



**Dora**  
Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

**2009 Sunset Review:  
Commission for the Deaf and Hard  
of Hearing**

**October 15, 2009**





**Executive Director's Office**  
D. Rico Munn  
Executive Director

Bill Ritter, Jr.  
Governor

October 15, 2009

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Commission for the Deaf and Hard of Hearing (Commission). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 21 of Title 26, C.R.S. The report also discusses the effectiveness of the Commission and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this program is continued by the General Assembly.

Sincerely,

D. Rico Munn  
Executive Director





Bill Ritter, Jr.  
Governor

D. Rico Munn  
Executive Director

## **2009 Sunset Review: Colorado Commission for the Deaf and Hard of Hearing**

### **Summary**

#### ***What Is the Commission for the Deaf and Hard of Hearing?***

The Commission for the Deaf and Hard of Hearing (Commission) is a Type 2 commission housed in the Department of Human Services' Division of Boards and Commissions. The Commission is responsible for assuring that Colorado provides deaf and hard of hearing residents with equivalent access to governmental services pursuant to the Americans with Disabilities Act (ADA). The Commission also provides equipment such as videophones and amplified telephones to eligible individuals via the Telecommunications Equipment Distribution Program (TEDP); assures that the courts provide qualified legal interpreters or other appropriate accommodations during court proceedings via the Legal Auxiliary Services (LAS) program; and promotes and advocates for legislation and policy initiatives benefiting the community.

#### ***What Does It Cost?***

The fiscal year 07-08 expenditure to oversee this program was \$716,920, and there were 2.3 full-time equivalent employees associated with this program.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the Internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### ***Continue the Commission for the Deaf and Hard of Hearing for five years, until 2015.***

The general consensus among stakeholders interviewed for this report is that the Commission, through its administration of the TEDP and LAS programs, and its outreach, policymaking, and advocacy activities, contributes to the health, safety, and welfare of deaf and hard of hearing people in Colorado. Therefore, the Commission should be continued.

## Major Contacts Made During This Review

AARP  
Center for Systems Integration  
Colorado Advisory Council for Persons with Disabilities  
Colorado Association for the Deaf  
Colorado Civil Rights Division  
Colorado Commission for the Deaf and Hard of Hearing  
Colorado Cross-Disability Coalition  
Colorado Department of Human Services  
Colorado Hands & Voices  
Colorado Legislative Council  
Colorado Medical Society  
Colorado Public Utilities Commission  
Colorado School for the Deaf and Blind  
Denver Office of Disability Rights  
Denver Purple Communications  
DOVE: Advocacy Services for Abused Deaf Women and Children  
Hearing Loss Association of America  
Legal Center for People with Disabilities and Older People  
Mental Health Center of Denver

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
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## Background

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### *Introduction*

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## *Types of Regulation*

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

### Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

### Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

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Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

### *Sunset Process*

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The functions of the Colorado Commission for the Deaf and Hard of Hearing (Commission) relating to Article 21 of Title 26, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Commission pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the services performed by the Commission should be continued for the protection of the public and to evaluate the performance of the Commission and staff of the Department of Human Services (DHS), Division of Boards and Commissions (Division). During this review, the Commission and the Division must demonstrate that the Commission serves to protect the public health, safety or welfare. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

### *Methodology*

As part of this review, DORA staff attended Commission meetings; interviewed Division staff; reviewed Commission records and minutes; interviewed representatives of state and national advocacy associations, and professionals who provide services to the deaf and hard of hearing community; surveyed members of the deaf community; reviewed Colorado statutes and DHS rules; and reviewed the laws of other states.

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## *Profile of the Community*

The deaf and hard of hearing community is remarkably diverse. For example, a person with mild hearing loss might have difficulty keeping up with a conversation in a crowded restaurant, but would likely be able to function well in the hearing world with minimal adjustments and the occasional use of a hearing aid. On the other hand, a person who has been deaf since birth might have learned American Sign Language (ASL) as a first language, attended a residential school for the deaf, and be immersed in what's known as "Deaf culture."<sup>2</sup> Although their communication modes and needs are very different, both of these people would be considered part of the community that the Commission was created to serve.

First, what is hearing loss? There are two elements to aural comprehension. "Sensitivity" refers simply to the ability to detect sounds. "Discrimination" refers to the ability to distinguish one sound from another and to interpret sounds correctly.<sup>3</sup> Hearing loss occurs when a person's sensitivity to and/or discrimination of sounds is reduced.

There are two primary causes of hearing loss.<sup>4</sup> Conductive hearing loss occurs when there is a problem with the mechanism that transmits sound from the environment to the inner ear. Ear infections, tumors, injury to the eardrum, or even buildup of earwax can cause this type of hearing loss. Conductive hearing loss is often temporary and responds well to prompt medical treatment. Conductive hearing loss typically affects a person's sensitivity to sounds.

Sensorineural hearing loss occurs when the inner ear mechanisms, such as the cochlea or auditory nerve, are damaged or destroyed due to injury, illness, or a genetic condition. Damage to the sensory cells and/or nerve fibers of the inner ear may also cause this type of hearing loss. Sensorineural hearing loss often decreases a person's sensitivity to sounds, and also affects the ability to discriminate among sounds.

