August 8th, 2022

# HCAW August 2022 Public Policy Report

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***Legislative Landscape***

Summertime in the Northwest is always beautiful, but a bit hot this year! Hope you are all staying safe and enjoying the great outdoors as much as you can. Elections are in full swing and hopefully you voted in the Primary Election is on August 2nd. The General Election is on November 8th, 2022. All members of the House of Representatives are up for election and about ½ the Senate. Elections always provide us with new opportunities to educate legislators about home care, home health and hospice!

***Department of Health (DOH) (Lot's going on!)***

**Inslee announces upcoming rescission of twelve proclamations related to COVID-19:** On July 29, 2022, Governor Inslee announced his intent to rescind Proclamation 20-32.11 on October 27, 2022. This proclamation temporarily waived the requirements in Chapter 246-12 WAC related to continuing education for health care professionals. When the proclamation ends on October 27, 2022, providers will once again be required to attest they have met continuing education (CE) requirements for license renewal. This impacts training for home care aides and other licensed professions that was delayed during the pandemic along with Certificate of Need (CON) and more!

**Certificate of Need and COVID Proclamations for Licensed Health Care Facilities:** Barb and I attended the first meeting for the post COVID Proclamations that was attended by 68 people. All three meetings will be the same presentation but may be different due to questions asked and a Q & A that they are developing based on these meetings. Bottom line is if you used the flexibility in the waivers and want to continue to do so you must notify the department by August 28th with a letter of intent. The next meeting is August 9th and there will be one more on August Please see below:

If your health care facility took advantage of the waivers in Proclamation 20-36 and you plan to maintain these changes beyond October 27, 2022, you must comply with state law applicable to your license type. This could include obtaining a certificate of need, obtaining construction review approval, and/or updating your license. This will also impact home health agencies who are working out or their typical CON boundaries to provide care under the waivers. Its important that we have a plan for transitioning these patients either back to another agency or caring for them until the end of life which might be the case for hospice.

For those facilities requiring a **Certificate of Need**:

1. By **August 28, 2022**, facilities must submit a Letter of Intent to the department conforming to WAC 246-310-080. Letters of Intent must describe the increase in capacity and/or new locations the facility wants to maintain and be accompanied by a patient transition plan should the department not approve the application. Send the Letter of Intent to COVIDwaiver@doh.wa.gov.

2. By **October 27, 2022**, facilities must submit a CN application and the appropriate fee to the department following existing CN application processes and requirements. Facilities must also submit applications to modify their facility license within this same timeframe, as appropriate. If your CN application is denied, you must execute your patient transition plan and revert your operations to your previously approved CN.

· Exception: Health care facility types on a concurrent review cycle for CN applications (nursing homes, **hospice care centers**, and end stage renal disease facilities) will be required to submit a second Letter of Intent, CN application, and appropriate fee in compliance with the department's published schedule the next time the application cycle opens. Facilities must also submit applications to modify their facility license within this same timeframe, as appropriate. If your CN application is denied, you must execute your patient transition plan and revert your operations to your previously approved CN.

For those facilities requiring **Construction Review**:

1. By **August 28, 2022**, facilities must submit a construction review application to COVIDwaiver@doh.wa.gov and appropriate fee. Applications must include a clear description of the scope of work (physical changes, additions, renovations) made to the facility.

2. By **October 27, 2022**, facilities must submit formal engineering plans, functional programs, and associated documentation needed to evaluate compliance with the state licensing rules OR submit a technical assistance application to the department to confirm the scope of work and establish documentation requirements. Facilities must respond quickly and in good faith to correct non-compliant construction, eliminate hazards within the environment and complete the review project.

3. By **January 25, 2023,** and every 90 days after that until the project is fully approved, submit to the department quarterly progress reports that address project status, updates since the last report, and planned completion date.

Following the process above will not adversely affect a facility's CN, CR, or license application. Failure to follow the steps outlined above will be considered non-compliance and the department may take appropriate enforcement action. If you have any questions about what actions you should take now, technical assistance is available at COVIDwaiver@doh.wa.gov. The department will also host webinars about the glide path described above on the following dates:

**Tuesday, August 9th, 10:00 – 11:00 am**

Join Zoom Meeting https://us02web.zoom.us/j/82608904941 Meeting ID: 826 0890 4941

One tap mobile +12532158782,,82608904941# US (Tacoma)

**Thursday, August 11th, 2:00 pm – 3:00 pm**

Join Zoom Meeting https://us02web.zoom.us/j/82703728607 Meeting ID: 827 0372 8607

One tap mobile +12532158782,,82703728607# US (Tacoma) +16694449171,,82703728607# US

Dial by your location +1 253 215 8782 US (Tacoma)

**DOH Associations Meeting with Lobbyists:** I attended a virtual meeting on July 26 with Assistant Secretary Christy Spice that is held on a quarterly basis with association representatives in the health professions. There was extensive discussions about the new HELMS Licensure System that is currently being developed to handle all future health profession licenses, including home care aides and certified nursing assistants. They gave us a demonstration of the new system log in and how it will work. The system is still at least a year away from going into effect after a delay to hire a new company to implement.

