December 9, 2021

HCAW December 2021 Public Policy Report

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Policy Overview

Wow, is it December already? This year has flown by with lots of policy activity for WSHPCO. The Fall 2021 Legislative Days were held the week of November 15-19, 2021, with all the health care committees meeting and having work sessions on issues such as workforce shortages, COVID-19 updates, emergency funding add-ons for Medicaid providers and transitioning LTC Clients from acute care hospitals to community settings.

I was invited to testify on behalf of HCAW before the Aging and Disability Committee on low Medicaid Reimbursements and what impacts that has on our health care system: https://www.tvw.org/watch/?clientID=9375922947&eventID=2021111068&startStreamAt=4207&stopStreamAt=4520&autoStartStream=true . I think it went well and was a good opportunity to educate legislators about in-home services!

The main take away is that the legislature recognizes that there is a severe work force shortage in health care. Especially in nursing at the LPN/RN level and Certified Nursing Assistants. Wages for CNA's are not competitive when fast food chains are offering positions starting at $19 an hour and up. SEIU's LTC worker presentation talked about the new baseline for CNA and Home Care Aides being $20 an hour.

As you are aware, it has been very difficult to recruit new nurses in this environment. Nurses had some pretty scathing testimony about how hospitals are paying for traveling nurses at extremely high rates to work alongside of them and not being willing to pay the nurses on staff more money to retain them…. Bottom line is that they all support trying to get more nurses in the pipeline for the future, just not sure how they are going to get there. This will be an interesting battle next session!

Legislative committee hearings in 2022 will be virtual again and floor action will be in person for legislators. Lobbyists are allowed on the Capital Campus this session on a limited basis, so not sure how that will work but willing to try it out. Just a reminder that next session will be the "Short" 60-day Legislative Session: January 10 – March 11, 2022.

Virtual In-Home Services Advocacy Days, January 27-28, 2022! We are urging you to advocate with your legislators on important issues for in-home services. Please register for the event by filling out your name, agency, in-home services association, legislative district number, and the

legislators in your district. Please enter the information by going to this Google Forms link: : **In-Home Services Advocacy Day Registration.**

For over 8 years our In-Home Services associations, HCAW, WSHPCO and WAHCA have met with state legislators collaborating on a legislative agenda to support home care, home health, hospice, and palliative care. There will be an orientation prior to the In-Home Services Advocacy Days to go over our talking points and discuss how to talk to your legislators, especially if there are several people in your meetings. Typically, you will have three 15-minute meetings, as you have one Senator and two House of Representatives in your district. They will probably be scheduled a different times during the 2-day advocacy days. Some agencies may want to meet with more legislators in their service area. Please register now so we can begin scheduling appointments with your local legislators. I will be combining your meetings other participants who have the same legislators. I am working on the "song sheet" for the event and will add more issues as bills are introduced during the early session….

On November 10th we had a good meeting with Amber Leaders, Governor Office Health Policy Staff, to discuss our legislative agenda for In-Home Services providers issues related to home health, home care and hospice. Amber encouraged us to reach out to the Health Care Authority (HCA) to discuss the palliative care bill and if they would consider starting rulemaking again. We have a meeting scheduled with Dr. Charissa Fotinos on December 13th and policy staff to discuss the palliative care bill we are working on.

What to expect so far in 2022 Session!

We did get some good news! Washington gets another positive state revenue forecast (Seattle Times 11-19-21) Updated numbers by the Economic and Revenue Forecast Council show that projected revenue collections for the 2021-2023 budget cycle are $898 million above what had been originally forecasted in September. And projections for the next two-year budget cycle that ends in mid-2025 increased by more than $965 million. Revenues for the current budget cycle that ends mid-2023 are now projected to be $60.2 billion. And projected revenues for the next two-year budget cycle that starts July 1, 2023, are projected to be about $64 billion. Hopefully this will help resolve some Medicaid rate issues for LTC and more!

Washington Cares Act: One of the big controversial issues this session will be a delay of the Washington Cares Act. Passed in 2019 by the Legislature and signed by Inslee, the WA Cares Fund creates a 0.58% payroll deduction on employees, set to begin in January. Starting in 2025, eligible beneficiaries could then start claiming up to $36,500 to help pay for things like home care, meal delivery, assisted living or other needs.