Some people have hearing loss due to problems in the outer or middle ear as well as the inner ear: this is referred to as mixed hearing loss. In rare cases, damage to the central nervous system, either in the pathways to the brain or in the brain itself, may cause hearing loss.

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<sup>2</sup> Deaf culture is a unique linguistic minority that uses ASL as its primary mode of communication. A primary tenet of Deaf culture is that deafness is not a handicap, a disability, or an impairment to be overcome. National Technical Institute for the Deaf. *Deaf Culture*. Retrieved on September 16, 2009 from <http://www.netac.rit.edu/publication/tipsheet/deafculture.html>

<sup>3</sup> Colorado Commission for the Deaf and Hard of Hearing, *Info Sheet: About...Being Hard of Hearing*.

<sup>4</sup> Colorado Commission for the Deaf and Hard of Hearing, *Info Sheet: About...Being Hard of Hearing*.

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Levels of hearing loss are measured in decibels, and are generally categorized as mild, moderate, severe, and profound. A person with a mild hearing loss—within the 20-40 decibel range—might be unable to hear a whispered voice. A person with a profound hearing loss—above 90 decibels—might hear only very loud sounds, or sense them through vibration only.<sup>5</sup> The Commission defines as "deaf" those individuals having a severe to profound hearing loss,<sup>6</sup> meaning a hearing loss of 71 decibels or higher.

How prevalent is hearing loss? The Hearing Loss Association of America estimates that roughly 28 million Americans—or one in ten individuals—have some hearing loss. As people age, hearing loss becomes more prevalent: one in three individuals over age 65 has hearing loss.<sup>7</sup> By contrast, deafness is considered a low-incidence disability.

It is difficult to find precise statistics on the number of deaf and hard of hearing people in Colorado, because there is no consistent place where these data are collected. The federal Department of Health and Human Services estimates that 8.6 percent of the United States population aged three years and older has some degree of hearing loss. Based on this assumption, the Commission estimates that as of July 2007, 418,090 Coloradans were hard of hearing and 43,753 were deaf.

The major challenge facing deaf and hard of hearing people is effective communication with the hearing world. The accommodations or services they need in order to gain communication access vary considerably, depending on the degree of hearing loss, when the hearing loss occurred (before or after the acquisition of spoken language), and the level of comfort with written English.

Some hard of hearing people require only a hearing aid. Others may require communication access real-time translation (CART) services, where a court reporter provides simultaneous transcription of the spoken word, or a captioned telephone, that allows users to receive word-for-word captions of their telephone conversations. Personal assistive listening devices, which transmit a speaker's voice to a hard of hearing individual via an amplification system, may help some people. Other assistive listening devices are designed to work in public settings, such as churches, offices, and airports. These devices include infrared, FM, and inductive (or audio loop) systems. Some deaf people, particularly those "late-deafened" individuals who lost their hearing after the acquisition of spoken language, can benefit from CART and other services that rely on the written word.

To a certain extent, a hard of hearing person can ease interactions with the hearing through learned skills such as speech-reading (sometimes called lip-reading) and controlling the environment to facilitate communication, e.g., making sure background noise is kept to a minimum and sitting in clear view of the person speaking. Often these skills are used in tandem with a hearing aid or assistive listening devices.

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<sup>5</sup> Colorado Commission for the Deaf and Hard of Hearing, *Info Sheet: About...Being Hard of Hearing*.

<sup>6</sup> Rules of the Telecommunications Equipment Distribution Program, Section 120.

<sup>7</sup> Hearing Loss Association of America. *Facts on Hearing Loss*. Retrieved on September 16, 2009, from <http://www.hearingloss.org/learn/factsheets.asp>

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A more permanent option available to some deaf or hard of hearing people is a tiny electronic device called a cochlear implant. Rather than amplifying sounds, as hearing aids do, cochlear implants stimulate the auditory nerve. Cochlear implants do not restore normal hearing, but can provide a useful representation of sounds and assist in understanding speech.<sup>8</sup>

Deaf people who lost their hearing prior to the acquisition of spoken language—the pre-lingually deaf—might need different accommodations and services. These individuals are more likely to communicate primarily through ASL. Since ASL is a visual language, people who communicate via ASL need videophones and interpreters. Although many deaf people read, write, and speak English, ASL is the preferred mode of communication for many people in the deaf community, particularly those who learned ASL as their primary language.

Generally, the deaf and hard of hearing have benefited tremendously from technology, particularly the Internet, email, videophones, and handheld wireless devices that permit text messaging. These technological advances have rendered the teletypewriter (TTY)—once the sole way for people with significant hearing loss to use the telephone—virtually obsolete.

Despite the advances in technology and medical treatments, the deaf and hard of hearing face persistent challenges. People who lose their hearing later in life can experience a profound sense of grief and isolation as they lose their ability to communicate with hearing friends and family. Inadequate educational opportunities leave some deaf people functionally illiterate. Some deaf people have considerable difficulty securing steady, satisfying employment and must rely on Supplemental Security Income (SSI).

