

Kansas Commission for the Deaf and Hard of Hearing

Initial Policy Guidance Recommendation on Video Remote Interpreting (VRI) Services

Adopted by the Commission, October 20, 2017

Introduction

Video Remote Interpreting (VRI) is a means of providing qualified interpreter services for individuals who are deaf and hard of hearing and who communicate using sign language. VRI uses videoconferencing technology, equipment, and a high-speed Internet connection with sufficient bandwidth to provide the services of an interpreter, usually located at a call center, to people at a different location, usually a service site. VRI is currently being used in a wide variety of settings including hospitals, physicians' offices, mental health care settings, police stations, schools, financial institutions, and workplaces. Entities may contract for VRI services to be provided by appointment or to be available "on demand" 24 hours a day, seven days a week. As such, there are significant possibilities for the use of VRI technology and services.

However, at the same time, KCDHH is calling for a more cautious approach when considering or using VRI services to ensure effective communication and no harm is created for any party involved. Unfortunately, many covered entities have been misled to believe VRI can easily achieve effective communication all of the time and is applied unilaterally across the board as a primary means of accommodation without consideration of the individuals, situation or setting involved. Effective communication can occur when VRI's use is appropriate, related to the content and complex nature of communication involved, and without factors that may cause the use of VRI service to fail or be rendered as useless. KCDHH considers VRI services only as another technology tool and cannot be considered as functionally equivalent to an on-site (in person) sign language interpreter until it is certain that effective communication is achievable or otherwise requested by the deaf or hard of hearing individual.

The guidance provided in this recommendation to the KCDHH Commission is meant to provide initial basic guidance for the use of VRI services by state agencies and political subdivisions in Kansas, and it may also serve as a starting resource guide for all other covered entities who are required to provide public accommodations to individuals who are deaf and hard of hearing. It is highly recommended that all state agencies and subdivisions defer its consideration of using VRI services until KCDHH completes its study on this subject matter and develops an appropriate policy action during the next six months. If VRI services are still feasible and appropriate to use, this guidance will be very helpful in ensuring safeguards are in place before VRI services be considered as an accommodation.

In the meantime, there is a high likelihood that KCDHH will take the lead in creating a system to enable the use of VRI services in Kansas to supplement the current array of communication accommodations available to all state agencies and subdivisions. With a further proper guidance, of course.

Preliminary Consideration

KCDHH has been proactive in its approach with VRI. Several workgroups and collaborations have been formed, and they include:

- KCDHH Medical Interpreting Subcommittee and KCDHH Legal Interpreting Subcommittee
- Kansas Association of the Deaf (KAD) and Kansas Community Action Planning (K-CAP)
- National VRI Taskforce led by Deaf Seniors of America (DSA) and National Association of the Deaf (NAD) with various stakeholders, including Registry for Interpreters for the Deaf (RID) and representatives from VRI services industry and interpreting field
- National Association of State Agencies Serving Deaf and Hard of Hearing (NASADHH)

Several town hall meetings on VRI services are being planned, including October 21 in Olathe, being coordinated by K-CAP. Surveys on use of VRI (especially in medical settings) have been conducted with collaboration from KAD and KCAP, which have yielded common responses including:

- Willful and blatant disregard of individual considerations or whether VRI is appropriate for each situation
- Staff are often untrained and don't know how to handle VRI equipment, and thus often relying on deaf individual to set up or enable the VRI equipment or they would wait at lengths and often it would be near the end of the appointment before they finally could use VRI equipment, if not at all
- Many deaf or hard of hearing individuals with low vision abilities or cognitive limitations were forced to use VRI or resort to either writing or using a family member for communication when VRI was useless, while communication remained ineffective or unsuccessful at times
- Most hospitals or medical clinics that switched to VRI services often don't have triage or means of contacting local on-site (in person) interpreters
- Two instances reported physician/specialist willing to provide on-site (in person) interpreters in defiance to clinic or hospital's policy and these providers bore all cost of providing them

Conversations among interpreters and community members have also identified the following concerns:

