Response to House Concurrent Resolution 80 of the 2019 Regular Session of the Louisiana Legislature

Communication Services for the D/deaf, DeafBlind, and Hard of Hearing in Certain Healthcare Settings

FINAL RECOMMENDATIONS

Prepared by:

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July 2020

LOUISIANA DEPARTMENT OF HEALTH

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Introduction

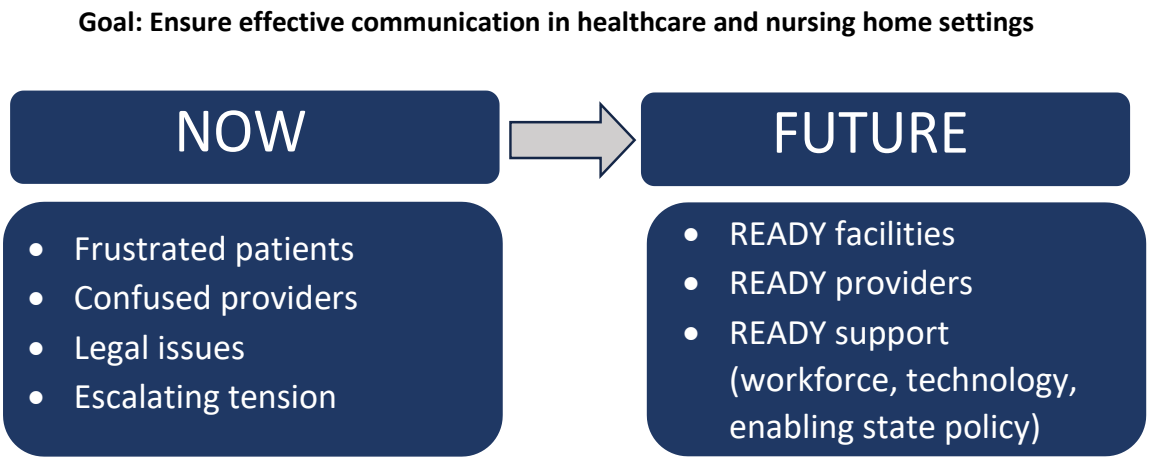
In the 2019 Regular Session of the Louisiana Legislature, House Concurrent Resolution 80 (HCR 80) established a study committee to review community experiences in certain healthcare settings as they pertain to the accessibility of healthcare services for individuals who are D/deaf, DeafBlind, and hard of hearing, and to report the findings. In addition to reviewing community experiences, the study committee was charged with recommending options for cost-effective and patient-centered accommodations for d/Deaf/DeafBlind/hard of hearing individuals. In January 2020, the Louisiana Department of Health prepared a report of the proceedings and preliminary findings of the study committee's review of these issues. On February 3, 2020, the study committee convened for a third and final meeting to finalize specific recommendations to address the key issues discussed throughout the study. The **purpose of this report is to present the final recommendations** from the HCR 80 study committee.

Section 1: Review of the Study Proceedings and Findings

Over the course of three public meetings held between October 2019 and February 2020, the study committee members:

- Defined the major problems that prompted the study resolution;
- Heard testimonials about experiences in Louisiana facilities – both encouraging and challenging;
- Identified specific accessibility concerns and challenges facilities experience with providing appropriate communication access;
- Started to frame a potential future-state; and
- Generated potential solutions to address the identified problems

Figure 1. Current and Proposed Future-State of Communication Access in Louisiana Hospitals and Nursing Homes, as discussed by the HCR 80 Study Committee



Through the activities of the first two meetings, committee members identified four primary challenges:

1. Use of technology, specifically Video Remote Interpreting (VRI), when it may not be appropriate for the patient or resident's need;
2. Gaps in the state's interpreter workforce, support, and oversight;
3. Systems that do not make patient-centered communication "easy" to accomplish; and
4. The costs of accommodations are reported as substantial and potential sources of reimbursement are unclear.

Each issue was reviewed in depth, including relevant laws, policies, and proposed solutions (see Appendix A). In the third and final meeting, convened on February 3, 2020 from 9:00 am to 11:00 am in Room 118 of the Bienville Building, the study committee members discussed recommendations for the final report; reviewed the findings from HCR 50 of the 2019 Regular Legislative Session; reviewed the Americans with Disabilities Act; and planned the final steps to report to the legislature. Overall, the issues and recommendations put forth by the committee members were synthesized into eight crosscutting recommendations:

1. Remove payment barriers for interpreter and transliterator services
2. Identify and "bundle" best practices to support effective communication in hospitals and nursing homes
3. Create quality standards for agencies providing interpreting services
4. Study the establishment of a centralized system to facilitate patient choice and straightforward arrangement of and payment for interpreter services
5. Establish credentialing requirements for interpreters working within the state
6. Study the establishment of licensure requirements for interpreters working within the state
7. Study the establishment of education and professional development pathways for interpreters
8. Promote an understanding of the Americans with Disabilities Act

Section 2: Recommendations

Recommendation 1: Remove payment barriers for interpreter and transliterator services.

