

# **SUMMARY OF REVISIONS TO THE HAWAII ADMINISTRATIVE RULES RELATING TO THE UTILIZATION OF ASL INTERPRETERS**

**AS OF MAY 29, 2018**

*The information below is a summary of ALL the major changes to the Hawaii Administrative Rules, the underlying rationale, and some of the discussion from the Committee meetings (as approved by the DCAB Board).*

## **1. HQAS TEST**

NOTE – The Hawaii Quality Assurance System (HQAS) Test is being separated from the issuance of a state credential. See section under “3. State Credential” for more information about this.

### **TOPIC 1.1: Continued Use of the HQAS Test**

Concern has been expressed that the HQAS Test is antiquated in comparison to other testing options on the mainland, either in other states or at the national level. The test was developed as a combined effort in a “consortium” of approximately 13 states led by Kansas, all of which wanted a test to credential interpreters who did not seek national certification. Hawaii contributed monetarily to the joint effort, although the development and the validity of the test was conducted by Kansas. The HQAS Test, Version I, was adopted in Hawaii in 2001, with Version II adopted in 2004. Since then, most Quality Assurance System (QAS) states have ceased to issue a credential based upon the original or second version of the QAS tapes. Some states use the test as a screening tool for the national test and some states have developed their own test or new QAS tapes. DCAB explored options to purchase another state’s test or partner with another state to use a more modernized test. However, those options appear to be unrealistic at this moment. The main reason for not pursuing those options is that the State of Hawaii does not have a large enough pool of test takers to make such an arrangement financially viable. A secondary reason is the geographic isolation of the state, as some mainland states partner with contiguous states to share evaluators and to allow the evaluators to meet to discuss their ratings. These difficulties do not preclude the adoption of another test in the future, but DCAB does not wish to delay the necessary changes in the administrative rules until such time as a better test is used.

Community comment and response: A few commenters suggested that HQAS is outdated and needs to be replaced. The Committee and Board agreed that it is old. Staff has researched this and will continue to do so with consideration of practices in other states. There is no other financially viable option currently. Thus, there is no change to the proposed draft. Until such time, DCAB will continue to use HQAS and will continue to explore other options.

### **TOPIC 1.2: Number of Times a Person May Take the HQAS Test**

The number of times that a person was allowed to take the HQAS test has been limited to 3 times, in the past. This limit was an administrative decision, not one found in the rules. The rationale was the availability of only 3 tests and the concern that an applicant should not take the test again with the same video for the performance.

Many commenters stated that limiting the number of times a person can take the HQAS test to 3 was a deterrent to improve, especially to lower level interpreters. Suggestions ranged from 4/5 times to an unlimited number of times a person could take the test. The Committee agreed that a repeat of the same video would not compromise the integrity of the test, given an interval of time between using the same test again. Thus, it was agreed that DCAB should allow extra tests, especially to assist Level III interpreters. The initial proposal to allow each tape to be used twice, resulting in a potential 6 test opportunities (instead of 3), was agreed upon by all present. Also, the applicant would have to take all three versions of the test – Test A, Test B and Test C – before they could ‘cycle’ back to retaking the same test. The main concern was how much time would be needed between taking the same test twice to ensure that its integrity would not be compromised. After discussion, it was agreed that DCAB would require 6 months between any test re-takes. The rationale is that about 2 months is required to score a test and most applicants would not change their skill set sufficiently in 4 more months, so a total of 6 months seemed reasonable. With only 3 original tests – Test A, Test B and Test C, a repeat test would be test #4 (Test A<sup>2</sup>) with a minimum of 18 months lapse time from the original test (Test A<sup>1</sup>) and so on. Since tests are given upon request, rather than at set intervals, the time frame could be customized to the individual. It was noted that the applicant would still have to pay the fee again because the evaluators must rate and be paid again. After 6 times taking the test, there would be no further options to take the test.

