



**Final Report  
of the Commissioner of Professional and Financial Regulation**

**to the Joint Standing Committee  
on Business and Economic Development**

**Sunrise Review of L.D. 2478**

**“An Act to License Cued Speech Transliterators  
of the Deaf and Hard-of-Hearing”**

**December 15, 2000**

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## **Introduction**

Under 5 M.R.S.A. § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated. The sunrise review process consists of applying the evaluation criteria established by statute, 32 M.R.S.A. § 60-J, to the proposed system of regulation to determine whether the occupation or profession should be regulated

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 applicants' answers and report its findings to the Commissioner.

Copies of 5 M.R.S.A. § 12015(3) and a summary of the Sunrise Review process as enacted by P.L. 1995, c. 686 are included in Appendix A to this report.

### **I. Charge from Committee**

In a memorandum dated March 31, 2000, the Joint Standing Committee on Business and Economic Development of the 119<sup>th</sup> Legislature requested that the Commissioner of Professional and Financial Regulation conduct an independent assessment of LD 2478, “An Act to License Cued Speech Translitterators of the Deaf and Hard-of-Hearing” in accordance with the Sunrise Review Procedures of 32 M.R.S.A., Chapter 1-A, sub-chapter II. A copy of the Committee’s request is attached as Appendix B. Although the legislation was voted “Ought Not to Pass,” the Committee nonetheless felt that a sunrise review of the proposal would be beneficial and requested that the Commissioner conduct an independent assessment.

### **II. Independent Assessment by Commissioner**

The requirements for an independent assessment by the Commissioner are set forth in 32 M.R.S.A. § 60-K. In conducting an independent assessment, the Commissioner is required to apply the specified evaluation criteria (set forth in 32 M.R.S.A. § 60-J) to all answers and information submitted to, or collected by, the Commissioner. After conducting the independent assessment, the Commissioner must submit a final report setting forth the Commissioner’s recommendations, including any draft legislation necessary to implement those recommendations.

If the Commissioner finds that some form of regulation is appropriate, the Commissioner must recommend the level of regulation and a responsible agency. Pursuant to 32 M.R.S.A. § 60-K(3), the recommendation “must reflect the least restrictive method of regulation consistent with the public interest.” A copy of 32 M.R.S.A. § 60-K is included in Appendix A.

### **III. Summary of Proposed Legislation**

L.D. 2478, “An Act to License Cued Speech Transliterators for the Deaf and Hard-of-hearing” proposed to require licensure of persons who serve as cued speech transliterators for compensation. Under the proposal, “cued speech” is defined as “a visual communication system that, in English, uses 8 handshapes in 4 locations, known as cues, in combination with the natural mouth movements of speech to represent all of the sounds of a spoken language.” “Cued speech transliteration” is defined as “a person who acts as an intermediary between a person who is deaf or hard-of-hearing and another person who represents any auditory communication as a visual form using cued speech.” The proposal would vest authority for licensure of cued speech transliterators with the Commissioner of Professional and Financial Regulation.

Two categories of licensure would be established under the proposal: limited cued speech transliterator and certified cued speech transliterator.

Licensure as a limited cued speech transliterator would require a high school diploma, or equivalent and completion of 45 hours of acceptable instruction in cued speech or a passing score accepted by the National Cued Speech Association as a pre-requisite for certification programs on the Basic Cued Speech Proficiency Rating or a comparable test. Limited cued speech transliterators would be subject to continuing education requirements of 15 hours in cued speech or the interpreting process.

In order to qualify for licensure as a certified cued speech transliterator, an applicant would again be required to have a high school diploma or its equivalent and have achieved a minimum certification level of 4 from the National Association of the Deaf or its successor. Continuing education of 6 hours and continued certification by the National Cued Speech Association would also be required.

A copy of L.D. 2478 is attached as Appendix C.

### **IV. Evaluation Criteria**

Ordinarily, an independent assessment by the Commissioner involves reviewing the responses to the evaluation criteria provided by the applicant groups to the Committee. In this instance, however, that information was not provided to the committee and the Department collected information from interested parties through the use of the questionnaire included in Appendix D

The evaluation criteria set forth in 32 M.R.S.A. § 60-J, a copy of which is included in Appendix A, shall be 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 (the full responses are included in Appendix D); and**
3. **The Department's independent assessment of the response to the evaluation criteria.**

**1. Data on group.** 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 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.

*Applicant Group Response:*

Respondents for the applicant group indicated that there are approximately 25—30 full time cued speech transliterators and 5-6 part time transliterators in the State of Maine.

