

HCAW September 2021 Public Policy Report

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Policy Overview

What strange times we live in! We seem to be heading towards a “perfect storm” in Washington state as COVID cases skyrocket among the unvaccinated, filling our hospitals to capacity, with a worker shortage and vaccine mandates potentially causing employees leave their jobs. This week’s Olympian newspaper had competing headlines about [hospitals on the verge of collapse in Washington state due to unvaccinated people with COVID-19 filling their ICUs](#), [weekend protests against the vaccine mandate in Olympia](#) and [state unions are now suing the state because of the new vaccine mandates](#) because they were not part of their contract negotiations!



WA State employees protesting the vaccine mandates at the state capitol in Olympia.

As the state legislature prepares for Fall Legislative Days, many issues seem to be coming together that will be top priorities during the next legislative session. Healthcare workforce shortages, COVID-19 and hospital capacity among the top three.

Currently, they are still projecting an “in-person” legislative session...but I find that hard to believe with the current COVID-19 rise in Washington state. Time will tell!

Committee Assembly Days:

Senate - November 15-16, 2021

House - November 18-19, 2021

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. They do not want to make the health care worker shortage worse by reducing wages that were increased during the pandemic with federal funding.

COVID-19 Update

On September 8th DOH made an announcement that our hospitals are near the “crisis” lever of care in our communities. One this level of care is officially announced, emergency plans across the state begin to be implemented in our communities:

[Statement on hospital capacity and crisis standards of care > Washington State Department of Health](#)

I have set up a meeting with the Governor’s Policy staff on September 13th to discuss ways to incentivize home health and hospice agencies to help get people out of hospitals and into their homes. DOH, WSHPCO, Donna, myself and Brent Korte, EvergreeHealth will join the meeting.

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The Delta variant of COVID-19 is rapidly spreading across the state with cases and hospital admissions at their highest levels to-date. About 98% of cases are estimated to be caused by the Delta variant and most related hospitalizations are with people who are unvaccinated. More COVID-19 data can be found on the [DOH data dashboard](#).

Most providers in the Washington state health care system are supportive of the vaccine mandates and in particular the WA State Hospital Association. Many of our large hospital systems have also implemented vaccine mandates such as PeaceHealth, Providence and Kaiser Permanente...but we have some smaller agencies, especially in our more rural areas that are being heavily impacted by the vaccine mandate with up to 10-20% of the staff refusing to get the vaccine by the October 18th deadline. As you can imagine, that could have devastating impacts on smaller agencies. Sadly, our more rural populations have shown the greatest reluctance to get vaccinated and many are being heavily impacted by outbreaks in their communities. [COVID-19 deaths overwhelm morgue in Cowlitz County - The Columbian](#)

Here are links to the Governor's Vaccine Mandates:

[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.

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.

After the Proclamation came out there was an article in the Olympian newspaper and a quote from the Governor's Communications staff, Mike Faulk, Deputy Communications Director, that was quite misleading. "We are exempting home care, home health and home hospice workers," he wrote via email in response to questions Monday from The News Tribune. "But individual providers providing health care, rather than personal care, would still be covered. For example, a physical

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therapist providing health care in the home would be included.” Here is a link to the full article; www.theolympian.com/news/coronavirus/article253378868.html

This led me to immediately contact the Governor’s office set up a meeting with Amber Leaders, Governor’s Senior Health Policy Staff, to discuss the issue as soon as possible to assure no further misinformation was spread. We met with Amber on Friday, August 13th in the morning and had a good discussion about the nuances involved with providing “personal care” in these settings. She was very receptive and asked that we submit our questions to her and DOH staff to assure that these clarifications made it into the FAQ’s that were being developed as we spoke. The three in-home services associations agreed on our questions and sent them to the Governor’s staff and DOH.