### **TOPIC 1.3: HQAS Test Name**

The HQAS test will be retained until such time that a better and financially viable alternative test is determined. A significant amount of time was spent discussing the name of the test. Initially, the Committee recommended changing the name of the test in the administrative rules to a more generic term, the “Hawaii State Interpreter Test,” while continuing to use the HQAS test as the actual test instrument. This would allow more flexibility if DCAB were to use another test in the future because the rules would not need to be amended. However, aside from the legal ease of amending the administrative rules, there were overwhelming comments in opposition to the change, suggesting that confusion would occur in the interpreter community among those who have an HQAS certificate. DCAB initially viewed the “HQAS” name as a proprietary name for a specific test while others thought that the name was generic enough to withstand a change in the test itself in the future. While that debate is still subject to further discussion, it was noted that since a change in the actual test is not imminent, it would be best to change the name of the test when the actual test is changed. Hence, the Committee decided to retain the name of the test as HQAS in the administrative rules.

#### **TOPIC 1.4: What test level would warrant the issuance of a credential?**

There are currently 5 levels (with “5” or “V” being the highest). There will be no changes to the scoring of the test, although DCAB will no longer consider any score lower than a Level 3 or III as a “passing” score for the issuance of a credential in the proposed rules.

Some commenters expressed concern that there is a place for Level I and II interpreters, especially those who currently possess that Level. Staff noted that for the record that there are currently no Level I interpreters and only one Level II interpreter (others have expired or have improved to a higher level). Hence, the impact will be minimal. The decision was to keep the minimum credential as Level III and work with the current Level II person to achieve a Level III status. If the number of test tries is increased to 6 (see “TOPIC 1.2: Number of Times a Person May Take the HQAS Test”), and given that there is feedback to the interpreter on his/her test, staff recommends keeping the minimum level to achieve a state credential at Level III.

#### **TOPIC 1.5: Code of Professional Conduct (CPC)**

The former QAS Code of Ethics will be replaced by a Code of Professional Conduct (CPC), which mirrors the National Registry of Interpreters for the Deaf’s Code of Professional Conduct. The rationale is that all interpreters, regardless of certification or credential, should adhere to the same behavior and conduct standards. The text of the proposed Code of Professional Conduct is contained in an Appendix. All commenters supported using the RID CPC instead of the older QAS Code of Ethics. It was recognized that RID is looking to update its CPC, but probably not for about 5 years. As such, when the RID CPC is changed, the CPC contained the appendix to the HAR will be amended to mirror those changes.

#### **TOPIC 1.6: Ethics Test**

The HQAS Code of Ethics was a written test prior to taking the performance test. The comments are split as to whether to retain an ethics test. The rationale for deletion is that passing a test does not guarantee ethical behavior; the best way is through CEUs. The rationale for keeping a test is that basic ethics are essential to practicing as an interpreter. RID requires a written test, although it is more than ethics. There was a strong feeling that DCAB should have some type of test to complement the performance test. Being able to interpret is good to assess, but we need to have something that also requires a person to have an understanding of ethics and other aspects of professional conduct. The RID test is more than just ethics. Also, RID uses a video whereby a person must determine what is and is not appropriate to do. Since we are replacing the old QAS Code of Ethics with the RID CPC (see “TOPIC 1.5: Code of Professional Conduct”), we would need to re-do the test in whatever form we decide, budgeting money for a new test. RID has a video on ethics that they are updating, which has some potential for use. There was a long discussion as to whether the test should be written or video-based, and the decision was to reference a Test on Professional Conduct (since we are basing it on the Code of Professional

Conduct). This would allow flexibility to incorporate more than ethics and simultaneously not specify whether the test needed to be written or video-based or a combination. DCAB would have time to develop such a test with external assistance and consultation. In addition, the Communication Access Committee voted to offer the Test on Professional Conduct after the performance test. The test will also be a requirement prior to obtaining the Hawaii State Sign Language Interpreter Credential (see “3. State Credential”).