The legislature should eliminate potential payment barriers for accommodations by updating the state's insurance code provisions that require coverage of the cost of interpreter/transliterator services.

Under current Louisiana law, R.S. 40:2208 and R.S. 22:245, health plans governed by the Louisiana insurance code are required to provide coverage for expenses incurred by any covered patient who is D/deaf or hard of hearing for services performed by a qualified interpreter/transliterator when such interpreter services are used by the patient in connection with medical treatment. The American's with Disability Act, however, prohibits a health care provider from billing the patient for any interpreter services and therefore it is very uncommon for the patient to be subject to any costs related to the interpreter services. This is consistent with the findings of the study conducted by the Louisiana Department of Insurance in response to HCR 50 of the 2019 Regular Session that stated:

> *"LDI performed a review of the relevant law and information pertaining to insurance coverage of interpreter services for the deaf and hard of hearing in health care settings. It found that, although state law provisions requiring such coverage exist and are actively enforced, Title III of the ADA placed the practical and financial burden of providing such services on the health care provider, leaving no remaining unfunded demand or patient liability or the insurer to cover. This finding is supported by the claims information provided by commercial insurers in Louisiana."*

In order to harmonize the state law requirements with federal law, the HCR 80 study committee recommends amending the applicable Louisiana statutes to require health plans to provide coverage for interpreter services when a health care provider providing health care services to a patient who requires auxiliary aids and services incurs the cost of such services (See Appendix D).

Recommendation 2: Support the adoption of best practices to support effective communication in hospitals and nursing homes.

The Louisiana Commission for the Deaf should work with the Louisiana Department of Health - Health Standards Section to develop and disseminate best practice guidelines for hospitals and nursing homes to support effective communication for individuals who are D/deaf and DeafBlind.

Communication access in hospitals and nursing homes is complicated by a lack of clarity regarding the legal requirements and recommended approaches for identifying communication needs and implementing reasonable and effective accommodations. Furthermore, some communication needs, such as for individuals who are DeafBlind, cannot be met with the types of accommodations that may be more commonly known, such as through interpreters, VRI, and other auxiliary aides. These gaps can result in a lack of understanding patients' communication needs, inappropriate uses of technology, and negative patient and provider experiences. They also have the potential to compromise the quality and safety of care, the provider-patient relationship, and the patient experience.

With this recommendation, the HCR 80 study committee proposes that LCD research, identify, and publish specific processes and tools that facilities could adopt to support effective communication, including honoring patient's choice of communication. The committee proposes that these guidelines and tools be "bundled" as a comprehensive package of recommended practices that can be disseminated to hospitals and nursing homes statewide. While not comprehensive, the following elements should be addressed:

- Standardized communication/language assessment tool(s)
- Model patient profiles to capture communication needs and the appropriate accommodations for those needs in different care settings and situations, including for individuals who are DeafBlind or who have limited language abilities
- Information about different types of accommodations and how to secure them
- A model policy regarding VRI that clarifies appropriate and inappropriate uses; standards for operation; and recommended quality assurance activities
- Considerations for the patient experience from check-in through the patient encounter
- Clarification of ADA and practices that support effective communication

Recommendation 3: Create quality standards for agencies providing interpreting services.

The LCD should develop and publish voluntary standards for agencies that provide interpreter services. Further, LCD should assess the feasibility of establishing a voluntary quality recognition program to make it easier for the public and facilities to understand best practices and the quality of services.

Many hospitals and nursing homes secure interpreters through agencies that coordinate interpreting services. These agencies are generally independent small businesses or are part of non-profit social service agencies providing specialized services for individuals with disabilities. These entities are not required to register with the state, other than for general tax and business purposes. There are no uniform professional standards for agencies that offer interpreting services. While some agencies may

have their own screening and quality oversight practices for their workforce, the qualifications of interpreters and their supervision is variable. Training – such as around the Health Insurance Portability and Accountability Act (HIPAA) privacy requirements – is not specifically required. As such, it is difficult for hospitals and nursing homes to readily understand the relative quality and value of the services they are purchasing. Creating voluntary standards for these agencies would facilitate greater transparency for the individuals and health facilities that utilize these vital services. (See also Recommendations 5 and 6).

Recommendation 4: Study establishment of a centralized system for arranging interpreters.

The LCD should commission a study to explore establishing a centralized system that would simplify the process of arranging and paying for interpreter services. Proposed solutions should optimize patient choice, streamline the administrative requirements for facilities, and support fair and timely compensation for interpreters who work independently or through agencies. The study should include extensive stakeholder input and be guided by financing and technology expertise.

Throughout the committee deliberations, both community members and facility representatives clearly illustrated how the current system of securing accommodations, such as interpreter services, is inefficient, burdensome, and, in some cases, an unnecessary added stress when navigating sensitive health issues. Committee members relayed experiences where they requested the accommodations for their specific needs, but had to make numerous calls to the healthcare provider and to the contracted interpreting agency to ensure that the appropriate accommodation had been arranged. Other members relayed how they had to repeatedly explain or justify their needed accommodation, which may be perceived by healthcare facilities as a choice or preference. While healthcare providers are generally responsible under the ADA for paying for patients' accommodations, requiring healthcare providers to arrange accommodations can be confusing surrounding logistics, specifically regarding if the patients' communication needs are not well understood.