HCAW was supportive of the legislation when it passed two years ago because it will boost funding available for home care. The implementation of the legislation has run into major problems and has

become quite unpopular as it goes into effect. Governor Inslee announced that they were looking for ways to stop the bill from going into effect for at least another year while they work out the problems with the bill.

According to the Seattle Times article below, "a range of critiques has emerged this year as the program began to get off the ground, with concerns that too many people would pay the tax but never receive benefits, as well concern over the inability of some people to take advantage of the one-time opt out from the program this year. Opponents and even some supporters acknowledge a range of people who will pay into the tax, but never become eligible for benefits. That includes roughly 150,000 people who work in Washington but live in another state; workers who ultimately leave to retire elsewhere; and military families coming in and out of the region. Other workers were not able to make use of a one-time opt out to the program because private insurers offering long-term coverage stopped offering policies. Here is the full article from The Seattle Times: **Inslee, Washington state Democrats discuss delaying WA Cares long-term care payroll tax**

Palliative Care Insurance Benefit: We have a team of members from HCAW and WSHPCO who are working on a palliative care standardized reimbursement bill. Palliative care for patients with a serious or chronic illness is not being reimbursed in a standardized way for palliative care providers in Washington state, even though the actual services are being provided around the state. This legislative proposal would include coverage under the state's Medicaid program, PEBB, SEBB, as well as private insurers. The stakeholder work has officially begun, and we should have our first official bill draft out soon. We have permission to work with Senate and House Health Care Committee staff on the bill drafting and submitted our first draft to them on November 30th. I will get a bill draft out to folks to review soon…

Private Duty Nursing Agency Reimbursement: Private Duty Nursing (PDN) agencies who care for medically intensive children and adults are being paid at the same rate as an independent provider nurses with no agency overhead costs. PDN agencies provide supervision, payroll and oversight and assure shifts by nurses are covered. Currently DSHS pays home care agencies a higher rate to address the overhead costs vs. independent providers. We are requesting that PDN agencies gain additional reimbursement for being an agency provider vs an independent provider. Maintain rates that were provided by federal COVID dollars for retention of current nurses. I have been given permission to work on this with Ways and Means Committee staff by Senator Cleveland and we had our first meeting with DSHS staff on November 4, 2021. They are going to research the rates for PDN and also how home care agencies are paid vs IPs in the home care world.

Medicaid Home Health 10% Rate Increase Budget Proviso: Home health did not get a rate increase during the COVID 19 Emergency and is still bearing the high cost of serving the Medicaid population with reimbursement much less than the cost of providing service.

Maintain COVID-19 Funding for Medicaid Home Care Agencies: Home care agencies are struggling to hire workers and must remain competitive in their wages to compete. We request that

the state maintain the amount of funding available during the after the pandemic after the state of emergency is declared over.

Workforce Shortage Issues and Impacts on hiring Home Care Aides, Certified Nursing Assistants and LPN/ RNs: We are supportive of the Nursing Care Quality Assurance Commissions efforts to create an apprenticeship pathway for Home Care Aides and Certified Nursing Assistants to become LPN/RNs to increased capacity in the LTC workforce.

Proposal for a WA State Psilocybin Bill based on the Oregon Model: Senator Jesse Salomon (D) representing the Shoreline area is talking about running the Oregon bill in WA State. He referred to the John Hopkins Study as a basis for the bill. He did ask for the associations support if they move forward with this proposal next session. More to come!

Health Care Authority (HCA)

$3,000 Incentive Payments for Medicaid Home Health: Donna, Brent Korte and I met with the Governor's Policy Staff, and Jason McGill at the HCA regarding incentive payments for home health and hospice to get difficult to discharge patients out of hospitals and into their homes. Based on that discussion, HCA decided to move forward with the following pilot project for home health :

Medicaid discharge incentives for skilled nursing facilities, home health agencies, & hospitals: HCA has approval to fund a new home health incentive supporting hospital discharge during the current COVID-19 surge. HCA has implemented a small home health incentive program of $3K for 25 new episodes of home health care for clients ready to discharge from hospitals. MCOs will send HCA requests for funding, and HCA will pay home health agencies directly. The deadline has been extended until the funds run out. You can also direct questions to Glory Dole, Section Manager for Medicaid Contracts and Compliance glory.dole@hca.wa.gov.

Social Worker for Home Health: Helpful for billing palliative care through home health Medicaid program. **The new reimbursement program will start up on January 1, 2022.** HCA has already had a stakeholder meeting to discuss implementation.