#### **TOPIC 1.7: HQAS Test Fee**

The HQAS test fee will be increased from \$300 to \$360 with the difference being used to augment rater compensation, which is already nominal. The proposed rules will clarify when a test cancellation will result in a refund (see “TOPIC 6.2: Cancellation Fees”). Some commenters opposed raising the test fee from \$300 to \$360. Currently the \$300 is used to pay 6 raters at \$40 each (for about 3 hours of time) plus the costs of purchasing tapes, to/from FedEx mailing, etc. The proposal would increase the rater reimbursement to \$50. DCAB does not earn money on the tests and, if the fee were kept at \$300 with an increase in rater reimbursement, then DCAB would lose money. After a lengthy discussion, the majority felt that the increase would not be a major deterrent to applicants but that an increase to \$50 for the raters for their time was important, since the amount is nominal.

#### **TOPIC 1.8: +H Test**

The local language +H test will no longer be offered as a test option. Consistent with comments from the community and referral agencies, DCAB noted that the possession of a +H credential was not a factor in requesting or placing an interpreter. Rather, consumer preference for a specific interpreter was a better measure of an interpreter’s ability or lack of ability to meet local language needs. Furthermore, only 4 HQAS interpreters opted to test for and receive a +H credential. This means that very few HQAS interpreters had exposure to the information about local language contained in the +H video and no nationally credentialed interpreters have ever seen the video.

Comments are mixed as to whether to keep +H. The current draft proposes to eliminate the +H as a test and, in its place, develop training components on the content. Some believe it has value to expose interpreters to local language; others believe that the tape itself, while useful, is outdated. Those wanting to keep +H mentioned a need for exposing people to Hawaii Sign Language (HSL) and for local language. To correct a misperception, +H is not about HSL. It reflects local pidgin, but not HSL. In its place, a +H video will be converted into a tool that all interpreters must view before being issued a state credential (see “3. State Credential”) or that can be used for CEUs (see “2. CEU Program”). DCAB believes that the information contained in the +H test would be better suited as part of the credential process or CEU program to expose more interpreters to the information.

#### **TOPIC 1.9: Grievance of the Test**

A few commenters emphasized the need for a grievance procedure. One commenter stated that the re-evaluation should not cost the applicant any additional fee. However, this is not practical because DCAB must pay new raters for their time. Several commenters asked for a mechanism to file a grievance against an interpreter for his/her behavior. This would not be a grievance on the test but a grievance on the interpreter's credential status.

There is currently a grievance procedure for the test itself. If the grievance is procedural, then the process is in place to grieve to the Director. If the grievance is about the score, then there is a process to have the performance test rescored upon payment of a new fee. To allow for a mechanism to grieve against an interpreter's behavior, further changes to the law will be required. DCAB should ask those in the community what type of "remedy" or "procedure" they wish to see. If it is anything other than an informal mechanism whereby the staff raises the issue to the interpreter, then DCAB would need to discuss with the AG how to change the law. There cannot be a grievance mechanism with punitive action without a mechanism to appoint people and have rules and due process. This would include an appeal mechanism and impartial investigator and perhaps approach more regulation. This would need some serious exploration beyond the scope of the current rules and law. Thus, no changes were made to the proposed rules.

## **2. CONTINUING EDUCATION PROGRAM**

The Continuing Education Program (CEP) will retain its purpose of allowing a person who has been issued a Hawaii State Sign Language Interpreter Credential by taking and passing the HQAS Test to retain his/her credential without retesting, assuming that approved continuing education units (CEU) are earned.

### **TOPIC 2.1: Enrollment in the Program**

Enrollment in the online CEP will be automatic with the issuance of the Hawaii State Sign Language Interpreter Credential. Currently, a \$100 fee is charged for enrollment in the CEP. However, interpreters often forget to enroll, which causes confusion when credits are not honored prior to enrollment in the program. The fee structure will change so that the interpreter must pay a fee for the Hawaii State Sign Language Interpreter Credential, which will automatically generate enrollment in the CEP. The net difference in cost to the interpreter is zero.

### **TOPIC 2.2: CEP Required Number of CEUs**

The current requirement for CEU credits is 3.0 for a 2-year cycle. A 1.0 CEU is equivalent to 10 hours. There was significant discussion that those interpreters who tested at the HQAS III level may need more training to improve their skills, especially because they are being assigned to situations where no other interpreter may be available. The number of CEUs proposed is 3.0 for Level IV and V (same as current)

with 3.5 for Level III (increase of .5). The HQAS CEU requirement of 3.0 CEUs for 2 years is less than RID's requirement of 8.0 CEUs for 4 years. Therefore, it should not be considered onerous. Also, DCAB CEUs can be earned on-line or with Independent Study, and few interpreters take advantage of those options.

