June 8, 2022

HCAW June 2022 Public Policy Report

Prepared by Leslie Emerick, HCAW Public Policy Director

Legislative Landscape

The 2022 Election Campaign season has started and our primary in WA State is on August 2, with ballots mailed out on July 15th. The General Election is on November 8th. There will be quite a bit of turn-over in the legislature next year and changes in the health care committees, especially with Rep. Eileen Cody retiring. She was the longest running House member, a nurse, and the Chair of the House Health Care Committee for many years. She was a strong advocate for home care, home health, hospice and palliative care and will be greatly missed!

It is fairly quiet in Olympia as state agencies are gearing up for rulemaking from bills and budget provisos that passed this last session. Short sessions typically do not address major or controversial changes to state law, but this year was an exception, with nursing unions and their partners in the Legislature attempting to pass strict hospital staffing mandates, criminal justice reforms and new funding for health care, homelessness, and the environment. State agencies will be figuring out over the interim how to spend that money and implement the two new apprenticeship bills. Agencies are putting together their financial Decision Packages to submit to the Governor for his budget that will be introduced in early December before the session starts.

As you may remember, this year's Supplemental Budget included nearly $50 million for health care workforce development, creating more slots in nursing programs, investing in simulation training equipment, providing grants to nurses who supervise students, offering loan repayment for nurse educators and expediting the nurse licensing process. This will take at least a year or more to really start rolling out into our communities to build the pipeline for more certified nursing assistants and nurses into the workforce, but it's a good start!

HCAW Political Action Committee (PAC): Please donate 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. Final approval for contributions will be soon, so please don't delay if you plan to contribute! Go to: Home Care Association of Washington - Donate to the PAC (wildapricot.org)

WA state hospitals 'remarkably strained' by COVID-19 community spread: A June 6, 2022, article in The Olympian newspaper reports that our WA State Hospital Association officials warned Monday that facilities are heading toward the bad old days COVID-19 cases peaking and there is

high spread in the community again straining our hospital capacities. Read more at: https://www.theolympian.com/news/coronavirus/article262204287.html#storylink=cpy

Health Care Authority (HCA)

Palliative Care Benefit for Medicaid, PEBB, SEBB: I spoke with Cynthia Rivers at the Health Care Authority who is the lead on the Palliative Care Benefit Project. She says that HCA is forming their internal task force to work on the palliative care benefit project. The main issue for HCA is how to do the billing for palliative care. Their focus in the beginning will not be on agency rulemaking, but how to construct the palliative care benefit and pay for it. Actual filing for the rule will probably happen later in the year as the agency sees what it will need to change in rule.

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!

Pediatric Palliative Care Rates: Pediatric palliative care Medicaid Reimbursement rates have not moved for over 15 years. We need a rate increase to improve utilization of this benefit. HCAW will be working with WSHPCO, the Health Care Authority and the Governor's office to discuss a rate increase for Medicaid Pediatric Palliative Care rates. We are working on a date and time to meet.

Pediatric Health listserv now available: HCA recognizes that they historically have not had a listserv specific to pediatric policy and program updates. To ensure providers serving the pediatric population have access to updates and information relevant to their services, HCA has created a Pediatric Health topic in response to a variety of projects impacting children and youth on Apple Health. This may be of help to our private duty nursing agencies. To stay informed on the projects listed below and other topics relevant to pediatric care, subscribe to the Pediatric Health topic.

Department of Health (DOH)

Death with Dignity Study: Fred Hutchison Cancer Research Center is reaching out to hospice providers regarding participating in a survey around barriers to the state's Death with Dignity Act. ESSB 5693 Budget Bill appropriated $200,000 of the state fund for 2023 to the institution to conduct a study, in consultation with DOH and with approval from the Washington state institutional review board, of the ability of Washington residents to make use of the rights established in chapter 70.245 RCW to achieve full access to the Washington death with dignity act. The institution and department shall enter into a signed data sharing agreement for the purpose of the study. Pursuant to RCW 42.56.070, 42.56.360, and 70.245.150, the data sharing agreement must specify that data shared or obtained in the course of this study are not subject to public disclosure.

The study shall review the extent to which there are barriers to achieving full access to the Washington death with dignity act.