At the meeting we were notified of a fee review for home care aides and they will be receiving a certification fee increase. The home care aide program is around $6.2 million dollars in the hole in the departments administrative fund called the "O2G Fund". Each profession is required by law to pay for their own costs. One of the main reasons for the huge deficit for home care aides is that they have training in 13 different languages. The cost of this was originally underestimated by the department and the profession has never been able to keep up. As you know this is a low-income job the higher fees can be devastating for these caregivers. The department is going to run a Decision Package next legislative session to cancel the deficit of the fee side for home care aides. We do not know at this time how much the fee increase will be at this time.

**Hospice CON Rulemaking:** DOH initiated hospice rules workshops in 2022. See: CN Rules Kick-Off Presentation (wa.gov) The purpose of opening WAC 246-310-290 and 246-310-295 is to update the need forecasting methodology and standards for hospice services by incorporating stakeholder input gained through various rules workshops and comment opportunities. **Here is the latest proposed draft language change:**

*(e) Step 5. Combine the two age cohorts. Subtract Calculate the most recent three-year average hospice capacity in each planning area using hospice agency admissions. Subtract the calculated hospice capacity from the projected volumes calculated in Step 4 to determine the number of projected admissions beyond the planning area capacity. (e)(i) For hospice agencies qualified under WAC 246-310- 290(7)(b), and whose recent three-year average hospice capacity is below an ADC of thirty-five, replace any reported admissions with default admissions for each year over which the three-year average is calculated.*

- 06/22/2022 Updated proposed draft changes to WAC 246-310-290(8)(e) (PDF)

- Draft language received for WAC 246-310-290(8)(e), as of June 21, 2022 (PDF)
- Sample methodology reflecting proposed change (PDF)

The CON Program's Rules Activity website soon. Email CNRulemaking@doh.wa.gov if you have any questions. **Future listening sessions:** August 2022

**DOH CON for Home Health Agencies:** We are in line for one of the next CON updates for home health. We are still working with Marc Berg of Berg Data on the state of home care in WA State and how we compare to the nation. Many of the recommendations are under consideration in our newly formed QAPI group. Please contact Carissa at carissa@aminc.org for more information on how to join our QAPI group.

**DOH Strategic Plan:** DOH has a new strategic plan for 2022 and beyond: DOH Transformational Plan: A Vision for Health in Washington State. You can also find the plan on their website: About Us: Strategic Plan. This plan is a call to action for DOH as we emerge from our intense focus on COVID-19 and look ahead to reimagine public health, reinvigorate our work, and not lose sight of the lessons learned during this pandemic. Please reach out to Kristin Peterson, Deputy Secretary for Policy, Planning, and Evaluation at Kristin.Peterson@DOH.WA.GOV, if you have any questions or comments about this plan. The plan is focused on five key priority areas:

- Health and Wellness
- Health Systems and Workforce Transformation
- Environmental Health
- Emergency Response and Resilience
- Global and One Health

**DOH Draft Survey for Home Care and Home Health Agencies:** John Hilger at DOH sent us a draft survey of home care and home health that he is required to do from a budget proviso that passed last session. He would like our **edits or comments on the survey by August 5th, 2022**.

- Although most of our private pay home care providers do not like this concept, this does potentially help Medicaid Home Care Agencies. Attached is the document:

HC HH Survey - 7-21-2022.docx

Peter Nazzal from Catholic Community Services and other home care associations also reached out to us, but we did not hear back from them with draft changes. As a reminder, here is the background information on this issue from the legislative session!

**Background: SEIU Study to Increase Taxes on Home Care to Gain higher Federal Reimbursements:** DOH 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:

"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.

No surprises among friends: while the nursing home industry folks at WHCA and LeadingAge support the concept, private-pay home care agencies probably won't like any future proposal to add a home care assessment, but 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.

**Home Care Aides Stakeholder Meeting:** I attended the DOH and the DSHS virtual Home Care Aides stakeholder meeting on July 27, regarding the new rules to respond to the backlog of long-term care workers needing training and/or testing for certification caused by the COVID-19 pandemic. The meeting basically reviewed information that we had sent our earlier in the month to our provider on the new deadlines for training and certification that was delayed during the pandemic. The Permanent Rule Making adds two new sections in Chapters 388-71 WAC and 388-112A WAC. To access the entire rules document and language, please click here.

**Death With Dignity Barriers Survey:** WSHPCO was contacted by Fred Hutchison Cancer Research Center regarding participating in a survey of hospice providers 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 study shall review the extent to which there are barriers to achieving full access to the Washington death with dignity act.

**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.

**Patient Safety Improvement Task Force (wa.gov):** DOH is implementing recommendations in its processes to reduce the time it takes to complete sexual misconduct cases, while working with other partner agencies on recommended actions they can take, to improve the process overall. Secretary of Health Dr. Umair A. Shah, MD, MPH convened a task force to develop recommendations for improving the disciplinary process for sexual misconduct cases.