Some individuals did not support the increase in number of CEUs for Level III interpreters, stating that it was a burden just to meet the 3.0 CEUs due to lack of sufficient or relevant offerings. Commenters noted that this may be one reason why 10 interpreters asked for an extension of the CEU deadline.

Note: At the beginning of this review process, over a year ago, the original proposal was to require Level III interpreters to be mentored to improve their skills (in addition to the 3.0 CEUs). However, it was realized that monitoring the mentoring would be very difficult and mentoring options might not be available in any given year to all those interpreters who need it (i.e., a lone interpreter on a neighbor island without a mentor nearby). Thus, mentoring was dropped as a requirement and replaced with an additional .5 CEUs. The Committee did not recommend lowering the required number to 3.0, as the additional 5 hours over 2 years did not seem excessive and was still less than what RID requires. Staff indicated that DCAB can offer an annual workshop geared toward Level III interpreters that will allow them to earn the additional .5 CEUs at no cost, thus eliminating the disincentive of added cost.

### **TOPIC 2.3: CEU Monitoring**

Some commenters indicated that DCAB should make the CEU monitoring system more streamlined to remind people when they need to complete their CEUs. A few commenters also suggested that DCAB consider using the RID ACET on-line system whereby a non-RID credentialed interpreter can sign up and monitor their CEUs with RID.

The CEU program is on-line for each HQAS interpreter already. Staff notes that a main reason for extensions is because interpreters wait until the last minute to earn their CEUs. Monthly updates are automatically sent via email to HQAS interpreters enrolled on HQAS.org regarding their CEU status. In addition, staff prompts them several times in the second year of their cycle, so they have ample notice as to their CEU deadline. Members believe that interpreters are professionals that should monitor their own CEUs from home on-line. Also, the RID ACET system would require the interpreter to pay a higher fee than that of the DCAB system and DCAB would have no way to access or monitor the CEU status.

### **TOPIC 2.4: CEU Extension**

The rules currently do not explicitly provide for extensions. The proposed rules will clarify how and when a one-time extension of 3 months will be allowed.

Some commenters did not understand the CEU extension process. It was also not clear if the “one-time” extension referred to once in a cycle or one time at all.

Currently, an HQAS interpreter may request a CEU extension each cycle. If the required CEUs are not earned by March 31, the Hawaii State Sign Language Interpreter Credential will not be eligible for renewal. Staff also noted that RID allows for only one lifetime extension and charges a fee (unknown amount). The decision was to change the proposed rule to allow a one time (in a lifetime) extension at no cost. Subsequent extensions will cost \$50. Each extension is for 3 months.

### **3. STATE CREDENTIAL**

The issuance of the credential (Hawaii State Sign Language Interpreter Credential) will be separated from the test. A new section is written to describe the Hawaii State Sign Language Interpreter Credential. It provides for issuance of the Hawaii State Sign Language Interpreter Credential upon verification of passing the HQAS test or upon presentation of a credential issued by another entity that is honored by the Board. Currently, upon completion of the test, a credential is automatically issued with a name that matches the test name (e.g., HQAS Credential Level V). However, because the Hawaii State Sign Language Interpreter Credential will be issued to people other than those who pass the state test (i.e., an Interpreter who possesses a recognized current credential issued by another entity), a distinction will be made between “passing the test” and “possessing a state credential.”

#### **TOPIC 3.1: State Credential Name**

Most commenters did not like the name Hawaii State Interpreter Credential (HSIC) because of the sound of the acronym. It is not recommended to name it “HQAS credential” because we are distinguishing the test from the credential and providing a mechanism for the issuance of a credential to others who have not passed the HQAS (i.e., those possessing a credential issued by another entity). The name can be changed, but we need to find an alternative name for the credential. After discussion, the name chosen is “Hawaii State Sign Language Interpreter Credential”.