COVID -19 Guidance: DOH has consolidated all healthcare guidance into one document. They hope this will make it easier to maintain consistency with the recommendations as well as make it easier to find the appropriate recommendations. Guidance was updated to clarify language and to maintain consistency. Three substantive changes in recommendations are:

- Healthcare workers should wear eye protection for all patient encounters when working in areas with substantial to high community transmission. (pg. 42)
- Nursing home residents who are not up to date with COVID-19 vaccines should be placed in quarantine on returning to the nursing home if out of the nursing home for more than 24 hours. No recommendation for quarantine of residents in non-nursing home LTCFs on admission or returning to the facility following a visit in the community.(pg. 56)
- The Risk Assessment is not included in the DOH guidelines. Facilities do not need to complete a risk assessment with residents who wish to go on community visits.

Please see Interim recommendations for SARS-CoV-2 Infection Prevention and Control in Healthcare Settings. Feel free to reach out to HAI-COVID@doh.wa.gov with any questions.

Winding Down State COVID-19 related Emergency Rules/Waivers: DOH is gathering input on how best to unwind waivers that were established by Governor Proclamation to support the health care system's response to the COVID-19 pandemic. We are at a point in the pandemic where we are seeing less stress on the health care system and more stability overall due to increased testing and access to a vaccine. Because of this, it's time to begin thinking about whether there are waivers that were put in place through a Governor proclamation to support health care's response to COVID-19 that are no longer needed. There is no timeframe established for ending the COVID-19 waivers or the state of emergency. The information you provide will help the department and the Governor's office understand the current landscape and plan for the future.

Donna and I met with 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 our In-Home Services patients. 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 when the state of emergency is officially declared over. If you or your agency has any specific concerns, please let us know ASAP. We have expressed concerns about hospices that are operating out of their CON area under the waivers and how they will wind down care for those patients, especially in rural areas of the state.

Governor Proclamations

20-32.11 COVID-19: Department of Health – Health Care Workers

- Allowed Secretary of Health to extend license renewal periods

- Suspended continuing education and training requirements for certain professions
- Waived certain medical assistant supervision requirements and restrictions on working
- Altered delegation agreement requirements (physician assistants, nursing assistants)
- Waived restrictions on practice of retired active licensees for certain professions
- Waived rules that restrict the practice of health care provider volunteers

20-36.10 COVID-19: Department of Health – Health Care Facilities and Hand Sanitizer

- Waived Certificate of Need requirement for surge capacity projects

Actions Taken

Since the first proclamations were issued several policy actions have occurred to decrease the reliance on waivers. Examples of these actions include:

Legislation

- ESHB 1120 allowed DSHS and DOH to set alternative time frames for nursing assistant and home care aide training and certification – emergency rules in place
- ESHB 1196 allowed audio-only telemedicine

Secretary Waiver

- WSR 20-10-061 Washington State Department of Health Guidance and Exemptions from Certain In-Person and On-Site Requirements for Home Care, Home Health, and Hospice Agencies and Washington State Patrol Fingerprint Background Checks

Emergency Rules

- WAC 246-980-030, 040, 065 Home Care Aide training and certification timelines. DSHS also has emergency rules reflecting the same adjusted date of hire/timeline for training and certifications. These emergency rules are authorized by ESHB 1120 and as such will be withdrawn when not needed.
- WAC 246-335-510, 545, 610, 645 In Home Services Agencies allowing supervision via telemedicine. Permanent rulemaking is in progress.
- WAC 246-840-010 – Waiving certain nursing CE requirements and allowing LPNs to practice as Nursing Technicians
- WAC 246-841-405 - Nursing Assistants training flexibility including volunteer experience

Permanent Rules

- WAC 246-335-510 Home Health allowing Physician Assistants to order Home Health. This permanent rule replaced emergency rules and also implemented a federal CARES Act change. This became effective March 28, 2021.

- Chapter 246-335 WAC making emergency rules permanent, implementing ESHB 1196 audio only telemedicine, addressing a rule petition related to remote supervision, and incorporating recent CMS flexibilities for Medicare patient supervision. This removes requirements that supervisory visits must occur during an on-site visit. Permanent rules may complete fall/winter 2022.
- WAC 246-980-010 definitions to redefine "date of hire" according to ESHB 1120.
- Chapter 246-841 WAC – Chapter update incorporating emergency rules for Nursing Assistants

Next Steps: DOH will share your input with the Governor's office to plan the exit from COVID-19 health care waivers. Please subscribe for email or text alerts based on your topic preference at Washington State Department of Health (govdelivery.com).

