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HCAW May 2022 Public Policy Report

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Legislative Landscape

The 2022 election season is in full swing now for legislative positions in the 2023 session! Half of the Senate is up for re-election and all of the House of Representatives. Around 1/3 of the House is retiring or running for the Senate and some long-time Senators are retiring as well. State agencies are gearing up for rulemaking from bills that passed this last session. They are also putting together their financial decision packages to submit to the Governor for his budget that will be introduced this fall.



As a reminder, the Supplemental Budget that was passed in 2022 contains additional funding for LTC workforce shortages and nursing as well as the budget proviso that we worked on over the session for palliative care, private duty nursing and home health rate increases for Medicaid. State agencies will be figuring out over the interim how to spend that money and implement the apprenticeship bills!

HCAW Political Action Committee (PAC): Please consider donating to the HCAW PAC for this election cycle. Many of you created lasting relationships with legislators this year during our In-Home Services Days and your support for their campaigns can make a big difference and helps open doors for us. Go to: [Home Care Association of Washington - Donate to the PAC \(wildapricot.org\)](https://www.wildapricot.org/donate-to-the-pac)

SEIU Gets Funding for a Study to Increase Taxes on Home Care to Gain higher Federal Reimbursements: We did have one dangling issue from the last session regarding a budget proviso that slipped through at the end of session from Senator Warnick (R) of the Ellensburg-Moses Lake area that was apparently suggested by SEIU. It took them two months to get me that information...so perhaps they were a little embarrassed that they did not reach out to us! This is only a study at this time and the additional fees would need to be approved by the legislature! It may be a bill or budget proviso next year at which time we can take a position.

DOH is to conduct a voluntary survey (expected to cost \$17,000 GF-S) to gather non-identifiable baseline information about the home care industry that would inform future consideration of a possible home care assessment of the same type that is already used to obtain more federal Medicaid dollars for the state with the current assessments for hospitals and nursing homes DOH is supportive of the amendment but wasn't able to get it into either the House or Senate versions of the Operating Budget. Here is the amendment language:

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“The department shall conduct a survey of home care and home health agencies, as those terms are defined in Ch. 70.127 RCW, to gather financial information for tax or fee planning purposes, including but not limited to total by service line. Any such financial information reported must be de-identified so it does not identify individual recipients of care. The department shall provide this information to the Department of Social and Health Services and SEIU 775 for analysis.” DOH would require a GF-S appropriation of \$17,000 for staffing to accomplish the work.

The background on this request is that for the past 18 months SEIU 775 has been working with DSHS, DOH and DOR to develop a proposal for a home care assessment that could increase federal Medicaid funding for home care services in our state, similar to the existing assessments on hospitals and nursing homes. However, after a lot of work it became clear that the state does not currently have enough information on revenue from home care agencies to be able to develop a proposal rigorous enough to meet CMS requirements. DOH ultimately suggested that they could do a survey and try to gather the information voluntarily from home care agencies.

The nursing home industry folks at WHCA and LeadingAge support the concept, our private-pay home care agencies probably won't like any future proposal to add a home care assessment. I want to emphasize that the survey authorized by this amendment would be totally voluntary and no home care assessment could be authorized without the passage of specific legislation at some future date. The voluntary survey authorized by this budget amendment would inform future decisions but would not create any obligations for future legislatures.

Health Care Authority (HCA)

Extension of the Public Health Emergency: HCA learned from [the Department of Health and Human Services \(HHS\)](#) that the current COVID-19 public health emergency (PHE) has been extended through July 15, 2022. According to [HHS' letter to the Governors](#), the PHE may be extended in 90-day increments and HHS will provide states with 60 days' notice prior to termination. HCA will continue to share updates as new information becomes available, and communicate to clients, partners, and stakeholders before any eligibility changes take place.

Palliative Care Benefit for Medicaid, PEBB, SEBB Rulemaking: HCA is slowing gearing up by forming their internal task force to work on the palliative care benefit project. The state invested \$250,000 of the general fund for fiscal year 2023 to design a standardized payment methodology for a palliative care benefit for the state Medicaid program and the employee and retiree benefits programs. HCA may contract with a third party to design the palliative care model and complete the work required. We are looking forward to seeing who get hired and when this work will begin!

