December 7, 2022

HCAW December 2022 Public Policy Report

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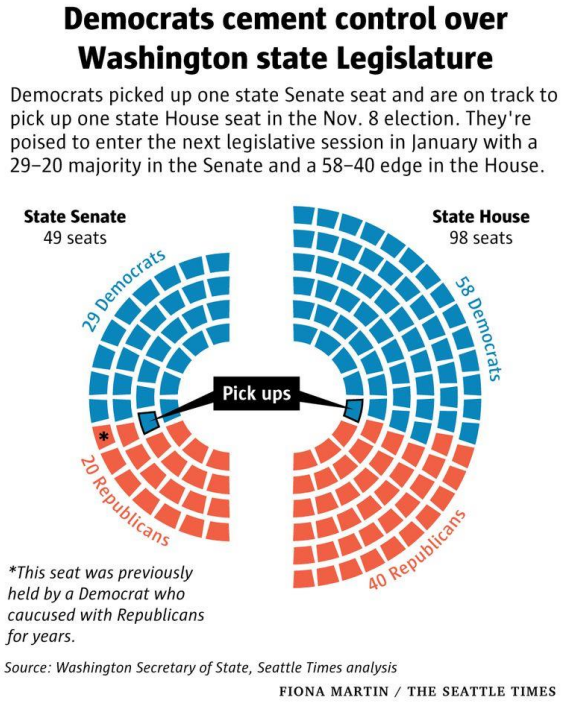
Legislative Landscape

Thank goodness the elections are over and Democracy won! Since a picture is worth a 1,000 words, I have included a snapshot provided by the Seattle Times on the outcome of the elections in Washington State. The political leadership of the House and Senate has not changed for the 2023 legislative session. What is about to change is the makeup of the important committees such as House and Senate Health Care that health care providers find most of the bills that impact them are in. There will be a new Chair of the House Health Care Committee which will be decided over the next few days. Predictions are that it will be Rep Marcus Riccelli from Spokane area, a long-time member of the committee and Senator Annette Cleveland will remain Chair of Senate Health Care.



The Legislative Assembly Days began November 30-December 2, 2022. I have been meeting virtually with legislators in preparation for session for over a month and continued to have meetings during the assembly days in person for a change! There were work sessions scheduled in both the House and Senate Health Care Committees, the Aging and Disability Committee and the Fiscal Committees where they discussed the state of the economy and budget revenue projections.

I listened to the Joint Legislative Committee on Planning for Aging and Disability Issues on 11/29/2022 and found this presentation very interesting and informative in light of our workforce shortages:

HCA - Long-term Care Workforce & Economic Trends & Conditions PPT If you want a link to the entire committee presentation on the Impact of Medicaid rate methodologies on workforce in long-term care settings, go to:
https://app.leg.wa.gov/committeeschedules/Home/Documents/30190?//18048

Session starts on January 9th, 2023 and lasts for 105-days. This is the long session of the state legislature where they prepare the 2-year operating, capitol, and transportation budget. They are working on setting up a virtual legislative session that will be a mixture of in-person and virtual meetings which has been a great side effect of the pandemic making it easier to testify. The Irv Newhouse Building is being torn down, so Republican Senators will be moved to modular buildings in a parking lot on campus.

The WA State Revenue Forecast Council has announced that there was $157 million increase over earlier projections so the state is still in pretty good shape for now. Budget decisions will be made around the end of February or early March when the next budget forecast comes out and they know how much money they have to spend! There are some big bills coming due for education and other pressing needs that will have to be addressed next session, so there will not as much money available as there was last year. The Governor's budget is due out any day! There are three operating budgets introduced during a session…the Governor's, the House and the Senate and they must agree on the final budget by the 105th day of session or we go into a Special Session called by the Governor….which is unlikely with the Democrats controlling all three budgets!