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 help our private duty nursing agencies but may not have an impact on Medicare certified home health and hospice unless federal telehealth rules change. We are waiting for further rulemaking.

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

Hospice CON Rulemaking: DOH hosted a meeting on May 25, 2022, to discuss hospice rules workshops starting in 2022. See: CN Rules Kick-Off Presentation (wa.gov) Here is a link posted on the DOH CON Website: Initial proposed draft changes to WAC 246-310-290(8)(e) (PDF).

The DOH first rulemaking workshop has been scheduled for Tuesday, June 14, 2022, and is scheduled to begin at 2pm. The meeting will begin at 2pm and may end early depending on the amount of feedback. We have budgeted an hour for this meeting and will be seeking feedback on the two specific rule change: WAC 246-310-290(8)(e) and WAC 246-310-720(2)

The agenda (attached) and Zoom link will be posted to the CN Program's Rules Activity website soon. Email CNRulemaking@doh.wa.gov if you have any questions.

Workshop_06142022.pdf

- **Future workshops:** June 22, 2022 – Begins at 10am
- **Future listening sessions:** August 2022

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/

Palliative Care-Rural Health Integration Advisory Team (PC-RHIAT): This is a workgroup that helps provide tele-consults for patients and their providers and helps set up community support for palliative care efforts in rural areas. For more information on their efforts go to: https://waportal.org/partners/home/washington-rural-palliative-care-initiative

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. John Hilger confirmed that he has been assigned to do the study at DOH!

Nursing Care Quality Assurance Commission (NCQAC)

Pediatric Certified Nursing Assistant: I am working with Leslie Elder at Seattle Children's Hospital (SCH) on ways to expand care for medically fragile children in our state. Currently around 20 or more children are backed up in hospitals around the state because there is not enough private duty nursing to care for these kids in their homes. Meetings start next week with SCH to talk about how to develop an expanded program and perhaps even pay parents with appropriate training to take shifts with their child with in certain specified boundaries and receive payment.

RN and LPN Nurse Licensure Increase: The NCQAC is doing rulemaking with increased licensure fees up to 20% for LPNs and RNs. 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. This does not impact certified nursing assistants, but they are under review for fees with DOH.

CR-102 Proposal Announcement: DOH filed a CR-102, Proposed Rule as WSR 22-10-104, for WAC 246-840-990, Fees and Renewal Cycle with the Nursing Care Quality Assurance Commission (NCQAC) is proposing fee increases for registered nurses (RNS), licensed practical nurses (LPNs), and advanced registered nurse practitioners (ARNPs).

RCW 43.70.250 requires that the costs of licensing each profession be fully borne by members of that profession. The department is proposing rules to ensure that profession fees are enough to cover the cost of licensing. The proposed fee change is necessary to cover the cost of a database solution to replace an outdated licensing system, for staffing to continue nurse license processing within legislated timelines, and staffing to address an increased workload associated with nursing assistants and the long-term care crisis.

Submit written comments by June 13, 2022 to the Department of Health online rules comment webpage. Attend an online rules hearing on June 13, 2022, at 2:00 p.m. Register in advance for the rules hearing: https://us02web.zoom.us/webinar/register/WN_dYNOpgEZTVqsB5ZC0MvMig
For information, please contact: Ross Valore, Policy Analyst DOH, HSQAfeerules@doh.wa.gov

LPN Apprenticeship Pilot Steering Committee Meeting: 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 last meeting was on May 20,2022. This project is sponsored by the NCQAC and DOH. They are starting out with a pilot project in skilled nursing facilities (SNF).

Labor and Industries (L & I)

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

CR-103 Emergency Adoption, Adoption Language

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. Bill Moss, Assistant Secretary of DSHS/ALTSA is retiring and Bea Rector has been giving an update on what is happening with policy at DSHS. This group has been a great advocate for hospice and palliative care legislative initiatives.

Dementia Action Collaborative: There was new legislation that passed 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 include a hospice and palliative care representative on the collaborative.

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