Actual filing for the rule will probably happen over the summer. I will be sharing all stakeholder information related to these rules and they will also let you sign up directly as an interested party to participate. Lot of folks appear to be interested in participating in the rulemaking process!

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Department of Health (DOH)

Eventually Ending COVID-19 related Emergency Rules/Waivers at DOH: I was recently contacted by Christie Spice, Assistant Director of Health Quality Assurance Systems, the division that has oversight of In-Home Services agencies, to discuss how to ramp down after the state of emergency ends for COVID 19. She will be scheduling a meeting with HCAW, WSHPCO and HCAOA-WA to discuss further. I have asked that the department come up with a list of all the emergency rules that impact in-home services agencies so we know specifically what will be ending. The meeting to discuss the wind down is on May 24th.

CR-103E Alert: Emergency Rule Adoption, Chapter 246-101 WAC – Notification and Reporting of COVID-19: The Washington State Board of Health (Board) has adopted a seventh emergency rulemaking order to continue the requirements established in WAC 246-101-017 – Novel Coronavirus (SARS-CoV-2), Coronavirus Disease 2019 (COVID-19) Reporting. The emergency rule is effective April 20, 2022, and will be in effect for 120 days. The CR-103E announces the emergency rulemaking order, filed as WSR 22-09-082 (attached). This emergency rule, in alignment with [updated guidance from the Department of Health and Human Services](#):

- Continues the designation of COVID-19, as a notifiable condition.
- Continues the requirement for health care providers, health care facilities, laboratories, local health jurisdictions, and the Department of Agriculture to report certain demographic, testing, and other relevant data for each COVID-19 test.
- Clarifies reporting requirements by test entity and test type:
 - Entities licensed to conduct moderate or high complexity testing must report all positive, negative, and inconclusive test results from all NAAT and antigen tests performed for COVID-19.
 - Entities licensed to conduct waived tests under a certificate of waiver must report positive test results from all waived tests, excluding antibody testing, for COVID-19.

The Board filed a CR-101, Preproposal Statement of Inquiry, on July 23, 2021, to integrate emergency rule requirements and provisions into permanent rule. More information can be found on the [COVID-19 permanent rulemaking web page](#).

For more information on this emergency rule visit the Board's [website](#) or contact notifiableconditions@sboh.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 quarantine for fully-vaccinated exposed residents.

Patient Safety Improvement Task Force: The task force formed by DOH to recommended taking faster action on sexual misconduct cases against health care professionals, has not started up yet.

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The most disciplinary actions were taken against massage therapists and nursing assistants, followed by doctors. The number of complaints of all types against licensed providers more than doubled from 2009 to 2019, as the number of licensed health care professionals increased by 45%, to nearly 500,000. I will be monitoring for issues related to nursing assistants.

DOH Health Equity Rules: DOH is holding a series of rules workshops to implement [ESSB 5229](#). In 2021, state legislators passed ESSB 5229 directing DOH to make rules for health professionals to take health equity continuing education. They previously held listening sessions to listen and engage with individuals who have lived experience of health inequities and racism, as well as providers, advocacy groups, and associations. At this time, they are considering between 2-6 hours of training every 4 years but have not settled on the exact number yet. If you have questions or comments, please contact: healthequityimplementation@doh.wa.gov.

Home Health and Hospice Telemedicine Supervisory Visits: (This rulemaking will not have an impact on hospice unless federal telehealth rules change) We are waiting for the next rulemaking session on this issue.

- [In-Home Services WSR 21-20-084.PDF](#)
- [WSR 21-16-096.pdf](#)

Hospice CON Rulemaking: DOH anticipates holding workshops starting in 2022. WSHPCO has been meeting with CON staff on issues related to reporting data accuracy. We have been discussing doing a review of the available data prior to the rulemaking to see the state of Hospice CON in Washington. No dates set yet.

Home Health Certificate of Need Rulemaking: Probably not until 2023. In the meantime, HCAW has hired Marc at Berg Data to review current data for Home Health CON in WA State and will make some recommendations to the board.