The deaf and hard of hearing community may be diverse and have a wide range of specific needs, but generally, it simply needs equal access to the same things the hearing community does: to health care, including mental health care and emergency services; to legal and governmental services; to educational and employment opportunities; and to entertainment and leisure activities.

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<sup>8</sup> National Institute on Deafness and Other Communication Disorders. *Cochlear Implants*. Retrieved on September 16, 2009, from <http://www.nidcd.nih.gov/health/hearing/coch.htm>

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## Legal Framework

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### *History of Regulation*

Although the Commission for the Deaf and Hard of Hearing (Commission) did not come into being until 2000, Colorado provided services to the deaf and hard of hearing community via other state agencies before that date.

In 1987, the General Assembly passed House Bill 1159, requiring state courts, as well as any licensing, regulatory, or law enforcement body, to provide qualified sign language interpreters to deaf or hard of hearing people in legal situations. This program was housed in the Division of Rehabilitation within the Department of Human Services (DHS).

Colorado started providing telecommunications services to the deaf, hard of hearing, and speech-impaired in the wake of the passage of the Americans with Disabilities Act (ADA) in 1990. The ADA compelled states to establish telecommunications relay services (TRS) to serve deaf, hard of hearing, and speech-impaired people. To fulfill this federal requirement, the General Assembly passed House Bill 1071 in 1992. The bill created a TRS program under the authority of the Public Utilities Commission (PUC). The TRS program was to be funded by a monthly surcharge on each telephone line in the state. All monies collected via this surcharge were to be deposited in the Disabled Telephone Users Fund (DTUF) and used to support the program.

The General Assembly created the Commission in 2000 with the passage of Senate Bill 194. The purpose of the Commission was to assure communications access for deaf and hard of hearing people in accordance with the ADA and to create a central access point for deaf and hard of hearing people in need of services. The bill authorized an appropriation from the DTUF for the establishment of the Commission.

In 2002, the General Assembly passed House Bill 1180, which directed the Commission to establish a program to distribute telecommunications equipment—such as teletypewriters, commonly known as TTY, amplified telephones, and, more recently, videophones—to deaf and hard of hearing people meeting certain income criteria.

In 2006, the program providing interpreters for the deaf and hard of hearing in legal settings was moved from the Division of Vocational Rehabilitation to the Commission. The bill also clarified that the state must provide a range of auxiliary services, recognizing that some deaf or hard of hearing people might benefit more from an assistive listening device that amplifies sounds, or from the services of a communication access real-time translation (CART) provider, than from a sign language interpreter. The bill also added a provision that required the state to provide interpreters and auxiliary services not only to deaf or hard of hearing people who are parties to a case, but also to witnesses and potential jurors who are deaf or hard of hearing.

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Senate Bill 216 was also passed in 2006. The bill authorized ongoing funding to Commission programs through the DTUF.

In the 2009 legislative session, the General Assembly passed Senate Bill 09-144. This bill created a system navigator position to provide technical assistance to deaf and hard of hearing people, to assure communication access in public and private settings, and to promote awareness of the rights of deaf and hard of hearing people, and the responsibilities of public and private agencies in providing services to this community. The bill also expanded the duties of the Legal Auxiliary Services (LAS) program to include the day-to-day scheduling of auxiliary services statewide.

Further, the bill empowered the Commission to award grants to entities that serve the deaf and hard of hearing.

### *Summary of Statutes*

Most of the statutes related to the Commission and its activities are located in Article 21 of Title 26, Colorado Revised Statutes (C.R.S.), and are known collectively as the “Colorado Commission for the Deaf and Hard of Hearing Act.”

The Commission is a Type-2 commission housed within the Division of Boards and Commissions (Division) within the Department of Human Services (DHS). The Governor appoints the seven Commissioners, with the consent of the Senate.<sup>9</sup> The following representatives comprise the Commission:<sup>10</sup>

- A deaf person;
- A hard of hearing person;
- A professional in the field of deafness;
- A parent of a deaf or hard of hearing person;
- A late deafened<sup>11</sup> person;
- An interpreter for the deaf or hard of hearing who holds a current certification from the Registry of Interpreters for the Deaf or successor organization, as required by section 6-1-707(1)(e), C.R.S.; and
- A member of the public.

Commissioners serve four-year terms.<sup>12</sup> At its first meeting, the Commission was required to elect a chair from among its members.<sup>13</sup>

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<sup>9</sup> § 26-21-104(3)(a), C.R.S.

<sup>10</sup> § 26-21-104(2), C.R.S.

<sup>11</sup> Section 26-21-103(6), C.R.S., defines “late deafened” as a person whose hearing loss began in late childhood, adolescence, or adulthood, after the person acquired oral language skills.

<sup>12</sup> § 26-21-104(3)(a), C.R.S.

<sup>13</sup> § 26-21-105(2)(a), C.R.S.