#### **TOPIC 3.2: Credential Levels**

There will be four (4) Hawaii State Sign Language Interpreter Credentials issued (a Tier V Credential, corresponding to an HQAS Level V score; a Tier IV Credential, corresponding to an HQAS Level IV score; a Tier III Credential, corresponding to an HQAS Level III score; and a Provisional Credential).

Those that commented all recommended that the Credential use the term “Tier” or “Level” but not “Tier Level.” One commenter noted that the term ‘tier’ might be confused with the ‘tiers’ in the Judiciary. However, this did not seem to be an issue. The

Committee discussed giving the credential tiers varying names, but ultimately settled on “Tier” to correspond with the current HQAS test score levels to minimize confusion.

### **TOPIC 3.3: Credential Fee**

An interpreter must submit a separate application form for a Hawaii State Sign Language Interpreter Credential upon passing the HQAS test and submitting a fee. The credential will correspond to the HQAS score and will be valid for a 2-year cycle; the same as the current duration. There were multiple comments on the credential fee, most stating that the fee should not be an addition to the test fee. There was a lot of misunderstanding of the credential fee. Currently, the credential is free but one pays \$100 to join hqas.org. The Hawaii State Sign Language Interpreter Credential fee would REPLACE the cost that we currently charge to enroll in the CEU program, thus the net difference is zero.

There was an initial proposal for a \$25 replacement fee. Several commenters indicated that it should not cost anything for a replacement credential given that it is just a piece of paper. Staff notes that we only issue 3-4 replacements in a two-year cycle and a person’s credential is listed on the DCAB website, regardless of whether the interpreter has a paper credential. Thus, there will be no charge for a replacement Hawaii State Sign Language Interpreter Credential.

### **TOPIC 3.4: Honoring Credentials Issued by Other Entities (Provisional Credential)**

The proposed rules will provide for the issuance of a Provisional Hawaii State Sign Language Interpreter Credential to an interpreter who does not have a national credential or has not taken the HQAS. Specifically, this would allow the state to honor and recognize (in a concept similar to one-way reciprocity) a current credential issued by another entity within the past 2 years. A Provisional Hawaii State Sign Language Interpreter Credential is intended to be one-time and temporary, valid for one credential cycle, until the interpreter can either take the HQAS test or obtain a national credential recognized in the rules. For purposes of the recommended fee schedule, a Provisional Hawaii State Sign Language Interpreter Credential will be considered equivalent to a Tier III Credential.

### **TOPIC 3.5: Honoring EIPA (Provisional Credential)**

Multiple comments stated that the Educational Interpreter Performance Assessment (EIPA) certification should automatically be recognized as a valid credential because it is issued at the national level. The comments differed on the EIPA level that should be recognized; one commenter said 3.0, two commenters said 3.5, and two commenters said 4.0. The EIPA is a national certification, but its focus is for the K-12 setting and the test is very different. The DCAB rules and the Hawaii State Sign Language Interpreter Credential do not impact the DOE’s hiring of interpreters as staff, but they do impact those who wish to freelance in the community. DCAB wants to recognize their skill set,

which is why we would give the person a Provisional Hawaii State Sign Language Interpreter Credential without a test. However, to recognize the EIPA certification indefinitely would be difficult because there is no ongoing requirement for them to earn CEUs to maintain their certification, unlike HQAS and RID interpreters who are required to earn CEUs. To give unlimited equivalency would be unfair to HQAS and RID interpreters.

Thus, an EIPA certification would be treated similarly to a credential issued by another entity. Also, a Provisional Hawaii State Sign Language Interpreter Credential will recognize interpreters who possess an EIPA certification at a level of 4.0 or higher.

#### **4. RIGHTS OF CONSUMERS**

The prior section on rights of consumers was revised and moved to the very beginning of the rules. This move strengthened and emphasized that the purpose of the rule is to establish guidelines to ensure the rights of consumers to effective communication.

All commenters supported moving the section on the rights of consumers to the very beginning of the rules. They also supported strengthening and emphasizing the purpose of the rules, which is to establish guidelines to ensure the rights of consumers to effective communication.