"(Recently) I had some health issues and thought it might be cancer, so I had to be referred over to another specialist. Because I am low-vision, the video relay interpreter (VRI) doesn't work well for me. I asked specifically for an on-site interpreter and they agreed. I later called the (interpreting) agency myself to see if I was scheduled for the day and time, and they said no, I had not. I had to call the specialist again and explain what I needed. I went back and forth through this for three weeks, while also dealing with concerns about what I'm going to find about my health."

- *Study Committee Member*

The advent of technology solutions that facilitate consumer choice for needed services and that support the logistics of arranging and paying for services present the opportunity to redesign how these services are secured.

Recommendation 5: Establish credentialing requirements for interpreters.

The state should establish credentialing requirements for interpreters in the state to improve the quality of interpreting in medical settings and nursing home in addition to improving quality of interpreting in Louisiana overall. Louisiana Commission for the Deaf should ensure information is available to the public regarding the interpreter workforce in the state, their credentials, status, and any specialization.

In Louisiana, there are no specific credential requirements for individuals to work as an interpreter in healthcare and other general community settings. As a result, the level of proficiency of individuals working as interpreters is variable, and it is difficult for entities contracting for these services to know the quality of the services being provided. For patients and residents who require specialized communication services, such as those who may have experienced language deprivation and have limited language generally or individuals who are DeafBlind, identifying an interpreter who is able to meet those needs is not straightforward since the skills and credentials of interpreters is not published publicly.

The absence of uniform state certification requirements has led to variable qualifications and credentials among individuals working as interpreters in the state. The Louisiana interpreter workforce currently consists of individuals who are:

- **Nationally Certified Interpreters:** Individuals who are certified are those who have passed a rigorous exam consisting of both written knowledge, ethics, and performance skill.
    - National Registry of Interpreters for the Deaf (RID) – A nationally recognized entity playing a leading role in establishing a national standard of quality for interpreters and transliterators. They encourage the growth of the profession, educate the public about the importance of the interpreter's role, and work to ensure equal access and opportunity for all individuals.
    - Board for Evaluation of Interpreters (BEI) – A widely recognized certification program created in Texas, which is responsible for testing and certifying the skill level of individuals. The primary goal of this certification program is to ensure prospective interpreters are proficient in their ability to meaningfully and accurately comprehend, produce, and transform American Sign Language to and from English, along with regulating the conduct of interpreters certified through the program in order to protect the interest of consumers.
- **Qualified:** Individuals who are designated as qualified are defined by local interpreting agencies as one who has shown a high level of excellence in American Sign Language skill, ethical practice, and applicable experience, however has not officially passed any national and/or state accredited testing criteria. In addition, as reflected in Recommendation 3, there is no standard practice across interpreting agencies for designating interpreters as qualified.
- **Independent:** Individuals who offer their services independently from any organization who may or may not be certified or screened as highly qualified by any outside entity.

It is important to note that some individuals who are currently designated as qualified or who work independently may be highly skilled. However, without any systematic assessment or credentialing system in Louisiana, there is no clarity or assurance of the proficiency of the state's interpreter workforce.

Other important entities providing interpreting services in Louisiana are companies that provide Video Remote Interpreting (VRI). These companies provide sign language interpreting through remote sign language interpreters using videoconferencing technology. This is a type of telecommunications relay service that is not regulated by the Federal Communications Commission. Louisiana does not currently license VRI service companies to operate in the state, though some states do. Interpreters working for these companies do not necessarily reside in Louisiana, and they may or may not have a nationally recognized credential, or are familiar with regional nuances of sign language which can cause critical miscommunication issues.

Under current Louisiana law, R.S. 46:2352, LCD has authority to promulgate rules for the examination of interpreters, as well as to issue certifications, and maintain a registry of all certified interpreters in the state. However, historically, LCD has only published a list of interpreters who hold a specific national certification (Registry of Interpreters for the Deaf only) and have passed a state background check. There is an opportunity for Louisiana to optimize the current statutory authority and establish a more rigorous and transparent system. This study recommendation charges LCD to identify clear pathways for interpreters to receive and maintain certification, and to establish a centralized registry of interpreters and their credentials.

Recommendation 6: Study the establishment of licensure requirements for interpreters.

The state should study establishing licensure requirements for interpreters in the state to ensure oversight and integrity of the interpreter workforce serving in sensitive medical settings, nursing homes, and in Louisiana overall.

While certification helps to ensure proficiency of the workforce, professional licensure helps to ensure compliance with ethical conduct and recognized standards of professional practice. Currently only nationally certified interpreters are bound to uphold the Interpreter Code of Professional Conduct (CPC). Establishing state licensing requirements could help ensure that all providing these sensitive services are required to follow the same codes of conduct and professional standards.