Social Worker for Home Health Rulemaking has been initiated: HCA has started the rulemaking process to amend the WAC to allow for reimbursement of a social worker for home health. HCA Preproposal - Statement of Inquiry (CR101) **182-551** Home Health WSR 21-20-063

Purpose: The 2021-2023 operating budget included a proviso (section 211(65), chapter 334, Laws of 2021) specifying that certain appropriated funds are provided to reimburse social workers as part of the medical assistance home health benefit. The agency is amending home health rules in chapter 182-551 WAC, subchapter II, to include medical social services within the home health program.

Department of Social and Health Services (DSHS)

Private Duty Nursing (PDN) and Seattle Children's Hospital (SCH): Medically fragile children on vents and trachs often end up in the palliative care or pediatric hospice programs in our agencies. SCH has initiated a workgroup to discuss how to address medically fragile children being backed up at the hospital for up to 3 years due to the shortage of private duty nurses and low reimbursement rates in the state. I am working on a budget proviso that will increase rates for PDN and asking for a higher agency rate than Independent Providers. I will continue to work with SCH on a workgroup over the next year to address these issues.

Update on TB testing for LTC workers: "These rules are suspended in response to the significant threat of COVID-19 to our most vulnerable populations, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. This rule-filing extends the emergency rule until March 05, 2022. Information is available online:

- Emergency Rules Suspending TB Testing

Substitute House Bill 1411 Relating to health care workforce eligibility for persons with prior involvement with the criminal justice system: The department filed a permanent rule on November 4 to amend WAC 388-113-0020 as a result of the passage of SHB 1411. The intent of this filing is to preserve and expand the workforce of long-term care workers balancing client choice and safety while maintaining the statutory requirement of character, competence and suitability determination. WAHCA was supportive of this legislation in the 2021 legislative session. To read the rule filing and final language, click here.

LTC Worker Training Program Flexibility Rulemaking initiated: The department is planning to amend WACs 388-112A-0010 and 388-112A-0300 to establish rules that allow for remote skills training which provides for more flexibility in training our long-term care workforce in remote areas. To read the preproposal click here. If you are interested in participating in this rule making process, please contact Angel Sulivan at angel.sulivan@dshs.wa.gov.

Reasons why rules on this subject may be needed and what they might accomplish: RCW 18.20.270(9) stipulates that "the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department." Under gubernatorial suspension of training rules and coordinated efforts to expand opportunities for remote training during the COVID-19 pandemic, DSHS contracted with a DSHS approved training company to conduct a pilot basic training program in which skills would be taught, demonstrated, reinforced, and remediated remotely. Data from student Prometric skills test pass rates for students involved in the pilot revealed success at a rate equal to that of students trained in person. The success of the pilot indicates that remote skills training is not only feasible but can also be effective. Remote skills training has the potential to

greatly increase the ability for students in remote areas to access training, and in turn augment an already strained long-term care workforce. Currently, there are no rules in place that allow for remote skills training or set standards for training programs that might offer it.

Department of Health (DOH)

Home Health and Hospice Telemedicine Supervisory Visits: DOH is hosting two virtual public rule workshops to discuss home health and hospice telemedicine supervisory visits:

- December 15, 2021 – 1:00pm to 4:00pm – Virtual/TEAMs
- January 7, 2022 – 9:00am to 12:00pm – Virtual/TEAMs

Please save these dates/times on your calendars. Separate invitations will be sent out prior to each workshop and will include a TEAMs link, an agenda, and other relevant materials. If you are interested in attending/participating in these workshops, please register by sending your name and email to john.hilger@doh.wa.gov.

Background: Current rules require home health and hospice agencies to supervise aides each month during an "on-site visit." While these requirements have been waived during the COVID-19 pandemic, the waiver will expire at the end of the declared emergency. Emergency rules under WSR 21-16-096 were put into place beginning August 3, 2021 to allow agencies to conduct supervision of aides via telemedicine and to cover any gap between the end of the pandemic and finalization of permanent rulemaking – which is the purpose of filing the attached CR-101.

During our upcoming rule workshops, DOH will review the attached emergency rule language with interested parties and discuss any amendments to the language that may be needed. The scope of this rule project is narrow and will only focus on the sections of the In-Home Services rules that pertain to home health and hospice supervisory visits.