- Covered entities are not willing to recognize many instances of ineffective communication occurring during use of VRI service; and deaf individuals were often left without any accommodation throughout their appointments
- Prevalence of VRI services among hospitals and medical clinics have caused a market shift in business for most of Kansas interpreters, which has also created an appearance of their being less available because they have to look for business elsewhere
- Some covered entities have often reported ignorance of true costs involved with VRI services when comparing to on-site (in person) interpreter until after initial services are rendered
- The same is also true when involved with purchases of specific VRI equipment, as some purchases were unnecessary while existing equipment could be used; and that most specialized VRI equipment would not allow them to utilize different VRI providers if needed

- Some VRI providers have indicated that their biggest business has been the VRI equipment sales rather than the actual interpreting services

The KCDHH Medical Interpreting subcommittee has developed a matrix for using VRI services in medical settings to provide some basic parameters for medical providers to use, while the subcommittee continues its work to develop a more defined policy guidance for the KCDHH Commission's consideration for appropriate policy action within the next six months. **SEE ATTACHMENT**

As these efforts are being put together, the KCDHH has come to the following basic considerations:

VRI services may be used in limited circumstances, such as when waiting for an on-site (in person) interpreter to arrive at the hospital. In all circumstances, VRI should not be used without the consent of all parties involved. VRI services can be used effectively in limited circumstances if certain minimum requirements are met. In some situations, VRI may not be effective and on-site (in person) qualified interpreters should be used.

In the medical setting, VRI services should be provided only if qualified and/or certified on-site (in person) interpreter services are immediately unavailable despite a good-faith effort to locate such services. If a deaf patient or deaf companion specifically requests VRI services, VRI may be provided.

A selected excerpt from KCDHH's Quick Guide for Kansas Public Employees on Accommodating Deaf and Hard of Hearing, January 2017:

"Would it be appropriate to use Video Remote Interpreting service (VRI) instead of an on-site interpreter? Yes, it is appropriate as long as you don't rely on VRI as your only means of providing accommodations. VRI would be appropriate for service centers in remote locations where an available on-site interpreter would be difficult to locate or it is too far for an interpreter to travel within a reasonable time. It may still be acceptable for you to use VRI if you are located in or near a major city where on-site interpreters are available. However, if the person requested an on-site interpreter with advance notice, you should make every effort to honor the request. The same consideration should be given only if there is sufficient time for you to secure an interpreter and time for the interpreter to arrive before your meeting ends with the person involved – for example, at a hospital or processing police station where a significant amount of time would lapse before you would finish communicating with the person."

Primary Policy Consideration for VRI Services

- VRI service is not a substitute for an on-site (in person) interpreter, while it may sometimes achieve **effective communication** in initial situations, depending on circumstances and/or context involved.
- VRI services are considered an extension or enhancement to existing communication access and VRI services should not be construed as a way to replace an on-site (in person) interpreter.
- VRI services should not be used as a **primary means of access**, but VRI services may be appropriately considered if primary means of access is not feasible or may result in an undue burden.

- Covered entities are required to give **primary consideration** to the type of auxiliary aid or service requested by the deaf or hard of hearing individual. They must honor that choice, unless they can demonstrate that another equally effective means of communication is available.
- If the choice expressed by the deaf or hard of hearing individual would result in an undue burden or a fundamental alteration, the covered entity still has an obligation to provide another aid or service that provides effective communication.
- The decision that a particular aid or service would result in an undue burden or fundamental alteration must be made by a high level official, no lower than a Department head, and must be accompanied by a written statement of reasons why the conclusion was reached.
- **Informed consent** should be utilized in each situation if VRI is to be used or considered as a primary means of access, especially in situations when appointments are being scheduled in advance.
- If an on-site (in person) interpreter cannot achieve effective communication, additional accommodations may be needed, if not required, such as a Certified Deaf Interpreter (CDI); and thus, using VRI services could create a higher need for a CDI.
- Site staff are properly trained, or at least an assigned staff member is available on-site to provide support anytime VRI service is used.
- VRI equipment is ready to use by the deaf or hard of hearing individual when an on-site (in person) interpreter is unavailable, and that such individual should not be relied upon to enable the equipment.

