

October 18, 2021

HCAW October 2021 Public Policy Report

Prepared by Leslie Emerick, HCAW Public Policy Director

Policy Overview

Just back from my two-week trip to France and getting caught up! This was a trip that was originally canceled by COVID last June. The weather was very similar to here while we were gone. I loved Paris and the surrounding countryside. Great food, art, museums, good people, and overall vacation!



I am preparing for the Committee Assembly Days and meetings with legislators from the Senate, November 15-16, 2021 and the House, November 18-19, 2021. In a recent conversation with a Senator, she stated that it looks like committee hearings may be virtual again and floor action will be in person for legislators. That will mean that lobbyists will probably be barred from the Capital Campus again this session. Nothing formal has come out to confirm this... just conversation at this point! Just a reminder that next session will be the “Short” 60-day Legislative Session: January 10 – March 11, 2022

In speaking with various lawmakers, we are hearing that increasing Medicaid rates is a top priority for both Democrats and Republicans. And on that note, Republican Senators sent a letter to Governor Inslee requesting that the National Guard be brought in to assist with our local hospitals due to the staffing shortages and.... “Our state desperately needs additional funding to increase reimbursement rates to our skilled nursing facilities, which will allow the discharges necessary to free up critical hospital bed inventory.” And here is a link to the article in The Olympian newspaper about it: <https://www.theolympian.com/news/local/article254902442.html>



Covid Healthcare
letter to Gov.docx

Governor’s Vaccine Mandates go into effect on October 18, 2021: [COVID-19 Vaccination Requirement \(Proclamation 21-14\) for health care providers, workers and settings \(wa.gov\)](#) released on August 9, 2021, requires health care providers, which is defined broadly to include not only licensed health care providers but also all employees, contractors, volunteers, and providers of goods and services who work in a health care setting, to be fully vaccinated against COVID-19 by October 18, 2021. It also requires operators of health care settings to verify the vaccination status of a) Every employee, volunteer, and contractor who works in the health care setting, whether or not they are licensed or providing health care services, and b) Every employee, volunteer, and contractor who provides health care services for the health care setting. DOH included most of the answers in there FAQ: [COVID-19 vaccine requirement for health care providers FAQs](#).

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Interestingly, home care, home health and hospice were specifically called out in the first proclamation which cause a great deal of confusion. The key word being “providing personal care in a person’s home”.

“Health Care Provider” does not include, for purposes of this order:

- Individual providers, as defined in RCW 74.39A.240;
- Providers of personal care in a person’s home, such as home care, home health or hospice care;
- Providers who are not actively practicing or providing services; and
- Providers who provide services only at one or more of the settings that are expressly excluded from the list of Health Care Settings under this order.

Health Care Authority (HCA)

Incentive Payments for Home Health and Hospice: Donna Goodwin and I met with the Governor’s Policy Staff, along with Barb Hansen of the WA Hospice and Palliative Care Organization, regarding incentive payments for home health and hospice to get patients out of hospitals and into their homes. We then worked with Jason McGill at the HCA and discussed a pilot project for home health as it seemed the easiest to deal with hospital capacity at this time. HCA is now implementing a small pilot project that began last week!

“Changes to Medicaid discharge incentives for skilled nursing facilities, home health agencies, and hospitals”: The Health Care Authority (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. We still have all 25 incentives available as of today.

The Office of Financial Management funded incentives for payments of \$6K for 266 new admissions into Skilled Nursing Facilities out of hospitals. As of October 14, HCA allocated all of this funding. In order to continue supporting hospital discharges, MCOs have agreed to continue payments of the \$6K incentive - through October 31 at a minimum. The billing process may change as we transition from HCA directly paying the incentive to the MCOs paying.

If you have any questions or concerns about a specific admission, please reach out to either the MCO or to HCA. You are welcome to direct any questions other to glory.dole@hca.wa.gov or hcamcprograms@hca.wa.gov



MCO Point of
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Social Worker for Home Health: I spoke with Josh Morse at HCA, and he said that the reason the payment is being delayed until January 1, 2022 is that they have to have federal approval for this change in the State Plan Amendment for Medicaid also known as SPA. We were initially mis-lead by a staff person who said that it would be retroactive until July 1, 2021, as the proviso stated. HCA is not able to meet federal requirements for the SPA and amend their contracts with the MCOs until the January 2022 start date.