Under current Louisiana law, R.S. 46:2352, LCD has the authority to specify procedures outlining grounds for denying, suspending, or revoking interpreters' certificates, and for investigating and resolving complaints and violations. This function has not been operationalized to include the interpreter workforce broadly, but instead has been applied only to interpreters seeking to provide services through LCD. There are a growing number of states that have recognized a need for greater oversight of this important workforce and have established licensing bodies to govern this charge. The study committee recommended that LCD be tasked with assessing the feasibility, benefits and costs associated with establishing statewide licensure requirements.

Recommendation 7: Study the establishment of education and professional development pathways for interpreters.

Louisiana Board of Regents should study establishing pathways for developing the state's interpreter workforce, including offering American Sign Language (ASL) as a foreign language in both high school and secondary education, establishing Bachelor and Master-level degree Interpreter programs, and other continuing education to support career progression in the state.

Louisiana currently has very few formal education pathways for developing and sustaining a robust professional interpreter workforce. At the introductory level, several high schools in Louisiana offer ASL has a foreign language. In higher education, some colleges may offer ASL for credit, however only one two-year program in the state offers ASL interpreting as a path of study. Graduates from that program, and others who come to work in the state, subsequently experience significant challenges obtaining sufficient formal mentorship needed to obtain nationally recognized certification.

In order to meet the current and future demand for high quality culturally-appropriate communication services in hospitals, nursing homes, and other critical settings, attention is needed to professionalize and grow the state's interpreter workforce. The study committee recommended that the Board of Regents determine how the state can support the development of this critical workforce.

Recommendation 8: Promote an understanding of the Americans with Disabilities Act (ADA).

The state should promote information and resources related to the ADA to support greater understanding of the requirements, how to effectively implement the requirements, and how to address problems.

It is generally understood that the ADA requires facilities such as hospitals and nursing homes to provide accommodations to support effective communication. However, there are different requirements depending on the type of facility. For example, in facilities associated with state and local governments, "public entity shall give **primary consideration to the requests of individuals with disabilities**" (28 CFR §35.160 General)**.** In contrast, for commercial entities, "public accommodation should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, **but the ultimate decision as to what measures to take rests with the public accommodation**" (§ 36.303 Auxiliary aids and services.). The different standards are not commonly understood by the general public, and may exacerbate frustrations around the accommodations offered across the state's hospitals and nursing homes.

The study committee found that clearer information is needed for facilities and the public about the ADA requirements and how to achieve the ultimate intent: effective communication. For facilities and providers, the committee recommended that clarifying information be incorporated into the package of best-practices outlined in *Recommendation 2* and that the information be promoted through LDH Health Standards. To support greater understanding of the ADA among individuals who are D/deaf and DeafBlind, the committee recommended that LCD work with other state agencies to develop and disseminate information regarding patient rights under the ADA, where and how to file complaints when necessary, how to access communication services, and resources to support self-advocacy.

Section 3: Next Steps

This report outlines recommendations for various state agencies and the Louisiana legislature. The Louisiana Department of Health will disseminate the report to the affected agencies for their consideration.

As articulated in the preliminary report of the HCR 80 study committee, every individual has the right to safe and equitable healthcare in facilities such as hospitals and nursing homes in Louisiana. Ineffective communication compromises the ability individuals who are D/deaf, DeafBlind, and hard of hearing to fully participate in their care. Patients, providers, and facilities all share a vested interest in understanding how to achieve effective communication in healthcare settings such as hospitals and nursing homes. The recommendations issued by the HCR 80 study committee are consistent with national recommendations for ensuring communication access in healthcare settings and reflect important areas where Louisiana can make strides towards ensuring that our systems of care are ready to effectively serve individuals who are D/deaf, DeafBlind, and hard-of-hearing.

Appendix A: Initial Findings Chart

Problem #1: Use of technology when may not be appropriate for patient/resident need		
Description of Issue and Contributing Factors	**Laws, regulations, and/or best practices addressing this concern**	**Preliminary Ideas Generated (not final or formalized)**
• There appear to be different understandings of "effective communication access" vs. "preference." There are perceptions that individuals may be requesting what they "*prefer*" rather than what is *necessary* for communication to be effective. • There are many different kinds of communication needs. It is not clear or easy to determine how to secure or implement necessary accommodations. • There are gaps in understanding about when Video Relay Interpreters (VRI) can or cannot be used. In some instances, providers lack adequate training on how to use technology effectively. • Technology does not always function properly, even when it is the appropriate accommodation and the workforce is prepared.	• Americans with Disabilities Act • Department of Justice: *[VRI must provide] real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication. [VRI must provide a] sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of [their] body position. [VRI must also provide] a clear, audible transmission of voices.* • Joint Commission PC.02.0121 "The hospital effectively communicates with patients when providing care, treatment, and services." • NAD Statement on use of Video Remote Interpreting (VRI).	• Support policies that allow providers to work collaboratively with patients when choosing the communication approach that is the most effective for them. • Provide and require sensitivity trainings for facilities and providers (cultural competency, practical communication cues, assessing needs, and ADA compliance). • Provide training in care systems around identifying different communication needs in emergencies vs. routine visits. • Provide "clarity trainings" for D/deaf and DeafBlind community regarding their rights under the ADA, including where/how to file complaints when necessary. • Provide trainings for D/deaf and DeafBlind community on how to access communication services and practice self-advocacy.
Problem #2: Gaps in support and oversight for interpreter workforce		
• Lack of statewide, enforced professional standards for sign language interpreters (including ethical/skill level qualifications, certification, and/or licensure). • Insufficient workforce to provide quality interpreter services. • Lack of formalized training offered in the state (i.e. secondary education opportunities). • Lack of specialized interpreters for populations that need additional support (e.g. varying levels of language proficiency, tactile interpreting, etc.).	• Registry of Interpreter for the Deaf (RID).	• Create and implement licensing requirements for interpreters. • Enforce existing national guidelines for interpreters on a statewide level to address interpreter certification/licensing issues. Require annual trainings to provide necessary education to interpreter workforce. • Support ASL offered as a foreign language in schools to better prepare students who want to pursue interpreting training programs for secondary education. • Establish Interpreter Training Bachelor and Master degree programs in the state.