#### **5. PROVISION OF SERVICES**

This section was significantly rewritten to emphasize the following: (a) the obligation of a person who is deaf, hard of hearing, or deaf-blind to request communication access services; (b) the requirement by the state agency to provide communication access services, when requested; (c) general parameters for using multiple interpreters; (d) the obligation to use an interpreter who is “most qualified.”

The initial proposal was to require the use of an interpreter with the highest credential level, excepting deaf consumer preference. While a credentialed interpreter is one way to indicate that they possess the skills to be qualified for a job, it does not mean they are qualified for every situation. There were a few comments indicating that this policy may result in unintended consequences. Some believe this could impact the availability and nature of work for lower-level credentialed or certified interpreters. Another comment was that, to secure work, lower-level credentialed or certified interpreters may feel compelled to approach Deaf consumers asking them to request them, which is potentially unethical. A comment suggested that, for several individuals within Hawaii’s Deaf community, a higher-level credentialed or certified interpreter would not necessarily satisfy the definition of “qualified” under the ADA. Another comment stated that if the preference of a Deaf consumer is a non-credentialed or -certified interpreter, the interpreter should then be assessed to be “qualified” for the job situation. The

Committee decided to use the word “qualified” and mirror the ADA definition of “qualified” interpreter.

There was also a comment about issues arising due to HQAS not offering a credential for deaf interpreters. The QA system never had a DI tape. Staff will continue to research options but cannot create a test without a tape. While HQAS does not currently credential deaf interpreters, a Deaf consumer may still obtain a deaf interpreter – regardless of whether they are credentialed – if they indicate that this is their preferred accommodation. There will be no change in the proposed draft in this area.

## **6. OTHER CHANGES**

### **TOPIC 6.1: Fee Schedule**

The fee schedule in Appendix A is removed. Significant concerns have been raised about the DCAB fee schedule as being restrictive to Sign Language Interpreters who are independent contractors and wish to set their own rates as professionals.

Once the Administrative Rules are in the public hearing process, DCAB will work on a separate, free-standing document that state agencies may use as guidance in paying for sign language and other communication access provider services. The requirement to issue a recommended fee schedule is set forth in statute as a requirement for DCAB. However, because the fee schedule is not binding, but only a guideline, it can be issued as a free-standing document.

Although some individuals objected to what they perceive as ‘rate setting,’ the fee schedule is only recommended and is not binding. Given the fact that the rules are only applicable to state agencies, they do not constrain the overall market for independent service providers. Furthermore, given the general unfamiliarity of state agencies with the different interpreter credentials (e.g. national versus state) and the various levels of credential or certification within those credentials, guidance is necessary to assist state agencies in understanding appropriate reimbursement for interpreter services as well as for annual budgeting for such services.

### **TOPIC 6.2: Cancellation Fees**

This section formerly contained a detailed description of the cancellation fees of varying levels of advanced notice depending upon the length of the job. This was removed, in part, to be included as part of the recommended fee schedule. This section also recommends deferring to the cancellation policy of an interpreter referral agency or the individual interpreter, if arranged separately from an interpreter referral agency.

### **TOPIC 6.3: Description of National Certification Levels**

The description of the national certification levels in an appendix is removed as it is no longer relevant to the policies in the rules.

#### **TOPIC 6.4: Description of Credential Levels**

There is no appendix describing HQAS levels. Instead there is an Appendix describing the Hawaii State Sign Language Interpreter Credential levels (see “TOPIC 3.2: Credential Levels”).

#### **TOPIC 6.5: Definitions**

In the definitions section... “Continuing Education Unit” and “Continuing Education Program” are defined in the new section 11-218-12.5 and therefore were removed from the definitions section. The definition of the Hawaii State Sign Language Interpreter Credential is added (see “3. State Credential”). The definition of “HQAS” is revised to remove the reference to the functional descriptions of the HQAS credential levels contained in an appendix that is removed. The HQAS +H test is removed from the definition because it will no longer be offered (see “TOPIC 1.8: +H Test”).