DOH anticipates that two workshops should be an adequate amount of time for these focused conversations.

- In-Home Services WSR 21-20-084.PDF
- WSR 21-16-096.pdf

Hospice Certificate of Need: The Certificate of Need Program's 2021-2022 hospice need forecasting methodology and updated application form are now available. You may access these using the below links to our secure file sharing service Box.com.

- Updated hospice application form PDF
- Hospice need forecasting methodology PDF

The methodology will also be available on their website shortly. This methodology is based on the adopted hospice rules under WAC 246-310-290. On October 29, 2021 the Certificate of Need Program announced it is delaying its final posting for its year 2021 final hospice numeric methodology. Although the notification we sent out on October 1, 2021 stated we expected to send out the final on or before November 1, 2021, staffing issues have delayed the release of some impactful decisions to this method. Namely for:

Pierce County	decision released October 27, 2021
King County	decision anticipated November 5, 2021

In order to release the most accurate need projections possible, the final numeric methodology will be posted on or before November 10, 2021, with the above decisions included. As many of you know this methodology is based on the adopted hospice rules under WAC 246-310-290. If you have questions, please contact the Certificate of Need Program at FSLCON@doh.wa.gov.

Hospice CON Rulemaking: We did get an update from Eric Hernandez, DOH CON Manager, "We have already started our planning for rulemaking, now that we have some resources to get this work done. We anticipate holding workshops starting in late winter to early spring. The entire WAC 246-310 is open, so they are strategizing on how best to divide this work so that we can get done efficiently and with the most participate with stakeholders. No dates set yet.

Home Health CON Rulemaking: No word from DOH yet on when this will begin…but we have hired Marc Berg, former HCAW Board member to provide some analytics on home health in WA State. This will be helpful when we finally do go into rulemaking!

In-Home Services Rules: DOH plans to update the In-Home Services Rules. No date set yet. Do you have suggestions for changes to the hospice related rules that should be made? We need to let John Hilger at DOH know soon so he can begin to incorporate into the draft for stakeholder review.

Palliative Care Roadmap Still Available!! It's posted on DOH Rural Health webpage, as well as the WA Rural Palliative Care Initiative portal To order: https://prtonline.myprintdesk.net/DSF/

Palliative Care-Rural Health Integration Advisory Team (PC-RHIAT): For more information on their efforts go to: https://waportal.org/partners/home/washington-rural-palliative-care-initiative The group met on November 3 to review how the Cohort programs are going around the state.

COVID-19 Guidance: The following guidance documents include changes to references that include the secretary of health's masking order; change in quarantine length for fully vaccinated, exposed residents from 14 days to seven days (with completion of post-exposure testing); and removal of links to archived CDC guidance.

- Outdoor Visitation Guidance for Long-Term Care (LTC) Settings

- Risk Assessment Template to Assess COVID-19 Exposure Risk for Residents/Clients after Community Visits
- Supplemental Guidance for Long-Term Care Facility Visitors
- Interim Guidance for SARS-CoV-2 Source Control in Health Care Settings
- L&I and DOH Respirator and PPE Guidance for Long-Term Care: Employer responsibilities for respiratory protection program and provision of personal protective equipment (PPE)
- L&I and DOH Respirator and PPE for In-Home Care Agencies: Employer responsibilities for respiratory protection program and provision of personal protective equipment (PPE)

Nursing Care Quality Assurance Commission (NCQAC)

Nursing Commission's statement on COVID-19 misinformation: NCQAC supports Federation of State Medical Boards' statement released on July 29, 2021, regarding COVID-19 vaccine misinformation. NCQAC expands this statement to include nurses in Washington State and does not limit this perspective to vaccines but broadly applies this standard to all misinformation regarding COVID-19 treatments and preventive measures such as masking. Nurses who generate and spread COVID-19 misinformation, or disinformation, erode the public trust in the nursing profession and endangers patients. Read the Nursing Commission's full statement on COVID-19 misinformation (PDF)

Telehealth Training Requirements

The Nursing Care Quality Assurance Commission (NCQAC) provides Advisory Opinions and answers to questions on telehealth requirements in Washington state.