2023 In-Home Services Day: is being planned for February 1, 2023. We have decided to do a virtual meeting again this year and will be sending out a notice for registering to participate. Here are our initial talking points:

Support Efforts by Seattle Children's Hospital to Expand Care for Medically Fragile Children: Medically fragile children are often kept in the hospital as there is a significant shortage of nurses to be able to care for these children at home. Seattle Children's Hospital (SCH) is working with the Nursing Commission and DSHS to create a new way to serve this pediatric population and maybe create a pathway for parents to get paid for taking care of their children at home. *We are waiting for SCH to release their proposal. According to their legislative director, its still in draft form and moving back and forth between the state agencies for concurrence.*

Budget Request: Support Health Care Authority Incentives for Timely Discharge Proviso: HCA is seeking $15,580,000 total (GF-S $7,816,000) to continue incentives for skilled nursing facilities and home health agencies to accept patients in need of discharge from acute care hospitals and permanent structural rate changes to ensure timely discharges of Apple Health patients. *We are waiting to see if this shows up in the Governor's Budget.*

Budget Request: Additional Funding for Palliative Care Benefit for Medicaid, PEBB, SEBB: The Health Care Authority (HCA) was provided $250,000 in funding to establish a palliative care benefit for their covered patients with a serious or chronic illness. The project will require specific analytics for palliative care provisions and development of a standardized billing mechanism. It may also require some ProviderOne billing system changes to provide the palliative care services. They are requesting an additional $350,000 to implement the palliative care benefit.

Budget Request: Increase Medicaid Pediatric Palliative Care Rates: Reimbursement rates for Pediatric Palliative Care have not risen since 2006 and access to this important care for seriously ill children has been severely limited due to the lack of funding. Palliative care reduces hospital admissions and supports families with children who require significant care prior to end-of life care.

Address Workforce Shortages for Home Care Aides and Certified Nursing Assistants: Testing and certification for certified nursing assistants (CNA) and home care aides (HCA) has been very inconsistent creating huge backups in WA State. We need a plan to enable students to get tested and certified, quickly, and efficiently, to get them into our long-term care settings, including home care, home health and hospice.

Support DOH Proposal to Eliminate Debt for Home Care Aides in O2G Fund…Concerns with Certification Fee Increases: Home care aides are some of the lowest paid jobs in health care. Although we support eliminating over $6 million in debt to the home care aide program, we would like the legislature to explore ways to assist these workers to gain certification without increasing their fees as it will be an additional barrier to entry into the health care system.

Department of Health (DOH)

Home Care Aide Fee Increase Hearing: State law RCW 43.70.250 requires that the cost of regulating each profession be paid for by that profession's credential fees. Based on the home care aides financial forecast, DOH is considering a fee increase to bring the profession's fund balance into the recommended range. Please see this: Home Care Aide Cost Driver.pdf

DOH held a stakeholder meeting considering raising home care aide fees from $85 to $100 on December 1, 2022. A decision will not be made until sometime in 2023. During the meeting, DOH staff explained how fees are set and was available for questions. We have expressed concerns to DOH and to legislators about potential fee increases and the barrier it poses to entry into the health care system.

DOH Hospice Admissions CON Announcement on November 29, 2022: The Certificate of Need (CN) program recently met with the Washington State Hospice & Palliative Care Organization (WSHPCO) to clarify hospice agency responsibilities when issued a certificate of need. The primary topic of concern was the responsibility of a CN-approved hospice agency to provide service to all residents of the county for which they are approved.

This notice is meant as a general reminder to all CN-approved hospice agencies to review their admission practices with respect to the provisions of WAC 246-310-290 as well as all conditions that may be attached to their certificates in accordance with WAC 246-310-490(3).

WAC 246-310-290(13) states: *Any hospice agency granted a certificate of need for hospice services must provide services to the entire county for which the certificate of need was granted.*

This means that a CN-approved hospice agency **must** provide services for all residents of their respective planning area, to include: all zip codes within the planning area and all hospice eligible patients regardless of age. While we understand there are current staffing challenges throughout the

health care industry, agencies are expected to adhere to all applicable hospice regulations to ensure access to hospice services for all eligible residents of their respective planning areas.