Problem #3: Patient-centered communication not easy to accomplish		
Description of Issue and Contributing Factors	**Laws, regulations, and/or best practices addressing this concern**	**Preliminary Ideas Generated (not final or formalized)**

• Lack of clear and reliable communication in healthcare settings due to diversity of language among the D/deaf and DeafBlind population.
• It is unclear who should be responsible for the logistics of providing necessary communication accommodations in both emergency and routine health settings (patient, provider, or facility).
	• NAD Statement regarding health care access for deaf patients.
	• Americans with Disabilities Act
	• The Joint Commission's Roadmap for Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care.
		• Explore novel approaches to efficient arrangement and payment of communication services that are convenient for both providers and patients.
		• Develop a communication/ language assessment for providers to use that identify patients' language needs (Sign Language Interpreter, written form of English, etc.).
		• Create information cards with communication needs and other information for patients to carry.
		• Increase supplemental facility accommodations such as:
		  ○ Clear masks to facilitate expressive communication.
		  ○ Braille labels on prescription bottles for DeafBlind (and Blind) patients.
		  ○ Pictures cards that allow patients to point to their needs.
		• Explore establishing a separate unit/facility specifically for D/deaf and hard of hearing patients.
		• Employ staff fluent in both American Sign Language (ASL) and medical terminology and procedures.
		• Support inclusive and equitable hospital policies for patients & providers, along with practical approaches and protocols for interacting with patients.
		• Promote communication-based compliance requirements for hospitals, nursing homes, etc.
		• Provide clarity trainings for D/deaf and DeafBlind community regarding their rights under ADA, including where/how to file complaints when necessary.
		• Provide trainings for D/deaf and DeafBlind community on how access communication services and practice self-advocacy.

Problem #4: Cost/Reimbursement for Services are substantial and unclear		
Description of Issue and Contributing Factors	**Laws, regulations, and/or best practices addressing this concern**	**Preliminary Ideas Generated (not final or formalized)**
• It is unclear how to pay for communication accommodation services, and unclear which services are covered (private insurance, Medicaid, Medicare, etc.). • There is a lack of clarity regarding who is financially responsible for providing interpreters in healthcare settings. • Statutes related to insurance coverage for interpreter services are not specific enough (RS 40:2208 and RS 22:245).	• RS 40:2208. • RS 22:245. • HCR 50 of 2019 Regular Legislative Session.	• Revise existing statutes to clearly require the Louisiana Medicaid program and commercial health insurers to reimburse healthcare providers the cost for interpreter services. • Ensure statutes are communicated to all healthcare providers statewide through annual trainings.

Appendix B: Membership List

Name	Representing	Public Meeting I Present	Public Meeting II Present	Public Meeting III Present
Dan Arabie	Deaf/DeafBlind/HoH Advocate	x	x	x
Melissa Bayham	Louisiana Commission for the Deaf		*(represented by Kevin Monk)*	
Rebecca Beard	Louisiana Commission for the Deaf			
Maria Bowen	Louisiana State Medical Society	*(represented by Mary Beth Wilkerson)*	*(represented by Mary Beth Wilkerson)*	
Henry Brinkman	Louisiana Commission for the Deaf			
Cecile Castello	LDH Health Standards	x	x	x
Dr. Vincent Culotta	Louisiana State Board of Medical Examiners			
Dustin Cutrer	Deaf/DeafBlind/HoH Advocate			
Richie L. Fraychineaud	Louisiana Commission for the Deaf			
Ernest Garrett III	Louisiana Commission for the Deaf	x	x	
Jimmy Gore	Louisiana Commission for the Deaf	x	x	x
Mark Hebert	Louisiana Board of Examiners of Nursing Facility Administrators			
Jay Isch	Louisiana Commission for the Deaf	x	x	x
Candice LeBlanc	Louisiana Commission for the Deaf	x		
Mark Leiker	Louisiana Department of Health (Health Services Financing)	x	x	
Dr. Karen Lyon	Louisiana State Board of Nursing		x	x
Dawn Melendez	Louisiana Commission for the Deaf	*(represented by Scott Huffman)*	x	x
Lee Mendoza	Louisiana Commission for the Deaf	x	x	x
Kevin Monk	Louisiana Commission for the Deaf	x	x	
Lisa Potter	Louisiana Commission for the Deaf		x	x
Dr. Floyd Roberts	Louisiana Hospital Association			x
Paula Rodriguez	Deaf Focus	x	x	x
Amy Shamburger	Deaf/DeafBlind/HoH Advocate	x	x	x
Iva L. Tullier	Louisiana Commission for the Deaf			
John Veazey	Deaf/DeafBlind/HoH Advocate			
Greg Waddell	Louisiana Hospital Association	x	x	x
Lemmie Walker	Nursing Home Association			
John Wyble	Louisiana State Nurses Association			