There are two Advisory Opinions related to Telehealth with sections on training requirements:

- Telehealth Advanced Practice Nursing Care Services
- Nursing Telehealth Practice; Registered Nurse (RN), Licensed Practical Nurse (LPN), Nursing Technician (NT), and Nursing Assistant (NA-C/NA-R)

For more information visit:

- Telemedicine Training Requirements FAQs
- Nursing Practice Frequently Asked Questions

LPN Apprenticeship and LTC Nursing Workforce: This group is an extension of the multiple years of work on the LTC Workforce Steering Committee. The LPN Apprenticeship and LTC Nursing Workforce virtual summit was help on October 22, 2021, and there are more workgroup

meetings coming up for me in the near future. I am an official member of this workgroup and will continue to offer ideas from our association membership. The LTC Workforce Development Steering Committee submitted The LTC Workforce Development Final Report - June 2021 (PDF) to the legislature in June 2021. The report includes legislative recommendations for continued work to support the needs of long-term care.

DSHS and DOH Stakeholder Workgroups on SHB 1218: SHB 1218 addresses the quality of life, health, and safety of long-term care residents during a state of emergency, such as a pandemic. During the 2021 legislative session, the legislature passed two bills in response to the COVID-19 public health emergency with major impacts on long-term care facilities and homes. I have been participating in these meetings. The final draft report has not been sent out yet before the December 2021 deadline.

NCQAC Advisory Opinions: Debbie Carlson, NCQAC, is still working on current drafts of advisory opinions that I believe may impact hospices: Portable Orders for Life Sustaining Treatment Revision Draft/Death with Dignity Draft/Determining, Pronouncing and Certifying Death Draft. Here is a link to the NCQAC Advisory Opinion site: https://www.doh.wa.gov/licensespermitsandcertificates/nursingcommission/practiceinformation#AdvisoryOpinions

Office of the Insurance Commissioner (OIC)

Telemedicine and audio-only telemedicine services (R 2021-06): OIC adopted the Telemedicine and audio-only telemedicine services rule R 2021-06 on November 22, 2021. The rule takes effect on December 22, 2021.The proposed rule implements ESHB 1196 (Chapter 157, Laws of 2021), which was signed into law on May 3, 2021. The law addresses coverage of telemedicine services, including audio-only telemedicine services. Prior to passage of this law, audio-only telemedicine services were explicitly excluded from the definition of "telemedicine". Carriers were not required by statute to cover audio-only telemedicine services. During the COVID-19 public health emergency, OIC issued emergency orders requiring coverage of audio-only telemedicine services in order to ensure access to medical services. ESHB 1196 requires coverage of audio-only telemedicine services under specified conditions and amends the statutory language related to telemedicine payment parity.

The proposed rule amends WAC 284-170-130 to add definitions relevant to telemedicine and creates a new WAC section – WAC 284-170-433. The new section addresses coverage of telemedicine services generally, including payment parity and the conditions in ESHB 1196 associated with payment for audio-only telemedicine services. For more information, including the adopted rule (CR-103) and the concise explanatory statement, please visit the rule's webpage.

Ongoing Public Policy Meetings

HCAW Public Policy Meeting: Meets on every 2nd Tuesday morning at 8:30 am of each month to review the public policy report and make recommendations to the board if appropriate.

WA State Senior Citizens Lobby: I attended the full day conference and listened to legislators and Governor staff talk about the state budget and next session. The state is in good financial condition considering a pandemic and employment issues!

Dementia Action Collaborative: There will be new legislation proposed in 2022 to continue the efforts of the DAC and update the state Dementia Plan. I have been participating in the states Dementia Collaborative for several years. I am working on a readmissions committee with this group that includes discussions around in-home services.

WA State Hospital Association (WSHA) Readmissions Workgroup: I am in the WSHA Readmissions Workgroup. I am trying to incorporate in-home services into their discussions!

WA State Telemedicine Collaborative: I participate in these meetings to follow issues closely related to providing telemedicine services in the home. The latest meeting was held on November 4th, 2021. There was further clarification on what an established relationship is for telehealth visits. They must have a report to the legislature done by the end of November 2021. I will send out when the final draft is released.

Expanding Democracy in Challenging Times: Presentation by Leslie Emerick, MPA, HCAW Public Policy Director, Friday, December 17th, 2021, 12:00-12:45 p.m. This event is free for HCAW members.

I will be discussing the main elements of a Democracy and how the work that we do as citizens contributes to maintaining one. I will weave in how recent legislation and the public policy efforts by HCAW strengthens your profession and promotes home health, home care, palliative care and hospice in Washington state.