The second topic of concern was provision of hospice services to pediatric patients. WSHPCO and the department have received reports of hospice agencies refusing to admit pediatric patients in several planning areas. WSHPCO has informed us that there are no additional industry credentials needed before treating pediatric patients, nor are there any additional Department of Health requirements. Pediatric patients are a small portion of the population, but they must be served along with any other small and unique patient population that may exist in any given county.

Hospice agencies found not in compliance with any of the Certificate of Need regulations; specifically, WAC 246-310-290(13) and conditions attached to their certificates may be subject to suspension or revocation of their certificates under the provisions of WAC 246-310-500.

The Certificate of Need program shares the goal of WSHPCO and the community of hospice providers to ensure that all people in Washington who need and desire high quality hospice care are able to receive it. If you have questions, please contact the Certificate of Need Program at FSLCON@doh.wa.gov.

Does the CON Requirements Apply to Home Health too? Yes, while there may be some different rule citations for home health agencies, anyone that is issued a certificate of need from our office is required to serve the entirety of the planning area in which they are approved and is likely also noted on the conditions of the issued certificate. The main citation would be WAC 246-310-490(3), as majority of the CNs issued would carry a condition to ensure the facility is open and available to all members of the planning area.

RCW 70.38.115(2)(d) outlines that criteria of CN applications must also include the extent to which such proposed services will be accessible to all resided of the area to be served.

State Health Plan, Vol II, pg. B-36 states: "*The proposed agency will serve either directly or through formal agreements with other providers the entire planning area in which it is proposed to be located.*"

HCAW Working on Home Health Methodology with Marc Berg Data: HCAW is developing a new home health CON methodology to present to DOH during upcoming listening sessions. We are working to finalize our proposal which will be shared with membership soon!

DOH Certificate of Need Listening Session Schedule for Home Health and Hospice:

Home Health | January 31, 2023 – 4:30pm – 6:00pm (may end early) Registration link
Hospice| January 3, 2023 – 4:30pm – 6:00pm (may end early) Registration link

Department of Social and Health Services (DSHS)

DSHS and DOH hosted a virtual Home Care Aides stakeholder engagement session on November 30, 2022. Attached is the PowerPoint presentation in PDF. Below is the agenda. Department leadership is currently reviewing concerns raised by community partners and the proposed date of hire rule change will not be presented as planned at the November 30th meeting. More to come on this issue. Nov 30 2022 Presentation.pdf

Nursing Care Quality Assurance Commission (NCQAC)

Meeting with Kathy Moisio: I met with NCQAC staff, Kathy Moisio who has been working with the LTC Workforce Steering Committee for the past 4 years. We expressed our concerns about the problems with testing for certified nursing assistants (CNA's) and the long delays. Although they have set up the mass testing sites below, many CNA's have not been able to get their skills testing in a timely manner. Kathy is talking about setting up virtual evaluations that may help the backlog, but also talked about how the federal laws regarding CNAs need to change and be more like RN testing. We will be talking more about this with Paula Meyers who runs the nursing commission. I told Kathy that legislators would like to help resolve this issue and find solutions to this problem next session!

Nursing Assistant Mass Testing Continues through Fall 2022: Mass testing is still going on for all nursing assistants who need the state skills exam. You can register for one of the skills exams listed below on the Credentia website. These dates are visible as Regional Test Sites on the Credentia website - you don't need to use codes to find them. If space is available, then the dates will appear. Once they are full, they will no longer appear. For information: nac.exam@doh.wa.gov

With assistance from the NCQAC, DOH, Leading Age Washington and Washington Health Care Association (WHCA), the DSHS applied for a statewide 1135 waiver request due to widespread barriers identified for the nurse aide (NA) training and certification program in Washington state. On September 29, 2022, CMS approved the statewide waiver valid until March 29, 2023 (180 days), or until the end of the public health emergency (PHE), whichever comes first. It is important to understand that despite having more time to complete this requirement, facilities need to continue moving rapidly towards the goal of achieving certifications for all CNA's that exceed the 4-month requirement as the PHE may end before March 29, 2023.