Minimum Considerations for Using VRI Services

This discussion of minimum considerations should not be utilized as an absolute until appropriate standard and best practices for VRI services can be well established. The National VRI Taskforce has put forth a draft of detailed specifications for equipment and technology along with other staffing and procedural requirements. Without creating a false expectation or impression that such minimum standards are met, further deliberation by KCDHH is required until appropriate policy action recommendations can be made for Kansas. The following selected considerations are only basic information:

Technical Considerations

- Network – reliable and dedicated high-speed Internet connection, technical specifications, etc.
- Equipment – appropriate size, ease of usability, minimum resolution, camera positioning, means of stabilization, etc.
- Onsite video and audio capabilities; contingencies
- Compatibility with other accommodation needs, i.e. visual aids

Training Considerations

- Training for all personnel dealing with consumers/patients and their companions
- Triage for informed consent and handling accommodation requests
- Situation assessment for appropriate uses and handling contingencies
- Clear procedure of due diligence for individual considerations
- Equipment set up, maintenance, and handling IT support
- Environment considerations (privacy, lighting and background, glare, room arrangements, etc.)

Video Interpreters

- Compliance with regulations and KCDHH registry of interpreters, i.e. K.S.A. 75-4355b
- Follow interpreter's Code of Professional Conduct as recognized by KCDHH
- Recusal when finding situation(s) for VRI is not appropriate accommodation; ability to advise appropriate needs, i.e. Certified Deaf Interpreter (CDI) or revert to on-site (in person) interpreting; any conflict requiring replacement/transfer
- Handling technical difficulties, visual aid needs, calling for additional support
- Triage and contingencies

Other Factors

- Procedures for informed consent, temporary accommodation, reverting to on-site (in person) interpreting when situation requires
- Effective communication should be satisfied by all parties involved; communication dynamics between VRI and on-site interpreters are often incomparable while on-site can be paramount
- Time sensitivity and limitations of the patient's and/or companion's visual, head/body mobility, cognition and/or consciousness should be considered to determine whether to use VRI or on-site interpreters
- On-site interpreters must be used should the patient and/or companion become stressed with the use of the VRI
- On-site (in person) interpreters must be used whenever there is no readily accessible Internet access
- On-site (in person) interpreters must be used when there is no space to use VRI

Minimum Requirement Before VRI Services Can be Used:

- Minimum technical specifications must be met, especially 1) internet connection, 2) video equipment with minimum screen size and quality, 3) equipment has proper means of being secured (i.e. iPad on a stand or a holder), and 4) [insert other required item(s)].
- Internet connection must be robust with frequent testing to ensure effective connection.
- Staff training must be completed and on-site staff must show competence before VRI can be offered.
- On-site IT support and/or the facility's site coordinator must be available at all of times, especially during the VRI session.
- If facility using VRI utilizes any kind of informed consent for services, treatment or support, the facility must offer informed consent in communicating the use of VRI and what recourse may be available, if applicable.
- Covered entities must have contingencies in place, for example, ability for recourse or additional support on site.
- Identification of the VRI provider must be communicated visibly, along with procedures for filing a grievance, with a single point of contact; or at least provide posted information on how to contact KCDHH if the facility opts out of this requirement.
- VRI interpreters must be properly registered with KCDHH unless a proper assurance is in place.

Additional Minimum Consideration for Technology and Equipment

KCDHH is neutral with respect to the type of VRI technology and equipment used, except to the extent that VRI technology and equipment impacts the delivery of VRI services. Due to the widespread limited understanding among the covered entities regarding equipment and associated costs involved beyond the interpreting services provided through VRI, it is KCDHH's recommendation that the covered entities should wait until further study by KCDHH is completed to provide basic parameters for procurement of equipment or technology to use VRI services. However, VRI services may still be considered only if there is no additional cost for equipment usage for existing equipment that is readily available until the needed guidance can be made.