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The Commission must meet at least quarterly, and may meet more frequently at the direction of the chair or at the request of at least three Commissioners.<sup>14</sup> Commissioners are reimbursed for actual and necessary expenses incurred in the discharge of their official duties.<sup>15</sup>

The Commission has the following powers and duties:<sup>16</sup>

- To serve as a liaison between the deaf and hard of hearing community and state government;
- To serve as an informational resource and referral agency to the state and the deaf and hard of hearing community;
- To determine what technology the deaf and hard of hearing community needs to interact with society;
- To recommend legislation that may facilitate and streamline the provision of services to the deaf and hard of hearing community;
- To recommend methods, programs, or policies that may improve the quality of existing services, promote or deliver necessary new services, and assist state agencies in the delivery of services to the deaf and hard of hearing community;
- To recommend legislation to the Governor and to the General Assembly;
- To establish a telecommunications equipment distribution program to obtain and distribute interactive telecommunications equipment to deaf and hard of hearing people;
- To collaborate with the Judicial Department in arranging auxiliary services for the state court system; and
- To publish and maintain a list of available resources regarding communication accessibility for persons who are deaf or hard of hearing.

Section 26-21-105(1), C.R.S., authorizes the Executive Director of DHS to appoint an administrator for the Commission. Commission members may interview candidates for the administrator position and provide their input on candidates to the Executive Director.

Section 26-21-106(7), C.R.S., establishes within the Commission a system navigator specialist responsible for, among other things, helping deaf and hard of hearing people obtain accommodations and auxiliary services, ensuring that state agencies and private companies are equipped to provide such services, and publishing a comprehensive resource directory.

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<sup>14</sup> § 26-21-105(2)(c), C.R.S.

<sup>15</sup> § 26-21-107(3), C.R.S.

<sup>16</sup> § 26-21-106, C.R.S.

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## Legal Auxiliary Services Program

Although section 26-21-106(4), C.R.S., grants the Commission the power to administer the LAS program, the statutes specifying the purpose and operations of the program are located in Title 13, C.R.S., which deals with Courts and Court Procedure.

The statute requires the appointing authority<sup>17</sup> to provide a qualified interpreter or an auxiliary service whenever a deaf or hard of hearing person is present as the principal party of interest or a witness at any stage of a court or legal proceeding.<sup>18</sup> For example, an appointing authority must provide legal auxiliary services when a deaf or hard of hearing person:

- Must attend court-ordered or court-provided alternative dispute resolution, mediation, arbitration, or treatment;
- Is party to an administrative, commission, or agency hearing;
- Is a potential or selected juror at grand jury or jury proceedings;
- Is arrested and taken into custody for an alleged violation of a criminal law;
- Is the parent of a juvenile who is brought before a court for any reason; or
- Is required to attend probation pre-sentence interviews and supervision.

When required to secure a qualified interpreter or auxiliary aids or services, the appointing authority contacts the Commission. The Commission is responsible for coordinating and paying for the appropriate auxiliary aids and services.

Interpreters wishing to provide services via the LAS program must demonstrate to the Commission that they have met specific training and experiential requirements.

The Commission has established several pathways to achieving the legal credential authorization, depending on an interpreter's education and experience. Interpreters holding a certification specific to legal interpreting are considered to already have the legal credential authorization, and do not need to complete any additional requirements. Interpreters holding generalist certification, or certifications in specialty areas other than legal interpreting, must complete varying levels of additional coursework and supervised experience to earn the legal credential authorization. Interpreters who do not hold any of the relevant certifications may be appointed to provide legal auxiliary services on a case-by-case basis.

CART providers holding either a Certified CART Provider certificate or Certified Realtime Report designation are considered qualified to provide services without additional education or experience.

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<sup>17</sup> Section 13-90-202(1), C.R.S., defines "appointing authority" as the presiding officer or similar official of any court, board, commission, agency, or licensing or law enforcement authority of the state or any other of its political subdivisions.

<sup>18</sup> § 13-90-204(1), C.R.S., and Rules of the Legal Auxiliary Services Program, Section 220.

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Service providers in the LAS program must meet certain performance measures and adhere to established standards of professional conduct.<sup>19</sup> Any of the parties involved in a proceeding where services are provided via the program may file a grievance with the Commission.<sup>20</sup>

The Commission is responsible for convening an advisory council to review the rules governing the LAS program periodically and make recommendations to DHS as needed.<sup>21</sup>

### Telecommunications Equipment Distribution Program

The Telecommunications Equipment Distribution Program (TEDP) promotes communications accessibility for the deaf and hard of hearing by providing free teletypewriters (TTYs), amplified telephones, videophones, and other assistive technology to individuals meeting certain criteria. In order to qualify to receive equipment via the TEDP, an applicant must:<sup>22</sup>

- Be a Colorado resident;
- Be deaf, hard of hearing, deaf-blind, late deafened, or have a hearing loss significant enough to make the use of the telephone difficult;
- Have an income less than 300 percent of the federal poverty guidelines as determined by the U.S. Department of Health and Human Services; and
- Provide proof of telecommunications service and a copy of the most recent bill.