Appendix C: HCR 80 Legislation

ENROLLED

2019 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 80

BY REPRESENTATIVE SMITH AND SENATORS ALARIO, APPEL, BOUDREAUX, CARTER, CHABERT, CLAITOR, COLOMB, ERDEY, FANNIN, GATTI, JOHNS, LONG, LUNEAU, MILLS, MORRELL, PEACOCK, PETERSON, PRICE, RISER, GARY SMITH, JOHN SMITH, TARVER, THOMPSON, WALSWORTH, AND WARD

A CONCURRENT RESOLUTION

To urge and request the Louisiana Department of Health to convene a study committee on policies concerning communication-related services for the deaf and hard of hearing in hospitals and nursing facilities, and to report findings and recommendations of the study committee to the legislative committees on health and welfare.

WHEREAS, the legislature intends that persons who are deaf or hard of hearing have access to appropriate communication options in health facilities so that they may enjoy an equal degree of choice in their care and treatment as persons with hearing ability; and

WHEREAS, of every thousand citizens in the United States, four are deaf, sixteen are profoundly hard of hearing, and approximately one hundred are mildly to severely hard of hearing; and

WHEREAS, in Louisiana, approximately two percent of children born each year are deaf or hard of hearing; and

WHEREAS, the number of patients in this state who require communication-related accommodations in healthcare facilities continues to rise; and

WHEREAS, the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.), requires that healthcare facilities provide reasonable accommodations in access to care for persons with disabilities; and

WHEREAS, healthcare facilities have important responsibilities under federal law to be accessible to deaf and hard of hearing individuals and establish effective communication with those persons as they receive medical treatment; and

WHEREAS, individual members of the deaf and hard of hearing community require different options for reasonable accommodation of their communications needs; the

community is highly diverse in many respects, and no "one-size-fits-all" accommodation exists for the entire deaf and hard of hearing population; and

WHEREAS, the United States Department of Health and Human Services recognizes that English and American Sign Language (ASL) are distinct languages, and that writing or interpreters who lack ASL proficiency will not suffice as effective communication aides for most deaf persons whose only language is ASL; and

WHEREAS, many members of the deaf community and other patients with limited English proficiency experience significant misunderstandings while receiving medical treatment, leading to unnecessary or counterproductive treatments or putting them at risk for adverse events due to language barriers or miscommunication; and

WHEREAS, when properly trained on their respective facilities' policies relating to working with patients who are deaf, deaf-blind, or hard of hearing, healthcare practitioners who interact with these patients or make communication-related decisions in coordinating the patients' treatment are the personnel who are best able to provide and guide effective care for people with hearing loss; and

WHEREAS, best practices for training of healthcare providers on communicating with the deaf and hard of hearing include cultural competency and awareness, and emphasize the importance of accommodating the patient's communication choices whenever possible; and

WHEREAS, informed by deaf advocates and academic fields such as neurolinguistics, new best practices for assessing the communication needs of patients with hearing loss are emerging, and these practices should form the basis of healthcare facility policies on accommodating the communication choices of the deaf and hard of hearing; and

WHEREAS, working together with the deaf and hard of hearing and their advocates, Louisiana hospitals and nursing facilities can identify and implement cost-effective and patient-centered communication policies in order to give patients who are deaf, deaf-blind, or hard of hearing the equal treatment they deserve.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana Department of Health to convene a study committee on

policies concerning communication-related services for the deaf and hard of hearing in hospitals and nursing facilities.

BE IT FURTHER RESOLVED that the study committee shall be composed of the following members:

(1) Each member of the Louisiana Commission for the Deaf who is not an elected member of the legislature.

(2) The executive director of the Louisiana Commission for the Deaf.

(3) Two staff members of the Louisiana Department of Health, one of whom shall represent the health standards section and one of whom shall represent the bureau of health services financing, appointed by the secretary of the department.

(4) Two representatives of the Louisiana Hospital Association appointed by the president of the association.

(5) The executive director of the Louisiana Nursing Home Association or his designee.

(6) The executive director of the Louisiana Board of Examiners of Nursing Facility Administrators or his designee.

(7) One physician appointed by the executive director of the Louisiana State Board of Medical Examiners.

(8) One physician appointed by the chief executive officer of the Louisiana State Medical Society.

(9) One registered nurse appointed by the executive director of the Louisiana State Board of Nursing.

(10) One registered nurse appointed by the executive director of the Louisiana State Nurses Association.

(11) The director of Deaf Focus or his designee.