Here are the questions we submitted to Amber and DOH:

- Who specifically is included/excluded in the mandate that impacts in-home services providers (home care, home health and hospice)?
 - Are you referring only to home health or hospice aides who may provide personal care? Home health and hospice typically provide medical services in the home. Other disciplines can include nurses, PT, OT, SLP, MSW, chaplains, volunteers depending on license type.
- Does the mandate include office staff for in-home services agencies licensed under DOH and RCW 70.127? All in-home services agencies have an office facility that they use to send workers to and from their jobs. These workers do not have patient contact.
- In terms of the exclusion for Individual Providers (IPs) under the state’s Medicaid program, does it include Medicaid approved home care agencies that provide care in the home or just IPs?
- What about home health agencies that provide private duty nursing to medically fragile children and adults in their homes? Will their staff be required to get vaccinated?
- Home care agencies in our state also have a large private pay component with agencies that are regulated by DOH, but are not Individual Providers (IPs). Will private pay home care agencies who provide personal services in the home be required to be vaccinated? How about their office staff?
- Some of our agencies provide care in ALFs, AFHs and SNFs. Will these staff have to meet the vaccine mandate?
- Is the Governor’s Proclamation requirements based on CDC recommendations?

DOH included most of the answers in there FAQ: [COVID-19 vaccine requirement for health care providers FAQs](#). DOH is currently working on another FAQ update that will be out soon.

On August 20, 2021, Governor Inslee issued a [revised version of his vaccination mandate](#). The Proclamation had several revisions of which long term care providers should be aware according to the [WA Health Care Association \(WHCA\)](#) who represents assisted living and nursing homes in Washington state.

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The most important revision addresses the vaccination requirements for contractors. Under the newly revised Proclamation, the operators of Health Care Settings may elect to require the contractor or the actual company employing the contractor to assume responsibility for the vaccination verification and the reasonable accommodation requirements. The revised Proclamation provides a detailed explanation of the steps that must be taken by contractors to satisfy the proof of vaccination requirements for Health Care Settings. In addition, any Health Care Setting electing to require contractors to assume responsibility for vaccination and accommodation retains the right to investigate the contractor's compliance and to withdraw the election at any time.

In addition, [the revised Proclamation](#) also clarifies who qualifies as an "on-site volunteer" and "on-site contractor." An "on-site volunteer" and "on-site contractor" includes "A volunteer or contractor who is reasonably likely or contractually obligated to engage in or in fact engages in work while physically present at a building, facility, jobsite, project site, unit, or other defined area owned, leased, or occupied by an operator of a Health Care Setting".

Behavioral Health Impacts of COVID-19 Fifth Wave: Below is an excerpt from the article by the Office of Behavioral Health sharing the effects of the 5th wave of COVID-19 and how can create a "disaster cascade". Read more in the attached article.

Background: "A secondary disaster impact, or disaster cascade, is often related to or triggered by the initial impact of a disaster. It may be caused by additional pandemic waves, economic hardships (unemployment, bankruptcy, eviction, food insecurity, etc.), and social and political disturbances (violence, civil unrest, protests, etc.) The fifth wave of infections could trigger a disaster cascade broadly across the state in terms of behavioral health symptoms, but particularly among healthcare workers, public health personnel, essential workers, and others who have been directly involved in the pandemic response since early 2020." [COVID-19 Fifth Wave FINAL.pdf](#)

State Law Enforcement and Wellness Checks: A new hot topic that has come up is that various law enforcement agencies around the state are refusing to do wellness checks in the community stating that the laws now preclude them from doing so. The WA State Attorney General disagrees with this approach and has submitted a memo which is included in the article below further detailing. Much of the discrepancy in interpretations has centered on [HB 1310](#), which sets a statewide standard for police use of force and establishes an expectation of "reasonable care" for officers. I am hearing that there may be clarifying legislation coming in 2022. <https://www.theolympian.com/news/state/washington/article253289628.html>

DSHS Update on HB 1310 concerning permissible uses of force by law enforcement and correctional officers: HB 1310 became effective on July 25, 2021, requiring police and sheriffs' offices across the state to adjust the way they do their work. Some law enforcement agencies have publicly stated that they will not respond to calls involving public health and care tasks.