Commission staff reviews the application to determine whether the application is complete and includes all required documentation, and assure the applicant meets eligibility requirements. Within 60 days of receiving the application, Commission staff notifies applicants whether their applications have been approved or denied.<sup>23</sup>

Denied applicants receive written justification for the denial. Applicants may be denied for a variety of reasons, including failing to meet the eligibility requirements, or having damaged, lost, or sold TEDP equipment previously granted.<sup>24</sup> Denied applicants may reapply when circumstances change that might affect their eligibility.

Approved applicants receive a list of equipment available through the TEDP and select the equipment that best meets their communication needs. Recipients are responsible for maintaining and repairing the equipment.<sup>25</sup>

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<sup>19</sup> Rules of the Legal Auxiliary Services Program, Section 240.

<sup>20</sup> Rules of the Legal Auxiliary Services Program, Section 270.

<sup>21</sup> Rules of the Legal Auxiliary Services Program, Section 300.

<sup>22</sup> Rules of the Telecommunications Equipment Distribution Program, Section 130.

<sup>23</sup> Rules of the Telecommunications Equipment Distribution Program, Sections 141 and 143.

<sup>24</sup> Rules of the Telecommunications Equipment Distribution Program, Section 143.

<sup>25</sup> Rules of the Telecommunications Equipment Distribution Program, Section 150.

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In times of fiscal constraint—defined as when 75 percent of the TEDP’s allocated funds have been spent or encumbered<sup>26</sup>—the TEDP may elect to hold reapplications in a pending file until adequate resources are available.<sup>27</sup>

### Grant Program

Section 26-21-107.5, C.R.S., establishes a grant program within the Commission. Any state, local, private, or non-profit entity that provides services to the deaf and hard of hearing community may apply for a grant via this program.<sup>28</sup>

A five-member subcommittee, appointed by the Commission, is responsible for administering the grant program.<sup>29</sup> The subcommittee may recommend to the Commission which applications to approve, including proposed grant amounts, and which to deny.<sup>30</sup> DHS is responsible for promulgating rules establishing criteria for the approval and denial of applications, as well as rules for the administration of the grant program.<sup>31</sup>

Starting with fiscal year 09-10, the General Assembly will appropriate no more than \$50,000 per year to the grant program.<sup>32</sup>

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<sup>26</sup> Rules of the Telecommunications Equipment Distribution Program, Section 120.

<sup>27</sup> Rules of the Telecommunications Equipment Distribution Program, Section 152.

<sup>28</sup> §§ 26-21-107.5(4) and (5), C.R.S.

<sup>29</sup> §§ 26-21-107.5(2)(a) and 26-21-107.7(1)(a), C.R.S.

<sup>30</sup> § 26-21-107.7(2), C.R.S.

<sup>31</sup> § 26-21-107.5(3), C.R.S.

<sup>32</sup> § 26-21-107.5(2)(c), C.R.S.

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## Program Description and Administration

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The Commission for the Deaf and Hard of Hearing is a Type 2 agency housed within the Division of Boards and Commissions (Division) of the Colorado Department of Human Services (DHS). As a Type-2 commission, the Commission functions in an advisory capacity. Rulemaking authority rests with DHS.

When the General Assembly created the Commission, it authorized the Disabled Telephone Users Fund (DTUF) allocation to support the program. That initial allocation was held in a cash fund and drawn upon in subsequent fiscal years.

Since 2006, the DTUF has provided ongoing funding for Commission programs. All business and residential telephone customers with a landline pay into the fund via a monthly surcharge on their telephone bills. The Public Utilities Commission (PUC) administers the fund and may adjust the amount of the surcharge if needed. If the PUC increases the fee to more than 15 cents per line, it must justify such increase in a report to the legislative appropriations committees.<sup>33</sup> The fee decreased from 10 to 7 cents in 2007, but was increased to 12 cents per line in March of 2009.

Because it provides services within the state court system, the Legal Auxiliary Services (LAS) program is funded both by the DTUF and money from the General Fund.

Table 1 shows the expenditures and overall staffing levels for the Commission for the five fiscal years indicated.

**Table 1**  
**Agency Fiscal Information**

<b>Fiscal Year</b>	<b>Total Program Expenditure</b>	<b>Full Time Equivalent Employees (FTE)</b>
03-04	\$88,671	1.0
04-05	\$140,795	1.0
05-06	\$112,019	1.0
06-07	\$601,825	1.8
07-08	\$716,920	2.3

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<sup>33</sup> § 40-17-103(3)(a), C.R.S., and PUC Rules Regulating Telecommunications Providers, Services, And Products, Section 2827 (a)(I).

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Since the Commission's inception, DHS has employed a director (1.0 FTE General Professional V) to administer the Commission. With the passage of Senate Bill 06-61, the LAS program was transferred from the DHS Division of Vocational Rehabilitation to the Commission, leading to a dramatic increase in expenditures and the addition of another employee (0.8 FTE General Professional III) to manage the program. The Commission gained another employee in fiscal year 07-08 to serve as staff interpreter (0.5 FTE Technician IV). An outside contractor had previously provided staff interpreting services, and DHS determined that it would increase consistency and reduce costs to employ a dedicated interpreter on staff.