In-Home Services Rules: DOH plans to update the In-Home Services Rules. No date set yet.

Palliative Care Roadmap Still Available!! We received good news from Pat Justis that DOH found grant money to reprint the roadmap. It's still posted on [DOH Rural Health webpage](#), as well as the [WA Rural Palliative Care Initiative portal](#) To order: <https://prtonline.myprintdesk.net/DSF/>

Preproposal Statement of Inquiry (CR-101): WAC 246-841-520 and 246-841-720 Nursing Assistants. DOH is considering amendments to WAC 246-841-520 to complete technical updates regarding expired licenses and WAC 246-841-720 to adopt the mandatory reporting requirements in chapter 246-16 WAC filed as [WSR# 22-08-019](#).

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Department of Social and Health Services (DSHS)

LTC Workers Training Requirements: On April 6, the department filed a proposed rulemaking notice for a public hearing on **May 10 at 10:00 a.m.** The intent is to require long-term care workers to complete training requirements by certain dates that would reduce the impact of clients accessing qualified long-term care workers to provide personal care services.

To read the filing notice and rules, click [here](#).

DSHS Rules on Virtual Training for LTC Workers: DSHS filed a permanent rule to add two new sections and amend four sections in chapter 388-71 WAC, Home and Community Services and Programs, and chapter 388-112A WAC, Residential Long-Term Care Services Training. These rules will set standards for remote skills training and update current definitions and basic training rules to allow virtual classroom and remote skills training. To read the rule filing and final language, click [here](#). If you are interested in participating in this rule making process, please contact Angel Sullivan at angel.sullivan@dshs.wa.gov.

Resuming Fingerprint Background Checks: On March 18, 2020, Governor Inslee issued Proclamation 20-18, which suspended the fingerprint background check requirements for long-term care facilities. Beginning May 1, 2022, long-term care workers will again need to complete a fingerprint-based background check as required by law. All providers and staff who began working between November 1, 2019, and April 30, 2022, will have 120 days to obtain non-disqualifying fingerprint results from the Background Check Central Unit (BCCU). This means that providers must have non-disqualifying results dated no later than August 28, 2022. New providers who start providing care on or after May 1, 2022, will have 120 days to get their results from BCCU.

Settings should monitor for compliance with fingerprint completion per normal procedures. We are asking all new providers have a fingerprint appointment scheduled before providing care, per current WAC 388-113-0109 and emergency WAC 388-06-0525. This requirement has been in place in chapter 388-113 WAC, but not previously enforced because of the proclamation suspending fingerprint checks.

If your Background Check System (BCS) account has pending fingerprints for staff that are not a current employee, please check the archive box on these records in BCS to remove them from pending fingerprint status. Here is a list of fingerprint locations that are currently open and available to provide fingerprint background checks. If you have any questions, please contact Tom Moore, Policy Program Manager, at (360) 764-9641 or Thomas.Moore1@dshs.wa.gov.

Labor and Industries (L & I)

Emergency (CR-103E) - Public Health Emergency Reporting and Notification Requirements for Infectious and Contagious Diseases and Voluntary Use of Personal Protective Equipment: L&I continues to respond to 2021 legislation establishing employer requirements during a public health emergency for infectious and contagious diseases. The employer requirements are under [SSB 5254](#), codified as [RCW 49.17.485](#), regarding voluntary use of personal protective equipment (PPE)

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and Engrossed Substitute Senate Bill 5115 (ESSB 5115), also known as the Health Emergency Labor Standards Act (HELSA) and codified as [RCW 49.17.062](#) and [RCW 49.17.064](#).

The emergency rule maintains requirements under new sections of chapter 296-62 WAC for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19. Under the emergency rule:

- Employers with more than 50 covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- Employees are not required to disclose any medical condition or diagnosis to their employer;
- Non-healthcare employers are required to notify employees, as well as their union representative (if any), in writing of potential exposures within one business day;
- Employees and contractors must be permitted to voluntarily use personal protective equipment.

In addition, this emergency rule now applies notification requirements to health care facilities as defined in [RCW 9A.50.010](#).