Nursing Assistants Rules Workshops: These rules are implementing the work of the LTC Committee that I have participated on for many years. NCQAC filed a CR-101 on February 8, 2021, under WSR 21-05-021 for Chapter 246-841 and Chapter 246-842, Nursing Assistants. A draft of Chapter 246-841 is attached for your review. If you have any questions, please feel free to participate or let me know what they are so I can bring them up for you!

Draft Chapter 246-841

To Join workshops, click https://us02web.zoom.us/j/6555701680 the day & time of meeting.

- **Thursday, December 29, 2022, 1-3 p.m.**
  - WAC 246-841-440: Common Curriculum
- **Friday, January 13, 2023, 1-3 p.m.**
  - WAC 246-841-465 thru 490: Complaints, Investigations, Corrective Action Designations, Withdrawal of Approval, Appeals, Closure, Re-Application
- **Friday, January 27, 2023, 1-3 p.m.**
  - WAC 246-841-586 thru 595: Medication Assistant Certification Endorsement (MACE) Programs
  - WAC 246-841-530 thru 585: Alternative Programs
- **Friday, February 10, 2023, 1-3 p.m.**
  - WAC 246-841-600, 720, 990, 991: Violations, Mandatory Reporting, Fees and Renewal Cycle, Expired Credential

Health Care Authority (HCA)

I am still working with the HCA on setting up the new palliative care benefit. Just a reminder that the increased home health and private duty nursing rates begin on January 1, 2023.

Department of Labor and Industries (L & I)

Job posting requirements for Employers: L & I has released an administrative policy to provide guidance on the Equal Pay and Opportunities Act (RCW 49.58). The law prohibits pay discrimination based on gender and promotes fairness among workers by addressing business practices that contribute to income disparities among genders. Employees and job applicants have rights under this law.

The administrative policy also addresses job posting requirements for employers brought about by the passage of Engrossed Substitute Senate Bill 5761. Effective Jan. 1, employers with 15 or more employees must provide a wage scale or salary range, plus information on benefits and other compensation in their job postings.

The policy also provides guidance on the department's existing interpretations of the act. To provide more information about the law, the Employment Standards program is holding webinars. Employers can sign up for a session on the Workshops and Training Center web page. In the event title dropdown menu, look for "Equal Pay and Opportunities Act (Webinar)" to find the webinars.

The schedule for the "Job Posting Transparency" webinars is: Dec. 15 at 2 p.m., Jan. 12 at 9 a.m., Feb. 9 at 2 p.m.

Topics to be covered include what constitutes a job posting, what information must be included in a job posting, what constitutes a wage scale or salary range as well as benefits and other compensation. You can also learn about the free consultations the program offers employers.

Employers who would like in-depth education on the Equal Pay and Opportunities Act can request a consultation with the EPOA team. A consultation is an educational opportunity and provides an informed assessment of possible risks specific to you as an employer as well as proposes resolutions to assist with future compliance with the law. As part of the consultation, L&I conducts a comprehensive review of your employment policies and practices to assess potential risks. Employers can also request a consultation about a specific concern. For more information, contact L&I's Equal Pay agents or 360-902-6625.

Keeping workers safe from COVID-19 doesn't end with lifting of Washington emergency orders: Still, coronavirus remains a workplace hazard and employers must continue taking precautions to prevent the spread of the virus. Among the general safety requirements and guidance still in place:

- Every employer must assess their specific workplace for COVID-19 hazards and take steps to prevent employee exposure based on that assessment.
- Workers who have tested positive for COVID-19 should be kept out of the workplace for at least five days per Washington State Department of Health guidance.
- Healthcare workers and others providing care to or working near someone known or suspected to have COVID-19 should wear appropriate, fit-tested, and NIOSH-approved respirators.

Complete Washington State Department of Labor & Industries' (L&I) requirements and guidance are available online.