The names and addresses of groups representing the practitioners are (the number of practitioners represented is given in parentheses, although there is some degree of overlap in membership):

National Cued Speech Association (10) 23970 Hermitage Road Cleveland, Ohio 44122-4008	Cued Speech Association of Maine (25) RFD #2, Box 728 Chelsea, Maine 04330
Educational Cued Speech Transliterator Committee P.O. Box 234 Fairfield, Me 04937	New England Cued Speech Services (3) 36-749 Vassar Street Cambridge, MA 02139
Maine Cued Speech Services (1) P.O. Box 785 Fort Fairfield, ME 04742	NCSA Instructor Committee Instructor of Cued Speech National Certification Exam 36-749, 50 Vassar Street Cambridge, MA 02319

*Department Assessment:*

L.D. 2478 proposed to regulate all persons who act as cued speech transliterators for the deaf and hard of hearing for compensation. Non resident transliterators (those who are residents of a state other than Maine and who do not transliterate for compensation in the State of Maine

for more than 160 hours per year), as well as persons providing communication assistance during a medical emergency, are exempt from licensure. In addition, volunteers, friends, family members and others who transliterate for the deaf and hard of hearing without compensation would not be subject to the provisions of the legislation. The legislation seeks to regulate only individuals and not agencies providing interpreter services or referrals.

The Department is not aware of any information that would contradict the estimates of the applicant group concerning the number of transliterators in the State and therefore estimates the potential pool of licensees to be between 25-35 individuals.

**2. Specialized skill. Whether practice of the profession or occupation proposed for regulation or 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.**

***Applicant Group Response:***

The practice of transliteration requires accuracy, consistency, uniformity, precision and speed in cueing, which can from take several weeks to several months to acquire. It requires 15-20 hours of instruction to learn the system of cued speech and formal training and workshops for cued speech transliterators and another 20-25 hours of coursework in deafness, deaf culture, and the interpreting process. Cued speech transliterators must understand standards of conduct in various settings (educational, public/private, etc.) and must be able to meet the needs of clients with varying degrees of skill and communication abilities.

Standards must be established so that there are assurances that minimum qualifications have been met and in order to ensure that the public has the means to select a competent practitioner.

***Department Assessment:***

Translitterators must be fluent in English and proficient in cued speech in order to adequately serve their clients. It is extremely difficult for persons who are not familiar with cued speech, but who must provide transliteration services for cued speech users, to assess the qualifications of a transliterator. There is a lack of awareness as to how the services of a cued speech transliterator may be obtained, as the Department experienced first hand in trying to procure a transliterator for its meeting to discuss the sunrise review criteria. In addition, there appears to be a lack of public awareness of the availability of certification of transliterators.

**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.**

***Applicant Group Response:***

Members of the applicant group assert that significant damage and lack of visual understanding of spoken language can occur if transliteration is not performed in a competent manner. For the deaf or hard-of-hearing individual to comprehend what is being said by a hearing person, the cueing of the transliterator must be proficient and precise. Concern was also expressed that, without regulation, there is a lack of equal access to the hearing community/auditory environment, particularly in the educational setting, as well as a substantial risk to cued speech users in legal and medical settings. Members of the applicant group also cited concerns about compliance with the Americans with Disabilities Act.

The applicant group felt that significant disadvantages might arise in the public school system because of the use of unqualified cued speech transliterators working in a school system.

Members of the applicant group indicated that there were no known complaints filed with state law enforcement agencies or regulators within the past 5 years.

***Department Assessment:***

The educational disadvantages of an unqualified transliterator to a deaf or hard of hearing student who uses cued speech are significant, and are the primary concern of the applicant group. Persons providing transliteration services to students should meet certain standards of proficiency in order to ensure that the child receives the full benefit of his or her education.

The Department recognizes that there are risks presented in legal and medical situations; however, these issues are of general applicability as a cued speech user's inability to effectively communicate if a qualified practitioner is not available is similar to the barriers faced by persons who speak foreign languages and cannot find an interpreter.

**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.**

***Applicant Group Response:***

Cued speech transliterators have sought to self-regulate and set standards for their practice. A committee (ECSTC) was formed to provide guidelines and protocols, especially in school systems. An initial workshop was held in 1992 and various workshops have been held since that time. Monthly meetings have been held by the ECSTC since 1993. Despite the fact

that membership is voluntary and no dues are required, it has remained viable and continues to press for and support professional excellence.

These efforts are inadequate because the profession lacks credibility without regulation. As a result, school systems often reluctant to use or implement and deaf and hard of hearing children are often denied the opportunity or ability to function in public school on the grade level with their hearing peers. The situation is further heightened when one group of service providers is regulated (American Sign Language Interpreters) and another (cued speech transliterators) is not.

Occasional workshops and training sessions have been offered in Maine but are difficult for many people to attend due to geographic limitations.

***Department Assessment:***

Regulation does not necessarily equate credibility. The applicant group's response indicates that self-regulation has met with some degree of success. In addition, regulation of the profession does not mean that training and continuing education will become more readily available. In fact, it may impose a significant burden on persons seeking licensure or those who become licensed but need continuing education in order to maintain that licensure.