- Employers of health care facilities must notify any employee with known or suspected high-risk exposure to the infectious or contagious disease within 24 hours. With employee authorization, notification must also be sent to the employee's union representative (if any) within 24 hours.

L&I filed a Preproposal Statement of Inquiry (CR-101) on May 13, 2021: ([WSR 21-11-051](#)) and initiated the permanent rulemaking process for rules related to infectious diseases, to include when there is an outbreak subject to a public health emergency under a national or state declared state of emergency. This emergency rule supersedes [WSR 22-01-047](#) filed on December 7, 2021.

Effective date: April 6, 2022

Expiration date: August 4, 2022

Employment Security Department (ESD)

WA Cares Fund Guidance from ESD: Earlier this year, newly passed legislation delayed the implementation of WA Cares and improved the benefit for Washingtonians. Stay up to date on the latest information from WA Cares by visiting the [employer page](#) on our website.

Legislation often affects employer taxes: The following bills may affect how much employers pay.

- **Senate Bill 5873**

During the 2022 legislative session, legislators passed a bill that provides tax relief to employers in Washington.

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SB 5873 reduces the unemployment social tax rate for most employers in 2022 and 2023. It also reduces the 2023 social tax rates for employers who report 10 or fewer employees for 4th quarter 2021.

- [Engrossed Substitute Senate Bill 5061](#)

On Feb. 8, 2021, Gov. Inslee signed ESSB 5061. This bill provides unemployment tax relief for Washington businesses, enhances unemployment support for Washington workers and more. These measures enhanced the state's ability to respond to the economic impact of the COVID-19 pandemic.

- [Engrossed Substitute Senate Bill 5478](#)

The state Legislature also passed [ESSB 5478](#) in 2021. This bill provided \$500 million in additional financial relief to taxable employers for offsetting benefit charges from COVID-19 related claims. The offset will result in lower tax rates for many employers who were projected to have the largest tax increases.

These employers will see relief on their 2022 tax rate notice. The notice will show the forgiveness ratio, as well as any reduced benefit charges.

Resources:

- [2022 tax rates](#)
- [Tax rate recalculation insert](#) sent to employers
- [Rate class comparisons table](#)

Nursing Care Quality Assurance Commission (NCQAC)

Nursing Licensure Rate Increases: The NCQAC is considering rulemaking with increased licensure fees up to 20%. This will help to hire new employees to process licenses that got very backed up during the pandemic and was taking up to 6-7 weeks to process.

Nurse Delegation: On March 14, 2022, the Department of Health filed emergency rules (WSR 22-07-046) waiving the requirement for nurse delegators to verify completion of basic caregiver training before providing delegation. The emergency rules amend WACs 246-840-930 and 246-841-405. The rules went into effect March 14, 2022. The goal of these emergency rules is to allow more long-term care workers to provide nurse delegated care. If you have any questions, please contact the Nurse Delegation Program at NurseDelegation@dshs.wa.gov.

LPN Apprenticeship and LTC Nursing Workforce: This group is an extension of the multiple years of work on the LTC Workforce Steering Committee. I am an official member of this workgroup and will continue to offer ideas from our association membership. The next meeting is coming up on May 20th. May so we will see how they intend to implement Senator Randall's Apprentice bill, [SSB 5764](#) and the budget provisions that they received for getting more people into the pipeline for becoming a HCA up to an LPN!

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Ongoing Public Policy Meetings

WA State Senior Citizens Lobby: I attend the monthly meetings where they are now reviewing bills that impact seniors in the state legislature. They usually have Bill Moss, Assistant Secretary of DSHS/ALTSA give an update on what is happening at DSHS. (Bill Moss is retiring soon and Bea Rector will take his place for now.)

Dementia Action Collaborative: There is new legislation proposed in 2022 to continue the efforts of the DAC and update the state Dementia Plan. They will be changing around people who are currently Governor Appointments to the committee. I have been participating in the states Dementia Collaborative for several years but am not sure if I will make the cut. I will continue working on a various committees to make sure that they continue to In-Home Services.

WA State Telemedicine Collaborative: I participate in these meetings to follow issues closely related to providing telemedicine services in the home.

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>