(12) The coordinator of the Deaf Grassroots Movement of Louisiana or his designee.

BE IT FURTHER RESOLVED that the executive director of the Louisiana Commission for the Deaf may appoint additional members to the study committee in a number sufficient to ensure that no less than fifty percent of the membership of the

committee is comprised of persons who are deaf or hard of hearing and advocates for the deaf and hard of hearing.

BE IT FURTHER RESOLVED that the members of the study committee shall serve without compensation except for any per diem or expense reimbursement to which they may be individually entitled as members of the constituent organizations.

BE IT FURTHER RESOLVED that the secretary of the Louisiana Department of Health shall take such actions as are necessary to ensure that the study committee convenes on or before August 31, 2019, and may appoint a staff member of the department to serve as an independent facilitator for the committee.

BE IT FURTHER RESOLVED that at its initial meeting, the members of the study committee shall elect from their number a chairperson and adopt rules of procedure for the committee.

BE IT FURTHER RESOLVED that the study committee may elect a vice chairperson and other officers and adopt policies as it deems necessary.

BE IT FURTHER RESOLVED that the study committee shall hold at least two public meetings, and shall issue notice of each meeting in accordance with the applicable provisions of the Open Meetings Law established in R.S. 42:19.

BE IT FURTHER RESOLVED that the Louisiana Department of Health shall compile a written report of the findings and recommendations of the study committee, and shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare no later than sixty days prior to the convening of the 2020 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the secretary of the Louisiana Department of Health, the executive director and each member of the Louisiana Commission for the Deaf, the president of the Louisiana Hospital Association, the executive director of the Louisiana Nursing Home Association, the executive director of the Louisiana Board of Examiners of Nursing Facility Administrators, the executive director of the Louisiana State Board of Medical Examiners, the chief executive officer of the Louisiana State Medical Society, the executive director of the

Louisiana State Board of Nursing, the executive director of the Louisiana State Nurses Association, the director of Deaf Focus, and the coordinator of the Deaf Grassroots Movement of Louisiana.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

Appendix D: HCR 50 Report

LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

January 7, 2020

The Honorable John Smith, Chairman
Senate Committee on Insurance
Baton Rouge, La. 70802
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Sent via email

The Honorable Kirk Talbot, Chairman
House Committee on Insurance
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The Honorable Fred Mills, Chairman
Senate Committee on Health and Welfare
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The Honorable Frank Hoffmann, Chairman
House Committee on Health and Welfare
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Louisiana State House of Representatives
C/O The Honorable Patricia Smith
Baton Rouge, La. 70802
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Sent via email

RE: Report of Study Findings as Requested by House Concurrent Resolution 50 of the 2019 Regular Legislative Session

Dear Representative Smith and Chairmen Smith, Mills, Talbot, and Hoffmann,

The Louisiana Legislature requested that the Louisiana Department of Insurance (LDI) study the availability, demand, costs and benefits of health insurance coverage of interpreter services for the deaf and hard of hearing in health care settings in House Concurrent Resolution 50 of the Regular Legislative Session. State law has mandated coverage of patient liability for these services since 1991 in the case of health insurance policies[1] and 1997 in the case of health maintenance organizations (HMOs).[2] The Americans with Disabilities Act of 1990 (ADA) generally imposes on health care providers a separate duty to provide such appropriate auxiliary services and devices (including interpreter services) as are necessary to ensure effective communication with people who are deaf or hard of hearing.[3] Because the ADA essentially prohibits patient liability for interpreter services, the coverage required by state law seldom results in any claim cost. In fact, after querying health insurance issuers operating in Louisiana, LDI found a general lack of any claims volume or cost for interpreter services among commercial issuers. LDI enforces the coverage requirement on all forms subject to approval and has received no complaints against an insurer for failure to cover these services. This leaves the ADA's superseding requirement as the core driver of the lack of claims.

[1] La. R.S. 22:1027
[2] La. R.S. 22:245
[3] *See* 28 CFR § 36.301

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I. Louisiana Statutory Requirements and Compliance

Louisiana has two existing laws requiring insurers to cover any patient liability for interpreter services: La. R.S. 22:1027, which applies to health insurance policies; and La. R.S. 22:245, which applies to HMOs. LDI enforces these statutes during the product approval process and through its complaint processing function.

Any health insurer or HMO wishing to offer its product in Louisiana must file its policy form with LDI and receive approval. As part of this process, each filer must complete the LDI's Statement of Compliance for the product, which includes specific identification of each section of the policy form that brings the product into compliance with every applicable requirement of the Louisiana Insurance Code (Code) and LDI regulations. LDI then conducts form review, ensuring that each identified section truly complies with the relevant Code provision and that no other section of the policy form negates compliance. Through this process, LDI ensures that all products comply with state law before the insurer is permitted to offer them for purchase in the state.