**5. Cost; benefit. 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.**

***Applicant Group Response:***

Members of the applicant group assert that regulation should not increase the cost of transliterator services, but rather maintain current levels. Applicants believe that without regulation, the dollar value of a transliterator's skill may be decreased and that there would be insufficient financial remuneration and professional respect, thus reducing the number of qualified transliterators available and reducing access to their services. It was also suggested that regulation should increase the hourly cost of cued speech transliteration services, ultimately reducing turnover and need for re-training

In the educational setting, applicants asserted that while initial costs to schools may be increased if the schools are required to prepare, train, and hire qualified cued speech transliterators. Applicants indicate that they believe this will eventually serve to reduce special education budgets because students who receive full access to the language of their classroom environment will have fewer special education needs.



***Department Assessment:***

Generally, establishing requirements for licensure of a previously unregulated profession tends to reduce the pool of available practitioners and increase the expenses and overhead costs of the practitioner, thus increasing the cost of services provided. The pool of cued speech transliterators in Maine is already limited and the Department is concerned that regulation may reduce, rather than increase the number of practitioners. The maximum licensee pool is estimated by the applicant group to be 35 individuals at the present time, with a client base of approximately 75-100 individuals and businesses. The Department is concerned that regulation may have an impact which is in direct opposition to that sought by the applicant group.

**6. Service availability of 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.**

***Applicant Group Response:***

The applicant group expressed the belief that regulation would increase job status and visibility; that if skill and professional ethics were assured through regulation, practitioners would be justified in charging more, making the profession more rewarding; that regulation would provide a known “bank” of cued speech transliterators; and that it would only increase the availability of services to the public by setting standard criteria and providing an arena for uniform accessibility.

***Department Assessment:***

Although regulation may serve to increase the status, visibility or recognition of the profession, the Department is concerned that the applicant group may not be fully cognizant of the likely impact of regulation upon such a small group of practitioners, as was discussed in the Department’s assessment of evaluation criteria number 6.

**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 nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.**

***Applicant Group Response:***

There are no existing laws or regulations for cued speech transliterators. A year ago licensure status was afforded to interpreters and attempts to include cued speech in that legislation were rejected. There is no regulation of cued speech transliterators in any New England state at the present time.

The State's special education regulations require that cued speech transliterators must be registered with the Department; however, no such regulatory structure exists. Members of the applicant group stated that separate regulation (from American Sign Language interpreters) is needed in order to protect cued speech transliterators and the clients they serve.

***Department Assessment:***

The most compelling arguments in support of regulation are those pertaining to the impact of inadequately trained practitioners serving as transliterators in the educational setting. An alternative to regulation is available, as a requirement of certification through national certification processes could provide assurances that minimum qualifications have been met, thus achieving the same objective.

The Department would also note that the purpose of regulation is to protect the public, not the members of the profession.

**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.**

***Applicant Group Response:***

In support of the method of regulation, applicants assert that cued speech is an indispensable tool in mainstreaming deaf and hard of hearing children and in teaching them the English language, that the State's Department of Education imposes many stringent regulations on school special education directors with respect to the provision of such services, and that regulation is required in order for state administrators and school administrators to recognize cued speech transliteration as a true profession. Applicants have expressed the belief that it is necessary to establish a high level of regulation similar to that of American Sign Language interpreters.

***Department Assessment:***

Licensure by the Department, rather than by a regulatory board, is the least restrictive and least costly method of regulation available. However, the costs associated with regulation will be significant, as will be discussed in assessing evaluation criteria number 13.

The proposal would establish an advisory council, similar to that created under P.L. 1999, c. 399, which created a licensure category for American Sign Language interpreters. The potential costs associated with the establishment of an advisory council may serve to further increase the costs of regulation. Given the relatively small licensee pool, the Department believes that it could solicit input from interested parties on an informal basis and that an advisory council is not needed.

**9. Other states. 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.**

***Applicant Group Response:***

Applicants indicated that Kentucky, Virginia, Louisiana, Maryland (DOE regulations), Minnesota, North Carolina, and Ohio regulate cued speech transliterators, although only Kentucky's laws were provided. Proponents also indicated that Georgia, California and New York may be considering such proposals.

***Department Assessment:***

Information obtained by the Department indicates that Alabama, Connecticut, Kentucky, Indiana, Minnesota, and Virginia currently regulate cued speech transliterators. The Department was unable to confirm the existence of regulation of the profession in the states of Louisiana, Maryland, North Carolina or Ohio. Some states, while not regulating the profession, may require the use of certified transliterators in certain educational or legal settings.