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Some local law enforcement agencies have interpreted the legislation to mean they can only respond to calls reporting crimes. House Bill 1310 limits when police use force and requires peace officers to, "... exhaust all viable and appropriate de-escalation tactics prior to using any physical force... and leaving the area if there is no threat of imminent harm and no crime has been committed or is about to be committed." [House Bill 1310](#)

State Board of Health

COVID-19 Reporting Emergency Rule Making (CR-103E): WAC 246-101-017, Novel coronavirus (SARS-CoV-2), coronavirus disease 2019 (COVID-19) reporting. The WA State Board of Health has adopted a fourth emergency rule to continue to designate COVID-19 as a notifiable condition and extends reporting requirements for health care providers, health care facilities, laboratories, local health jurisdictions, and the Department of Agriculture to report certain data with each COVID-19 test, including test results, relevant demographic details (e.g., patient's age, race, ethnicity, sex), and additional information. The rule allows for certain waivers by a local health officer. The rule establishes what testing and demographic data need to be reported as well as the timing and mechanism of reporting in accordance with Public Law 116-136, § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act filed as [WSR# 21-16-014](#).

Department of Health (DOH)

I recently attended two meetings with DOH where they discussed their budget priorities and decision packages for the next legislative session. There is nothing directly related to hospice and palliative care, but there will be updates to current Boards and Commissions for nurses, physicians and others. Here is their legislative agenda if you are interested:



Department of
Health_2022 Budget a

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](#).

How to Order: 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.

Facility Enforcement Framework Presentation & Stakeholder Session (August 30, 2021)

Background:

In 2020, [HB2426](#) passed requiring the department to conduct a review of the statutes for health care facilities licensed by the department, and to identify opportunities to consolidate and standardize

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licensing and enforcement requirements. The bill also directed DOH to work with stakeholders and the Washington State Legislature to create a uniform health care facility enforcement act for the 2021 legislative session. HB2426 also established new enforcement tools for psychiatric hospitals.

The department began stakeholder work last summer to develop recommendations as required by HB 2426. We also provided a preliminary report to the legislature in December 2020. However, the COVID-19 pandemic has continued to redirect many of our resources towards the response and away from other policy work. While this work is also important, the department has had to make many difficult decisions on where to focus our efforts.

During the 2021 session, the legislature chose to pass a second bill establishing new enforcement tools for acute care hospitals, [HB1148](#). This bill was closely modeled on the psychiatric hospital bill and has now given us two bills to consider as a framework when establishing enforcement recommendations for other facility types. Using that framework, we have determined which facility laws have limited options for taking action, short of revocation or suspension of a license, and are proposing recommendations for adding options that would allow more flexibility in working with facilities to resolve compliance issues.

Focus of Feedback Sessions:

We do want to recognize that facilities are facing many challenges at this time, including workforce shortages and capacity issues, and time is a valuable commodity right now. These feedback session specifically included home health, home care and hospice. We are hoping for more consistency and flexibility for enforcement. I weighed in with a comment on liking the ability to receive technical assistance for agencies. We field a lot of questions about compliance with DOH and staff is suggesting that they are able to contact DOH directly without repercussions. (John Hilger, In-Home Services Program Manager - john.hilger@doh.wa.gov) If you have any questions about these sessions, please contact FacilitiesFeedback@doh.wa.gov.

[L&I and DOH Respirator and PPE for In-Home Care Agencies: Employer responsibilities for respiratory protection program and provision of personal protective equipment \(PPE\) \(wa.gov\)](#) – Updates to section #4 regarding fit-tested respirators.

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.