The task force met several times in 2021 and 2022 and developed an extensive set of recommendations. This summary explains how DOH intends to implement some recommendations, while other oversight partners look to implement actions on behalf of their entities.

**DOH Notifies In-Home Services Agencies about Compliance Surveys:** Over the past several months DOH surveyors have encountered the below challenges when attempting to conduct required compliance surveys. We are sharing these challenges as an opportunity to remind agencies of the various survey-related requirements in the In-Home Services rules (chapter 246-335 WAC). Our goal is that this regulatory reminder will encourage agencies to appropriately communicate with DOH and cooperate with its surveyors. To those agencies who are aware of these requirements and have made efforts to remain in compliance – we thank you. To those agencies who have not understood these requirements – we ask that you make new efforts to follow the rules.

DOH IHS Complance Survey Info 8-2022.do

If you have questions about this communication, please contact In-Home Services program manager John Hilger at john.hilger@doh.wa.gov

**Home Health and Hospice Telemedicine Supervisory Visits:** This rulemaking mainly imp[acts private duty nursing agencies and will not have an impact on home health or 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

**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

**Nursing Care Quality Assurance Commission (NCQAC)**

**Basic Caregiver Training Emergency Rule Refiled:** NCQAC is amending requirements for:

- Register Nurse (RN)
- Nursing Assistant Registered (NAR)
- Home Care Aide (HCA)

T**hese changes became effective immediately on July 12, 2022 when filed as WSR 22-15-020.**

NCQAC is refiling these emergency rules to allow a registered nurse delegator to delegate nursing tasks to a NAR or HCA without verifying that the NAR or HCA has completed basic caregiver training. NCQAC is adopting emergency language to remove the requirement that a NAR must show proof of completion of basic caregiver training before performing any delegated nursing task.

The Department of Social and Health Services (DSHS) provides basic caregiver training for NARs and HCAs. DSHS wasn't able to provide basic caregiver training due to COVID-19. Emergency rule provisions, first adopted in April 2020, allowed NARs and HCAs to perform delegated tasks without the training.

DSHS filed rules effective July 1, 2022 as WSR 22-12-081 to outline dates by which HCAs must complete basic caregiver training based on hire and rehire dates. These dates may extend through September 30, 2023, or within 120 days after the end of the COVID-19 training waivers established by the governor, (whichever is later). This emergency rule will be refiled every 120 days until DSHS resumes its standard training schedule. For more information, please contact: Shad Bell, Assistant Director of Operations, NCQAC.Rules@doh.wa.gov

**Suicide Prevention Training Requirement for Nurses**

Per RCW 43.70.442 RNs, LPNs, ARNPs must take a 6-hour suicide prevention course.

Visit DOH Suicide Prevention Training for Health Professionals for more information including the Model List of approved training programs.

**Nursing Telemedicine Training Requirement for Nurses**

Per RCW 43.70.495 RNs, LPNs, ARNPs who provide clinical services through telemedicine must complete telemedicine training.

The following training meets the requirements in the law:

- Washington State Healthcare Professional Telemedicine Training (NRTRC)

**NCQAC advisory opinions on telehealth nursing:**

- Nursing Telehealth Practice RN, LPN, NT, and NA
- Telehealth Advanced Practice Nursing Care Services

**PDN Issues and Possible 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. Many of these children end up in our pediatric palliative care and hospice programs. 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 within specified boundaries.

**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.

**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).

**Certified Nursing Assistant Skills Testing:** There is a 5,000 CNA student back up with the Nursing Commission trying to get final skills testing to become certified. There are meetings with the Governor's Office and NCQAC to address the backlog. They are working with community colleges to hold big certification testing events around the state to address the backlog. As you are aware, hospice aides are certified nursing assistants and the backlog has impacted the entire health care system! More to come on this issue….

***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 October 13, 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:** I received a status update from Evan Klein and Dr. Charissa Fotinos, Medicaid Director, at the Health Care Authority who are the policy leads for HCA. We discussed the state funding of $250,000 of the general fund for fiscal year 2023, began on July 1, 2022, and why we think that this would be applied to hiring a consultant to get the project moving. We need to design a standardized payment methodology for a palliative care benefit for the state Medicaid program and the employee and retiree benefits programs and this would help identify the areas that we may need additional funding to support. Charissa was going to take the proposal back to leadership to see if they could move forward with hiring a consultant.

**Pediatric Palliative Care Rates:** WSHPCO will be working on a rate increase for pediatric patients. The rate to our knowledge has never been raised and we would like it to reflect home health rates more closely.

***Ongoing Public Policy Meetings***

**WA State Senior Citizens Lobby:** I have been invited to speak at the August 15th meeting to talk about HCAW and WSHPCO efforts on legislative and regulatory issues. I will be presenting a 15-minute PowerPoint to the group virtually.

**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 in-home services 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.

**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/