Most states that regulate the profession establish criteria for licensure through the requirement of national certification. Copies of the laws of Alabama, Connecticut, Kentucky, Indiana (by rule, rather than statute), Minnesota, and Virginia are included in Appendix E. Also included in Appendix E is a chart of licensure requirements for interpreters and transliterators developed by the National Association of the Deaf ("NAD") and guidelines adopted by NAD for state regulation of interpreters.

**10. Previous efforts. The details of any previous efforts in this State to implement regulation of the profession or occupation.**

***Applicant Group Response:***

Applicants indicated that attempts were made to include cued speech transliterators in PL 1999, c. 399, which applied to deaf interpreters (American Sign Language).

***Department Assessment:***

The Department is aware that attempts were made to include cued speech transliterators in P.L. 1999, c. 399, and concurs with the response of the applicant group.

**11. Mandated benefits. Whether the profession or occupation plans to apply for mandated benefits.**

***Applicant Group Response:***

No plans to seek Medicaid reimbursement

***Department Assessment:***

Medicaid may provide some level of reimbursement to physicians for interpretive services; however, most health insurers and managed care companies do not.

**12. Minimal competence. Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.**

***Applicant Group Response:***

Proposed standards meet or exceed the national certification standards for accuracy and fluency and are similar to models used in other states

***Department Assessment:***

The proposed legislation incorporates national certification as the primary qualification for licensure and is therefore consistent with generally accepted standards of minimal competence.

**13. Financial analysis. 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.**

***Applicant Group Response:***

Require licensure or registration through the Office of Licensing and Registration.

***Department Assessment:***

Under the laws governing to the operations of the Office of Licensing Regulation, each regulatory program must be self-sustaining. 10 M.R.S.A. § 8003-F. If cued speech transliterators are the sole licensee pool regulated, as is proposed, the Department estimates that the costs of licensure would be prohibitively expensive for such a small pool of licensees. It is estimated that the license fee would be approximately \$500-\$600 per license. This would cover only the costs of licensure; it would not include the costs of obtaining the training or certification necessary to qualify for licensure, which members of the applicant group estimated to be approximately \$400-\$500.

In order to mitigate the costs of regulation, the Department feels it would be more appropriate to establish any regulation of cued speech transliterators in the same chapter as the regulation of American Sign Language interpreters. This would enable to the Department to administer similar regulatory functions in the most cost effective manner by pooling the costs among both licensees pools. This would also serve to help control the costs associated with regulation for both groups of practitioners and the estimated costs of licensure for cued speech transliterators would be the same as for American Sign Language Interpreters, which is currently \$200 per year.

## **V. Recommendations of the Commissioner**

Generally under the independent assessment method of sunrise review, the Commissioner must not only evaluate the information by the applicant group, but must also recommend to the Committee whether action should be taken on a proposal. If the Commissioner's recommendation supports regulation, the report must include any legislation required to implement that recommendation. The recommendations must reflect the least restrictive method of regulation consistent with the public interest. In this instance, however, no legislative proposal exists at the present time, and the Committee must make a determination as to whether it wishes to put forth such a proposal.

In assessing the sunrise review evaluation criteria, the Department believes that the *least* restrictive form of regulation would entail amendment of the Department of Education's rule governing supportive services (Rule Chapter 101, § 6.7(B)) to require that cued speech transliterators achieve and maintain national certification. This would address the primary concerns of the applicant group, while minimizing the regulatory burden on practitioners and the costs for both practitioners and their clients. That having been said, however, this State has previously determined that regulation of American Sign Language interpreters is appropriate and necessary. The Department sees little basis for regulating practitioners of professions who serve the essentially the same clientele, but use different languages to do so, in such a disparate fashion. Furthermore, the Department does not believe that deaf and hard of hearing persons who use one form of communication should be afforded greater protection than those who use another.

Based upon the foregoing, it is the recommendation of the Commissioner of Professional and Financial Regulation that should the Committee wish to pursue regulation of cued speech transliterators, it utilize the regulatory structure proposed in L.D. 2478 as considered by the 119<sup>th</sup> Legislature, with the following amendments:

- The legislation should designate the provisions governing licensure of American Sign Language interpreters as sub-chapter I of Title 32, chapter 22 and designate the provisions applicable to Cued Speech transliterators as sub-chapter II of Title 32, chapter 22.
- The proposed section 1536, sub-section 4, which would establish an Advisory Council should be eliminated, as should Section 2 of the legislation.

## **Appendix A**

### **Statutory Provisions Governing the Independent Assessment form of Sunrise Review**

## **Appendix B**

### **Request of the Committee for Sunrise Review**

**Appendix C**

**L.D. 2478**

**“An Act to License Cued Speech Transliterators  
for the Deaf and Hard-of-hearing”**



## **Appendix D**

### **Sunrise Review Evaluation Questionnaire and Applicant Group Responses**

## **Appendix E**

### **Requirements of Other States**