DOH Rulemaking removing limitation on distance supervision for Social Worker Associates. If you have comments you may submit these comments here: [Rules Comment](#) If you have any questions regarding this please reach out to Brandon Williams at brandon.williams@doh.wa.gov.

- [2113148counselingswrkmftpostgradsupervision105final.pdf](#)

Telemedicine Supervisory Visits for Home Health & Hospice rules: WAC 246-335-510, 246-335-545, 246-335-610, WAC 246-335-645 In-Home Services Agencies. This emergency rule amends WAC 246-335-545 and WAC 246-335-645 to remove the requirement that supervision of aide services must be “during an on-site visit” and to add language that the supervisory visit “may

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be conducted on-site or via telemedicine.” This rule will allow home health and hospice agencies to perform supervision either on-site or via telemedicine. This rule also amends the definition of “telemedicine” in WAC 246-335-510 and WAC 246-335-610 to clarify that telemedicine applies to both delivery of health care services and supervision of direct care providers and how it is to be used. Federal and state COVID-19-related guidelines and Department of Health (department) waivers, filed under WSR 20-10-061, currently allow home health and hospice agencies to implement social distancing practices and to limit in-person contact to reduce the spread of the virus filed as [WSR# 21-16-096](#).

Home Health Certificate of Need: HCAW requested new rulemaking around home health certificate of need last year and was approved by DOH, then got delayed due to COVID-19. The current guidelines have not been updated since the mid-1980’s and they need to be modernized by current standards. We are hearing that the rule making process is due to start up again sometime this fall. We are making plans to gather data prior to the rulemaking starting to get a good feel where the industry is currently at in our state. More to come!

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. As part of these efforts, the CN Program is sent a survey to determine which providers in Washington have expanded under the provisions of Proclamation 20-36. According to DOH 6 hospices responded to the survey.

Emergency Rules Filed on Medication Assistance: The Pharmacy Quality Assurance Commission (commission) and Department of Health (department) have jointly filed emergency rules to reinstate medication assistance rules as permitted under chapter 69.41 RCW. Specifically, these rules, filed under [WSR 21-15-108](#) establish criteria for medication assistance in community-based and in-home care settings in accordance with [RCW 69.41.010\(15\)](#). These rules help impacted individuals retain their independence and live in the least restrictive setting, such as their own home, longer by providing means and guidance for medication assistance. For more information and to view the rule language, please follow [this link](#). Contact WSPQAC@doh.wa.gov with questions.

Office of the Insurance Commissioner (OIC)

Telemedicine and audio-only telemedicine services rulemaking from OIC: Telemedicine Audio-Only 2021 Legislation: [Substitute House Bill 1196](#) was passed during the 2021 legislative session and requires the following regarding the practice of telemedicine. OIC released a stakeholder draft for the telemedicine and audio-only telemedicine services rule (R 2021-06). This rule will implement ESHB 1196, related to coverage of telemedicine and audio-only telemedicine services.

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This rule will clarify terms related to several components of the new law and facilitate implementation of the law by ensuring that all affected entities understand their rights and obligations under the new law. Comments on the second stakeholder draft are due Aug. 31, 2021; please send them to rulescoordinator@oic.wa.gov. For more information, including the text of the stakeholder draft, please [visit the rule's webpage](#).

DSHS/AL TSA

DSHS regarding CARE assessments: Due to the rising COVID cases in Skilled Nursing and Assisted Living facilities, Home and Community Services (HCS) is temporarily stopping in-person visits and resuming telephonic CARE assessments for Medicaid residents in these setting types effective September 13th. HCS will continue to work with Adult Family Home and Enhanced Service Facility providers on a case-by-case basis, evaluating the most appropriate response between in-person and telephonic visits based on provider/client needs: [HCS Return to Telephonic Medicaid Assessments](#)

DSHS filed an emergency rule on Disqualifying Crimes: On July 30 to implement the changes related to the passage of [Substitute House Bill 1411](#), which adds time limitations to certain crimes which were previously permanently disqualifying. To read the filing notice and rule, click [here](#).