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

To read the filing notice, see [WSR 21-20-063](#)

Private Duty Nursing (PDN) and Seattle Children's Hospital (SCH): HCAW has been working on the reimbursement issue for PDN agencies for many years. PDN agencies who care for medically intensive children and adults are being paid at the same rate as an independent provider with no agency overhead costs. PDN agencies provide supervision, training and management of caseloads and nurses to assure shifts are covered among other state requirements. 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. I have permission to work with Ways and Means Committee staff and DSHS to develop a methodology on this issue. We received a very positive response back from Bea Rector, Director, Home and Community Services Division at DSHS:

“There is not a direct correlation between the published home care agency vendor rate and the IP rate from an administrative perspective, but you are correct that part of the difference is due to variance in how funding for things such as employer taxes, labor and industries, health care, training, etc. is accounted for. For home care agencies, these are all included in the vendor rate and for Individual Providers these are paid outside of the vendor rate by the state as the employer for purposes of collective bargaining or on behalf of the client employer.

There are also responsibilities that licensed home care agency employers have to recruit and hire direct care workers, perform payroll, provide supervision and oversight, etc. that are reflected in the home care agency vendor rate. The agency rate has always been determined by the legislature. There is a parity portion of the vendor rate that when increased is statutorily required to be used to increase the wages and benefits of direct care workers and there is a portion of the vendor rate that we refer to as the administrative portion of the vendor rate. It is common that there are increases to the parity portion and no increases made to the administrative portion as that requires specific action and appropriation by the legislature.

The total home care agency vendor rate is \$32.32/hour and the administrative portion of that total rate is roughly \$5.57. We do not have a structured methodology to share as that has been driven

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historically by legislative actions and appropriations. The approach you are looking at makes sense from my perspective, the key will be to create a methodology for those “employer based” costs.”

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 attended a 2-day conference in Seattle with SCH to discuss ways to help expand care for this kids in the home.

Department of Health (DOH)

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 our [website](#) shortly. This methodology is based on the adopted hospice rules under [WAC 246-310-290](#).

Deadlines for letters of intent and the corresponding applications are county-specific. You can find the schedule by county in Table A, included in the link above. If you have any questions related to the methodology, please email them to the Certificate of Need Program by October 17, 2021.

The methodology in rule includes survey responses (accessible [here](#)) from active hospice providers received under signed attestation. If your response is not accurately conveyed here, please provide corrections for your surveys to the Certificate of Need Program by October 17, 2021. We will accept corrections to survey responses that come directly from the survey’s hospice agency. We expect to post a final version of the methodology on or before November 1, 2021. If you have questions, please email the Certificate of Need Program at FSLCON@doh.wa.gov.

DOH Preproposal Statement of Inquiry (CR-101) for In-Home Services Supervisory visits: Regarding WAC 246-335-510, WAC 246-335-545, WAC 246-335-610, and WAC 246-335-645 in chapter 246-335 WAC, In-Home Services Agencies. DOH will consider amending requirements for how in-home services agencies perform supervisory visits. This may include permanently adopting some measures used throughout the coronavirus disease 2019 (COVID-19) pandemic, such as expanding the definition of "telemedicine," removing the requirement that supervisory visits must occur during an on-site visit, and other regulatory flexibilities as appropriate. Additionally, the department will consider whether amendments are necessary to align with Engrossed Substitute House Bill (ESHB) 1196 (chapter 157, Laws of 2021), audio-only telemedicine legislation that was passed during the 2021 legislative session filed as [WSR# 21-20-084](#).

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PPE Available from the State: The state personal protective equipment (PPE) stockpile (referred to as “the backstop”) has been available to help support state agencies, counties, tribes and other partners through the COVID-19 pandemic. The state backstop will be available to meet COVID-19 PPE requests through Oct. 31, 2021. Now is the time to submit requests for PPE through your county emergency managers. For information, please visit the [Department of Health PPE website](#). Contact your [local county emergency management](#) agency to determine how orders should be placed with them; they are able to answer questions about the forms and ordering process.