Secondary Considerations:

- The VRI provider must have the capacity to provide on-demand Certified Deaf Interpreter (CDI) support, if either the VRI interpreters or on-site interpreters feel a situation would benefit having a CDI involved; and for the CDI to make a determination if VRI is not appropriate.
- The VRI provider must have the capacity for its VRI interpreters to connect with on-site IT support and/or the facility's site coordinator, or the ability to communicate any issues that may arise.
- Identification of the VRI interpreter should be visible or disclosed if requested.
- If the facility intends to use VRI as a primary means of communication accommodation, the facility still must have the ability to provide an on-site (in person) interpreter when a situation requires. If the facility is in a remote location where interpreters are not readily available, within an hour of drive time, the facility should offer the option of rescheduling the appointment if communication through VRI was not effective.
- Every individual situation requires separate consideration and a communication rubric matrix or a triage must be established to deal with each situation within the different settings applicable to each facility.
- Disparate impact cannot be created by any policy, i.e. imposing cost responsibility onto the medical professionals for preferring on-site (in person) interpreters rather than VRI services.
- There is no good correlation between Foreign Language VRI services and Sign Language VRI services, including quality of sign language interpreting. A Sign Language VRI provider should not be disqualified because it cannot provide adequate foreign language options, nor the other way around; both contractual considerations must be dealt with separately, even if both services could be combined.
- For medical settings, Section 1557 clearly dictates that VRI considerations for either Foreign Language VRI or Sign Language VRI access must be dealt with separately by having a separate procedure, triage and contingencies.

Conclusion

VRI is a technological tool that can be used by covered entities to ensure immediate communication access for deaf and hard of hearing individuals who communicate in sign language. However, the use of on-site (in person) interpreters should remain and always be paramount, and when VRI is used in the absence of any available on-site (in person) interpreter, it must be used properly in terms of policy, procedure, and technology. Failure to conform to these standards is not only a failure to ensure effective communication under federal and state law but also creates unnecessary risks to the welfare of deaf and hard of hearing individuals.

As technology and services are constantly evolving, it is critical to engage the deaf and hard of hearing community when adopting new technology and services to ensure that it is aligned with their goals and communication needs. All covered entities planning to implement VRI services should consult with deaf and hard of hearing individuals in their community. Additionally, regular outreach and education programs should be conducted to introduce the system to the community. These education programs should include covered entities and/or service sites' policies and procedures on providing and using VRI services and the provision of on-site (in person) interpreters; how deaf and hard of hearing individuals should notify staff when VRI services do not result in effective communication; which staff position (staffed 24/7) is responsible for conducting and reviewing communication assessments and the provision of auxiliary aids and services, including VRI services; and how to file complaints and use the grievance system when necessary. Covered entities should make their VRI policies available on their websites, handbooks and booklets.

KCDHH is available to provide technical assistance and policy guidance for all state agencies and political subdivisions. KCDHH does not provide any legal advice.

Resources

- NAD Position Statement on VRI Services in Hospitals:
<https://www.nad.org/about-us/position-statements/position-statement-on-vri-services-in-hospitals/>
- RID Standard Practice Paper on VRI Services:
<http://www.rid.org/about-rid/about-interpreting/standard-practice-papers/>
(look under *Video Remote Interpreting*, 2010)

About KCDHH – *The Kansas Commission for the Deaf and Hard of Hearing (KCDHH) is a state agency housed within the Kansas Department of Children and Families (DCF) in its Rehabilitation Services Division. Based in Topeka, KCDHH works with agencies and organizations throughout Kansas to assure availability and coordination of services for people who are deaf and hard of hearing, including communication access. KCDHH also maintains a registry of qualified sign language interpreters in order to track interpreters' credentials, areas of expertise and geographic areas of practice of interpreters working in the State of Kansas. As required by K.S.A. 74-4355b (a), "All interpreters for the deaf, hard of hearing and speech impaired shall be certified or registered with the KCDHH or an agency designated by the Commission." This is applicable to all interpreters hired or contracted by state agencies or any political subdivisions of Kansas, including the Courts.*

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