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. Barb Hansen and I are attending these meetings. 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.

DSHS Consumer Directed Employer for Home Care Workers: New changes for Individual Providers (IP) are underway. These changes include how IPs are employed and paid. Consumer Direct Care Network Washington (CDWA) was selected by DSHS to become the Consumer Directed Employer (CDE) of all IPs. To learn more about this change and the CDE, please join the public webinars CDWA will be hosting this month.

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Interested persons are welcome to register for any webinars that apply to them. Attendees will have the opportunity to ask questions during the webinars. Questions will be answered and posted in the Resources section of the CDWA website (<https://www.consumerdirectwa.com/>) along with recordings of the CDWA webinars.

- **Getting Ready for the CDE**, Wednesday, September 8, 1:30 pm PDT
https://zoom.us/webinar/register/WN_0l30VqNDQMyOTmcrhSpMUA
- **Payroll Schedule Change and Work Week Limits (WWLs)**, Tuesday, September 14, 11:30 am PDT https://zoom.us/webinar/register/WN_vXktqX4sSZOKjFe_zizRBQ
- **Client Responsibility**, Friday, September 17, 3:00 pm PDT
https://zoom.us/webinar/register/WN_hjvDIlgETnKkrwBmQVC6BA
- **Parent Providers and Live-in Providers**, Tuesday, September 21, 3:30pm PDT
https://zoom.us/webinar/register/WN_3nR3-U8HSXCrmg8wYpaFWg
- **DirectMyCare Web Portal and EVV**, Wednesday, September 29, 1:00 pm PDT
https://zoom.us/webinar/register/WN_pBHqqAXRSXyoYLiyP-Fk6Q

The changeover to the CDE is starting with a small pilot group of Clients and IPs this month. Remaining Clients and IPs will changeover in two phases later in 2021 and into 2022. IPs will need to submit new documentation to CDWA during the CDE changeover. CDWA will be the employer of all IPs by early 2022.

Nursing Care Quality Assurance Commission (NCQAC)

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>

Health Care Authority (HCA)

Social Worker for Home Health Funding begins July 1, 2021: Donna and I are meeting with HCA staff to determine how this funding will be implemented through home health Medicaid program. HCA is still in the process of setting this up and payment will be retroactive to July 2, 2021. More to come on this subject!

Private Duty Nursing issue and Seattle Children's Hospital (SCH): SCH has initiated a workgroup to discuss how to address medically fragile children being backed up at the hospital for

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up to 3 years due to the shortage of private duty nurses and low reimbursement rates in the state. These are the same children that move in and out of the palliative care and pediatric hospice programs in our state. I will be attending a 2-day conference in Seattle with SCH to discuss ways to help expand care for this kids in the home.

Ongoing Public Policy Meetings

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 PC-RHIAT last meeting was on Wednesday, September 1, 2021 where they did reports from the different entities participating around the state. There was a great discussion about chronic care and palliative care and how each program was billing for their services. Reimbursement is still a big problem for rural areas in particular.

WA State Senior Citizens Lobby: This is a monthly meeting I have been attending for over 10 years. Speakers usually include the Assistant Director for Aging and LTC Services at DSHS and other who speak to issues related to servicing senior citizens in our state.

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” for dementia patients leaving the hospital and how to keep them safe and prevent readmissions.

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

Nursing Care Quality Assurance Commission (NCQAC): I attend several different types of meetings with the nursing commission and am tracking issues related to certified and registered nursing assistants (CNA’s), ARNPs and RNs, and more!

WA State Telemedicine Collaborative: The Collaborative was created in 2016 after the passage of [SB 6519](#), for the advancement of telemedicine and the benefit of professionals providing care through telemedicine. For upcoming meeting detail, please see the [Upcoming Meetings](#) page.

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/>