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

Hospice Certificate of Need: Opening rules date has not been set by DOH yet. In March 2020, Governor Inslee issued [Proclamation 20-36](#) waiving portions of Washington’s Certificate of Need statutes and rules for the purpose of allowing providers within Washington to expand and/or establish services for the specific reason of responding to the COVID-19 pandemic within Washington. At this point DOH is working on plans to transition from the pandemic response.

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>

Nursing Care Quality Assurance Commission (NCQAC)

LPN Apprenticeship and other ideas for developing the LTC Nursing Workforce

[Register](#) for the LPN Apprenticeship and other ideas for developing the LTC Nursing Workforce virtual summit on **October 22, 2021**.

- **Learn** about the LPN apprenticeship pathway
- **Understand** ways to get involved, including how to apply to become a pilot site
- **Offer** your ideas to help develop the apprenticeship pathway
- **Discuss** other ways of developing the LTC workforce NOW
- **Connect** with nurse educators, LTC facility leaders, students, and state staff

Get the zoom link and see the **agenda** on the [NCQAC Virtual Summit - LPN Apprenticeship Summit & Agenda \(PDF\)](#)

- [NCQAC LTC Virtual Summit - LPN Apprenticeship Summit & Agenda.pdf](#)

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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>

Emergency Rule Making (CR-103E) Amending NAC and NAR training requirements:

WAC 246-841-405, 246-841-420, 246-841-470, 246-841-490, 246-841-500, 246-841-510 and 246-841-555. Amending specific training requirements for Nursing Assistant Certified (NAC) and Nursing Assistant Registered (NAR). The Nursing Care Quality Assurance Commission (commission) has adopted emergency rules as the permanent rulemaking process continues. The rules in chapter 246-841 WAC provide regulatory requirements for NACs and NARs. These amendments allow additional pathways to comply with current standards. This is the fifth emergency rule and it continues the emergency rule that was filed on May 20, 2021 under WSR 21-12-011 without change. Prior filings were June 26, 2020, WSR 20-14-066; October 23, 2020, WSR 20-22-023; and January 20, 2021, WSR 21-04-004. Transition from emergency to permanent rules were approved by the commission and a notice of intent to begin rulemaking was filed on February 8, 2021, under WSR 21-05-021. Filed as [WSR# 21-19-091](#).

Office of the Insurance Commissioner (OIC)

OIC has released the proposed rule language on R 2021-06. To read the filing notice and rule language, click <https://www.insurance.wa.gov/telemedicine-and-audio-only-telemedicine-services-r-2021-06>. 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.

We scheduled a public hearing on the rule: October 28th, 2021, at 11:00 a.m. [Register for the public hearing via zoom](#). Comments on the proposed rule language are due October 25th, 2021; please send them to rulescoordinator@oic.wa.gov.

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DSHS/ALTA

DSHS and DOH Stakeholder Workgroups on Legislation: 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 invited to participate in these meetings and have attended the first stakeholder meeting for SHB 1218 where they discussed parameters for the workgroup and an October 2021 deadline to submit a draft to state agencies for review before December 2021 deadline. No meeting date set for HB 1120 yet...more to come!

[SHB 1218](#) addresses the quality of life, health, and safety of long-term care residents during a state of emergency, such as a pandemic. The legislation directs the department develop rules requiring long-term care facilities to develop emergency preparedness plans, respond to communications from the public, make accommodations to assist residents with communication, maintain current resident information, post any notice of stop placement, and support a resident's right to visitation from an essential support person during times when visitation is otherwise limited. This project is expected to begin in the summer of 2021 and continue through the adoption of the final rules. If you have any questions or if you want to participate in the rule-making process, please contact the Policy Unit at rcspolicy@dshs.wa.gov.

Ongoing Public Policy Meetings

WA State Senior Citizens Lobby: I will be attending their fall conference on October 21, 2021.

Dementia Action Collaborative: I am working on a readmissions committee with this group that includes discussions around hospice, home health and home care. They are working on a "tool kit".

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

WA State Telemedicine Collaborative: For upcoming meetings, please see [Upcoming Meetings](#)