In fiscal year 08-09, another position was added (0.5 FTE General Professional III) to administer the Telecommunications Equipment Distribution Program (TEDP), bringing the total number of FTE as of August 2009 to 2.8. Previously, an outside vendor had administered the TEDP, but DHS moved the program in-house to improve program oversight and reduce costs.

Senate Bill 09-144 (SB 09-144) added a new system navigator position (1.0 FTE General Professional III) and an auxiliary services coordinator position (0.8 FTE General Professional II), both of which will be filled this fiscal year.

The Commission's primary duties include serving as a clearinghouse of information and resources for the deaf and hard of hearing community, other state agencies, employers, and the public, and running the TEDP, the LAS program, and the grant program created with the passage of SB 09-144.

The seven-member Commission has established numerous committees to accomplish its work. Professionals and experts in the relevant subject areas serve alongside Commissioners on these committees. The Commission is required to convene and maintain two specific committees: the Legal Advisory Council<sup>34</sup> and the grant program subcommittee.<sup>35</sup> Other committees established at the Commission's discretion include the Legislative, Media Access, and Interpreter committees.

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<sup>34</sup> Rules of the Legal Auxiliary Services Program, Section 300.

<sup>35</sup> § 26-21-107.5, C.R.S.

Table 2 summarizes the Commission’s activities relating to general<sup>36</sup> information and outreach for the five fiscal years indicated.

**Table 2  
General Contacts and Referrals**

	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>
Number of requests for general information	N/A*	N/A*	N/A*	520	575
Number of general presentations	N/A*	N/A*	N/A*	N/A*	6
<b>Number of general publications</b>	<b>N/A</b>	<b>13</b>	<b>13</b>	<b>13</b>	<b>20</b>

\*Information was not routinely collected during this time period.

The “Publications” category includes the “Information Sheet” series, which provides basic information on deaf and hard of hearing issues, on such topics as the Americans with Disabilities Act, effective communication, accommodations for people who are deaf and hard of hearing, assistive technology, and tax incentives for businesses.

Senate Bill 09-144, signed into law in spring of 2009, directed the Commission to establish a system navigator specialist for technical assistance (education and training) to improve and ensure equivalent access to auxiliary services by state and local government agencies, private agencies, and other entities and increase awareness of the programs for and rights of deaf and hard of hearing individuals. The number of general presentations offered by the Commission is expected to rise when the system navigator specialist is in place.

Table 3 summarizes the services provided via the TEDP for the five fiscal years indicated.

**Table 3  
Activities of the Telecommunications Equipment Distribution Program**

	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>
Number of clients receiving telecommunications equipment from the TEDP	72	89	127	160	3172
Number of telecommunications accessories* distributed	63	92	152	229	363
Number of TEDP outreach demonstrations	N/A	4	18	22	30

\*Telecommunications accessories are the notification systems that come with telecommunications equipment. They notify users when the telephone is ringing with ring signalers and flashing lights.

<sup>36</sup> “General” includes all topics unrelated to the TEDP or LAS programs.

The program offers a wide variety of free telecommunications equipment to qualified individuals who might not otherwise be able to afford it. Some of the more popular devices include captioned telephones, which would otherwise cost around \$395; amplified telephones, which would range from \$140 to \$170; and videophones, which would cost around \$200. The number of people receiving equipment and accessories has increased steadily from year to year, largely due to the Commission's ongoing outreach activities.

There is currently no waiting list for the TEDP, and the program is able to distribute equipment to eligible applicants in a timely manner.

Table 4 summarizes the services provided via the LAS program for the two fiscal years indicated.<sup>37</sup>

**Table 4**  
**Activities of the Legal Auxiliary Services (LAS) Program**

	FY 06-07	FY 07-08
Number of Legal Auxiliary Services requests	1,104	1,596
Number of hours of auxiliary services provided in state-level courts and court ordered treatment programs	3,335	5,371
Number of presentations/workshops related to auxiliary services for courtrooms	10	8
Number of Legal Auxiliary Services publications	1	1

The activity of the LAS program is likely to continue to increase as more jurisdictions become aware of their responsibility to accommodate deaf and hard of hearing people in legal settings.

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<sup>37</sup> The LAS program was not transferred to the Commission until fiscal year 06-07.

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## Analysis and Recommendations

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### *Recommendation 1 – Continue the Commission for the Deaf and Hard of Hearing for five years, until 2015.*

Section 26-21-101, *et seq.*, Colorado Revised Statutes (C.R.S.), creates the Commission for the Deaf and Hard of Hearing (Commission) as a Type 2 (advisory) body within the Colorado Department of Human Services (DHS).

Section 26-21-102, C.R.S., underscores Colorado's duty to provide the deaf and hard of hearing equivalent access to governmental services pursuant to the Americans with Disabilities Act (ADA). The Commission is charged with assuring the state provides such equivalent access, and with serving as a clearinghouse for services and information for the deaf and hard of hearing community.

The sunset criteria were developed to evaluate regulatory programs. Although the Commission is not a regulatory program, the question posed by the first sunset criterion is still applicable: is the Commission necessary to serve the public health, safety, and welfare?