After form approval, LDI continues to monitor compliance with state laws through the complaint process. Policyholders and certain other stakeholders have a right to file complaints against insurers and have LDI investigate and take permissible action.[4] Additionally, LDI has broad authority to conduct market conduct examinations of regulated entities.[5] In order to efficiently use its resources, LDI typically focuses market conduct examinations on entities or areas where it has reason to suspect – whether due to formal complaints or due to tips, reports, or regional and national trends – a pattern of impermissible behavior. To date, LDI has not received any complaints related to interpreter services needed in connection with medical treatment or consultation.

II. Americans with Disabilities Act of 1990

At the point of care, Title III of the ADA places the burden of providing appropriate auxiliary services and devices on the health care provider, except where provision of such service would impose an undue burden on the provider's business. These auxiliary services include providing an interpreter for medical care or consultation without charge to the patient when such services are necessary given the needs of the patient and the circumstances of the care.[6] The only exception to this requirement is a case where the provider can demonstrate that providing the auxiliary service would represent an undue burden.[7] In all other cases, the provider is required to offer needed auxiliary aids and services without additional charge to the patient. These ADA requirements effectively negate the possibility of patient liability – the services are mandatory on virtually all providers and costs must be borne by the provider. Further state action increasing

[4] La. R.S. 22:41 et seq.
[5] La. R.S. 22:1981 et seq.
[6] 28 C.F.R. §36.303(c)
[7] This is a case-by-case determination that is very rarely applicable to health care providers as complex care needs are typically met in sophisticated medical settings where interpreter services will virtually never represent an undue burden and less complex care needs can often be appropriately paired with other auxiliary aids that represent a less significant burden to the provider.

insurer liability for interpreter services is likely only to shift the cost burden from providers to insurers (and ultimately to insureds in the form of premium increases) rather than having any salutary effect for patients.

III. Louisiana Medicaid Coverage

According to the Louisiana Department of Health, interpreter services are provided under Medicaid in accordance with their contracts with the Medicaid Managed Care Organizations (MCOs) and with MCNA Dental. Specifically, the MCO and its providers is required to deliver services in a culturally competent manner to all members, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation, or gender identity and provide for cultural competency and linguistic needs, including the member's prevalent language(s) and sign language interpreters in accordance with 42 CFR §438.206(c)(2).

Additionally, the Dental Benefit Plan Manager is required to make oral interpretation services available free of charge to enrollees, and inform the enrollees:

- Oral interpretations are available in all languages;
- Written translation is available in each prevalent non-English language; and
- How to access the interpretation services and written information.

Auxiliary aids such as TTY/TTD and American Sign Language (ASL) and services must also be made available upon request of the enrollee at no cost. The MCOs/MCNA provide the interpreter when the members request the service. There is no cost to the provider or member. In FFS, the provider is responsible for the interpreter services and associated costs.

IV. Demand for Services

To estimate demand for interpreter services, LDI researched available literature on prevalence of severe and total hearing impairment among U.S. residents. While most available national data counts both mild and severe hearing loss together, a recent prevalence study from the *American Journal of Public Health* provided detailed population statistics on bilateral hearing loss by severity.[8] Using the data from this study, LDI estimates that approximately 40,000 Louisianans are living with bilateral hearing loss that is either severe or profound. As hearing declines with age, this population skews older, with the vast majority of individuals exceeding age 50. While this population represents the upper limit of patients potentially needing interpreter services, the true patient population needing interpreter services is much smaller. Auditory or visual aids, for example, often provide appropriate auxiliary services in many health care contexts without the need for interpreter services. The patient's medical need is also critically important, as direct communication may be sufficient for routine medical care but entirely inappropriate for complex or emergency care.

[8] Goman, Adele M. and Frank R.Lin. "Prevalence of Hearing Loss by Severity in the United States," *American Journal of Public Health*, 106(10). Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5024365/

Generally, interpreter services are provided by the carrier at the point of enrollment and by the provider at the point of care. For example, the Office of Group Benefits contracts with Deaf Services out of New Orleans to provide interpreter services during the Annual Enrollment meetings.[9] At the point of care, the ADA places the burden of providing appropriate auxiliary services and devices on the health care provider, except where provision of such service would impose an undue burden on the provider's business.

V. Cost of Coverage

Commercial reimbursement rates for specific coverage is not generally available. Instead, LDI requested information from commercial insurers regarding their claim costs for interpreter services. Two of the state's largest commercial insurers volunteered that they had reviewed their claims history and found no claims volume or claims cost associated with interpreter services. This is consistent with the primacy of the ADA's requirement that health care providers offer interpreter services without cost to the patient. Under such a structure, patients have no liability for these services and the insurance coverage mandated in La. R.S. 22:1027 and 22:245 is never triggered.

VI. Conclusion

LDI performed a review of the relevant law and information pertaining to insurance coverage of interpreter services for the deaf and hard of hearing in health care settings. It found that, although state law provisions requiring such coverage exist and are actively enforced, Title III of the ADA placed the practical and financial burden of providing such services on the health care provider, leaving no remaining unfunded demand or patient liability for the insurer to cover. This finding is supported by the claims information provided by commercial insurers in Louisiana.

If you have questions or concerns, please contact me.

Sincerely,

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[9] This service was not utilized by any enrollees during the last two annual enrollment meetings, indicating that demand is not particularly high at the point of enrollment at least.

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