium for State Court Interpreter Certification is a program administered by the National Center for State Courts in Virginia on behalf of the state courts systems in the United States. It was created as a way to develop court interpreter proficiency tests, make them available to member states, and regulate the use of the tests. It is a voluntary state membership organization that serves as a clearinghouse of testing information but is focused only on spoken language interpretation in judicial settings.² Maine is not a member of the Consortium and the Administrative Office of the Courts does not administer a mandatory or voluntary training and certification program for the spoken language interpreters it employs in judicial proceedings.

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this State to implement regulation of the profession or occupation.

Responses:

None were submitted on this criterion.

² Information from the "Frequently Asked Questions" section of the website of the National Center for State Courts.

Department Assessment:

The Department is aware of no previous efforts by this state to implement regulation of spoken language interpreters.

Evaluation Criterion #11: Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

Responses:

None submitted on this criterion.

Evaluation Criterion #12: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

MHA noted that LD 909 does not propose standards for regulation; further, it notes that there are no generally accepted standards of minimal competence at present for this group of individuals.

In its response, CCM included a list of voluntary certification programs for Federal Court Interpreters, State Court interpreters, and medical interpreting standards developed by the Massachusetts Medical Interpreters Association & Education Development Center.

Department Assessment:

The Department is not aware of the existence of a nationally accepted set of standards of minimum competence for spoken language interpreters.

Evaluation Criterion #13: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Responses:

DOE responded that “agencies and institutions would ‘pay as they go’.”

Department assessment:

LD 909 does not propose a structured licensing program; therefore it is premature to address this evaluation criterion. For discussion purposes, the Department notes that licensing programs within the Department of Professional and Financial Regulation are

dedicated revenue agencies, and must be self-supporting through license fees. All costs associated with a new licensing program would have to be paid by the licensees of the program and those costs would be reflected in licensing fees. It is apparent from the responses submitted by interested parties that very few, if any, spoken language interpreters are working as full-time interpreters. Typically, they are in “on-call” status for a number of service providers and may not work on a consistent or regular basis. For these individuals, a license fee might be higher than actual compensation earned.

VI. Recommendations and Conclusions of the Commissioner

State sunrise review law requires the Commissioner to engage in a two-step evaluation process guided by 13 evaluation criteria. First, the Commissioner must evaluate the information provided by the applicant group in support of its proposal to regulate or expand regulation of a profession. Second, the Commissioner must recommend whether the Committee should take action on a proposal. If the Commissioner’s recommendation supports regulation or expansion, the report must include any legislation required to implement that recommendation. The recommendation must reflect the least restrictive method of regulation consistent with the public interest.

The purpose of the sunrise process with respect to licensing of spoken language interpreters is to assess the public need for new regulation and the consequences to the public and the regulated community of a new regulatory program.

The following factors have been considered in formulating the Department’s recommendations:

- 1 The absence of an organized professional association for spoken language interpreters that could act among other things, as a proponent of developing a set of state standards of competency and as a resource for generating critical information for legislative consideration;
- 2 The absence of information with respect to the number of individuals who would be required to obtain a license to perform interpreting services as well as an absence of information with respect to the estimated number of non-English speaking individuals in Maine, and a breakdown of the number of individuals for each foreign language;
- 3 The absence of documented evidence of complaints that have been registered against individual spoken language interpreters based on the quality of their services;
- 4 The absence of any nationally accepted standard of minimum competency for spoken language interpreters;
- 5 Information demonstrating that in the areas of greatest need and greatest potential for harm to LEP individuals without spoken language interpretation services, including

medical and legal settings, spoken language interpreting services are already being provided; and

6 Information from interested parties showing current heavy reliance on a national telecommunications service, the AT&T Language Line, as a primary source of spoken language interpreting services.

Based on these factors, the Department concludes that regulation of spoken language interpreters cannot be recommended at this time. Although there is no intent to diminish the negative experiences of LEP individuals who may not be able to access interpretation services, or are provided with inadequate interpreting services, they are protected by Title VI of the 1964 Civil Rights Act and related Federal laws that require educational, medical and legal institutions receiving Federal funding to provide these services to the non-English speaking public. The Federal structure provides a safety net that places responsibility on these institutions to meet the needs of its clients and patients in critical and potentially life-threatening situations. This is not to imply that State governments bear no responsibility for providing these interpreting services. However, Maine is not alone in not establishing a licensing program for spoken language interpreters. The Department could find no state that currently requires licensure of spoken language interpreters.

During the public meeting of interested parties on September 30, 2003, it was evident that the represented institutions, including Maine Medical Center, Maine Hospital Association, Catholic Charities Maine and the Administrator of State Courts, rely heavily on the AT&T Language Line as a means of providing spoken language interpreting services to their clients. Maine Medical Center's representative indicated that in the last year, it has documented 11,000 "encounters" in which a patient requires spoken language interpretation. MMC used the ATT Language Line for 70% of those encounters. Similarly, Mohan's representative indicated that Maine hospitals, particularly in rural areas make heavy use of the ATT service in those situations in which no other resource may be readily available. Regulation of spoken language interpreters would require that all individuals providing spoken language interpreting services be licensed in Maine. It is highly unlikely that this service would qualify for licensure in Maine and its further use in this regard would be precluded by law.

Imposing licensing requirements on spoken language interpreters in Maine would diminish protection of individuals requiring this service rather than enhance public safety, particularly in light of the heavy reliance on interpreters located out of state and feedback from user agencies that the service provided by the ATT Language Line would not be replaceable with Maine based interpreters.

Under normal circumstances, the proposal to license an unregulated profession is the final step in a series of steps in the development of a defined profession. Regulation is typically preceded by factors such as the evolution of an active state or national professional association representing practitioners that has formalized qualifications,

training and education requirements, and has developed the framework of accepted standards of practice and conduct.

In this case, the developments in the profession itself that would normally precede regulation have not yet occurred. Information submitted in response to the Department's request for public input, as discussed in prior sections of this report, indicates that the number of active interpreters is not known. Nor is the number of individuals requiring spoken language interpreting services known. Imposing licensure requirements or any other form of regulation on spoken language interpreters would not result in an improvement in the quality of interpreter services, but would almost certainly diminish the quantity of active interpreters to the detriment of the public being served in the absence of regulation.