The community the Commission serves is extremely diverse. What all members of this community share, however, is the challenge of communicating with the mainstream—or hearing—world. The goal of the ADA is to assure equality of opportunity, full participation, and economic self-sufficiency.<sup>38</sup> For the deaf and hard of hearing, such equality is largely dependent on communication access.

Communication can literally be a matter of life or death. Danger and urgency are often signaled with sound. A person with profound hearing loss cannot hear tornado sirens or announcements made over an airplane loudspeaker. A speech-impaired person cannot pick up a regular telephone and call 9-1-1.

Even routine communication can be difficult for some of those with hearing loss. Just as many hearing people would be uncomfortable relying on their high school Spanish to conduct legal business or discuss medical issues, people whose first language is American Sign Language (ASL) sometimes struggle to communicate in English. A person with moderate hearing loss might adapt very well in one-on-one interactions by focusing on the speaker and using speech-reading skills, but he or she might lose part of the conversation with the sound of a passing car, or when the speaker turns away.

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<sup>38</sup> 42 U.S.C. § 12101(a)(7).

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Additionally, it can be easy for a hearing person to take for granted the amount of information that is gathered simply by default: a conversation overheard on the bus and a tidbit from the evening news serve to orient hearing people to the world around them. A deaf or hard of hearing person is unable to fully participate in these informal networks of information, and the result can be isolating.

Barriers to effective communication can have a significant effect on a deaf or hard of hearing person's health, safety and well-being. The Commission facilitates communication access in several ways: by providing equipment such as teletypewriters (TTYs) and videophones via the Telecommunications Equipment Distribution Program (TEDP); by assuring that the courts provide qualified legal interpreters or other appropriate accommodations during court proceedings via the Legal Auxiliary Services (LAS) program; and by promoting and advocating for legislation and policy initiatives benefiting the community.

Although the Commission does not currently provide direct services—such as providing interpreters outside of legal settings and one-on-one case management—it has a proven track record of implementing initiatives that directly benefit the deaf and hard of hearing community. For example, in 2008, the Commission, in collaboration with the Colorado Division of Behavioral Health and a wide spectrum of stakeholders, developed an action plan for improving access to mental health and substance abuse services for the deaf and hard of hearing. In August 2009, the DHS Strategic Allocation Committee awarded the Commission a \$520,000 grant to implement the action plan.

The general consensus among stakeholders interviewed for this report is that the Commission, through the activities described above, contributes to the health, safety, and welfare of deaf and hard of hearing people in Colorado.

It should also be noted that many Coloradans who have no need for the Commission's services now might need them in the future. Recall that one in three Americans over the age of 65 has some degree of hearing loss. Further, any person could conceivably experience an illness or injury resulting in permanent hearing damage. In short, any Colorado resident could someday find himself or herself in need of the services the Commission provides.

For these reasons, the Commission should be continued.

The General Assembly has the ability to extend a program for anywhere from one to 15 years. Five years is justified, for several reasons.

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Over the course of this review, several areas for improvement came to light, some relating to perceived weaknesses of the Commission's performance, with others relating to the level of services the state provides:

- Many deaf and hard of hearing consumers are unaware the Commission exists. This is not to say that they have not benefited from the Commission's policy initiatives, but they are unaware that the Commission exists as a resource for them.
- Hard of hearing consumers report that the Commission places a disproportionate emphasis on issues facing the deaf.
- Deaf consumers report a pressing need for job training and placement services.
- Both deaf and hard of hearing consumers, as well as advocates for the disabled, give certain areas of state government poor marks for accessibility. Deaf consumers tell of state agencies either unaware of their obligation to provide interpreters, or, worse, aware of their responsibilities but unwilling to shoulder the cost. Hard of hearing people who visit the Capitol building to attend a legislative hearing are sometimes confronted with archaic, unwieldy equipment.

These issues might have been the basis for additional sunset recommendations, had Senate Bill 09-144 (SB 09-144) not passed during the 2009 legislative session. This piece of legislation marks a significant expansion of the Commission's scope, and makes several changes that, once implemented, will likely address the areas for improvement listed above.

The bill adds a new "system navigator" position at the Commission to assist the community directly in locating and securing services. Currently, DHS plans to hire a 0.5 full-time equivalent (FTE) employee to focus on the deaf community, and a 0.5 FTE employee to focus on the hard of hearing community. These two positions will become full-time positions by 2011. With the creation of these positions, the Commission will begin addressing the need for more outreach, direct advocacy, and assistance for the deaf and hard of hearing, and offering expanded training for state agencies on fulfilling their duties under the ADA. Having a full-time staff person devoted to the hard of hearing population might also address some concerns of that community.

The bill also expands the duties of the LAS program to include the day-to-day scheduling of auxiliary services statewide. The General Assembly appropriated funds for an additional 0.8 FTE employee to perform these additional responsibilities. This should result in more efficient placement of interpreters and appropriate auxiliary services.

The bill also established a grant-making program. This program allows the Commission to provide funding to local and state governments and non-profit and community organizations for the purpose of providing services. This, too, could lead to more direct, personalized assistance and advocacy for deaf and hard of hearing people.

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Another reason for a five-year repeal date concerns the funding for the Commission.

Recall that the Commission is dependent on the Disabled Telephone Users Fund (DTUF) for a sizable portion of its funding. This fund was established to support the federally mandated telephone relay services (TRS) for the deaf, hard of hearing, and speech impaired. The Commission has received at least partial funding from this fund since its inception, and in 2006 became eligible for an annual appropriation from this fund. Over time, several patterns have emerged that might affect the stability of the DTUF as a funding source.

First of all, traditional TRS have been rendered largely obsolete. According to data from the Public Utilities Commission (PUC), which administers the DTUF, TRS usage has declined about 66 percent in the past five years as more deaf people switch to videophones. The use of captioned telephone services, however, is on the rise among hard of hearing consumers. Captioned telephones feature a screen which displays simultaneous written transcription of telephone conversations. Although the use of captioned telephones is not as high as TRS use was at its peak, it costs about 60 percent more per minute than traditional TRS.<sup>39</sup> Further, according to PUC staff, the federal government is currently covering the cost of videophone use, but this responsibility could be transferred to the states at any time. The current cost of videophone use is about \$7 per minute.

Secondly, the number of landlines upon which the surcharge is levied is steadily decreasing, as consumers drop their landlines in favor of wireless services<sup>40</sup> and voice-communications services that are transmitted via the Internet.

Lastly, over time, several other programs, such as the reading services for the blind and the recently created Commission for the Blind or Visually Impaired, have become eligible for annual appropriations from the fund.

These factors could potentially affect the Commission's long-term funding. It would be premature to recommend changes to the funding mechanism at this stage, but over the next several years it should become apparent whether the DTUF will remain a stable funding source for the Commission and its activities.

A five-year sunset date will allow enough time for the Commission to implement the provisions of the new law. The Department of Regulatory Agencies (DORA) will then be in a position to evaluate the efficacy of the Commission in its expanded role and determine whether the new resources that were added with the passage of SB 09-144 are adequate to meet Colorado's duty to its deaf and hard of hearing citizens.

For these reasons, the Commission should be continued for five years, until 2015.

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<sup>39</sup> According to data from the PUC, in 2009, traditional TRS costs about \$.89 per minute, while captioned telephone services cost \$1.44 per minute.

<sup>40</sup> Alan Fram, "More cellphone users dropping landlines," *The Denver Post*, May 6, 2009.

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***Administrative Recommendation 1 – The Department of Human Services should coordinate with the Department of Personnel and Administration and other state agencies to train state employees.***

As mentioned above, the State of Colorado has some work to do in terms of making governmental services fully accessible for the deaf and hard of hearing. Although the new system navigator positions created with the passage of SB 09-144 are charged with assuring equivalent access to state agencies and programs, this is a potentially overwhelming task, given the number of agencies within state government and the sheer size of Colorado. Also, normal employee turnover within state government would necessitate ongoing training and re-training, not just a one-time seminar.

For these reasons, DHS should take a “train the trainer” approach in educating state workers about how to provide the deaf and hard of hearing with equivalent access to services. The Department of Personnel and Administration (DPA) has a tremendous training infrastructure in place. DHS should develop a training module relating to providing services for the deaf and hard of hearing community, then work with DPA to incorporate this module into its state supervisor and management training, as well as customer service training for front-line staff. If a comprehensive module is not practicable, at the very least, the Commission should develop a resource packet for inclusion with DPA course materials.

The deaf and hard of hearing community would benefit from the Commission raising its profile in the state. Anecdotal evidence gathered over the course of this review indicates that many state workers are not familiar with the Commission, yet all state workers bear responsibility for fulfilling the requirements of the ADA. State workers should be familiar with the rights of deaf and hard of hearing people, and should know that the Commission exists as a resource for them and for their customers.

***Administrative Recommendation 2 – Develop objective criteria for evaluation of the Commission.***

Although there is benefit to periodically reviewing programs like the Commission to assure they are meeting their statutory mandate, conducting such reviews can be difficult. This is because Colorado’s sunset criteria were developed specifically for the evaluation of regulatory programs, such as the Board of Medical Examiners or the PUC. The criteria provide clear guidelines for assessing programs’ efficacy. For example, to determine whether a licensing board is adequately protecting the public, DORA can look at the number and nature of complaints and disciplinary actions from one sunset review to the next.

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The Commission does not regulate professionals or businesses: instead, it serves as a policy advisory body and provides services to the deaf and hard of hearing community. With the exception of the activities of the TEDP and the LAS programs, the Commission has in the past measured its progress qualitatively, rather than quantitatively. This makes it difficult to assess improvement over time. The Commission should set performance benchmarks that can be supported by concrete, quantitative data. One way to do this would be by asking the deaf and hard of hearing community to rate the Commission's performance via an annual survey, and setting a specific goal for improving ratings from one year to the next.

The Commission, in cooperation with DHS, should develop a set of objective criteria to measure the Commission's progress. These criteria would not only be useful for DORA in conducting future sunset reviews, but would also allow the deaf and hard of hearing community, the Commission itself, and all interested parties a means to evaluate the Commission's performance over time.