September 7, 2022

HCAW September 2022 Public Policy Report

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Legislative Landscape

As we move through the last days of summer, state agencies and lobbyists are beginning to prepare for the 2023 Legislative Session. Most state agencies have submitted their Decision Packages to the Governor for review to determine whether they make the cut into to state budget or not. There is still lots of rulemaking going on and we are trying to wrap up after a pandemic and get back on track with certifications and trainings that were delayed for many professions.

We are also in the midst of an election year with predictions of which party will control the state Legislature and Congress constantly evolving on the state and national level. Primary races determined the top two candidates in WA State (not always in opposite parties) and the General Election will be held on November 8th, 2022. Please remember, "bad politicians are elected by good citizens who do not vote!"

We are also facing a public health emergency because hospitals can't discharge patients to care facilities. Crazy times we are living through with health care systems…
.https://www.theolympian.com/opinion/op-ed/article264693859.htm

Governor Inslee announced pending rescission of Proclamation 20-32: Waivers ending, and CME requirements being reinstated: On July 29, 2022, Governor Inslee announced his intent to rescind 12 Proclamations, including Proclamation 20-32, which have been in place during the COVID-19 public health emergency. When these 12 healthcare-related emergency orders terminate this fall, approximately 87% of all COVID emergency proclamations will have ended.

Department of Health (DOH)

DOH 2023 Preliminary Legislative and Budget Proposal: (summary attached) I attended a virtual webinar Thursday, August 25,with DOH to review the topics. These proposals are what will be submitted to the Governor's office for his budget that will be released later this fall. We are not sure at this time what will be in the Governor's budget from this proposal. Here are areas of interest for In-Home Services Providers:

Uniform Facilities Framework

$1.6 million GFS

DOH has established a standard framework for facilities enforcement based on acute care and psychiatric hospital laws and is now expanding it to in-home services and other health care facilities. This proposal requests modifications to statute which would allow intermediate

enforcement tools, giving the department the ability to work with facilities to address repeat violations quicker. It also adds enforcement tools that allow the department to take swift action when a situation poses immediate risk to the public. This proposal aims to increase patient safety and facility compliance, while ensuring continued access to care.

Development of Statewide Medical Reserve Corps

$0.9 million GFS

To leverage the talents and resources of Washingtonians in response to communities impacted by disaster and emergency, DOH is requesting the creation of a State Medical Reserve Corps that can organize, train, equip, and mobilize volunteers in support of public health and healthcare needs. This capacity enhances the geographically limited, locally controlled, medical reserve corps by creating a structure to deploy volunteers across the state to assist with public health, medical, and mortuary response tasks.

Home Care Aids and Agency Affiliated Counselors

$8.2 million GFS

DOH is carrying significant historical negative fund balances in the home care aide ($6.2 million of deficit) and agency affiliated counselor regulatory programs. Achieving cost recovery through fees alone risks driving workers out of professions already experiencing worker shortages, worsening access to care. DOH is requesting funding to offset the historical deficit in each program while seeking fee increases to cover operating expenses and required reserves to ensure the programs are self-sustaining without driving essential workers out of the health systems infrastructure.

Death with Dignity Act (DWDA)

$0.4 million GFS

The DWDA Program's funding is insufficient to deliver data and reporting that is both usable and transparent while failing to cover the cost of administrative tasks required by the DWDA. DOH is requesting ongoing funding for the DWDA program that will allow DOH to conduct these administrative tasks required by the DWDA statute.

Establish a Statewide Medical Logistics Center

$14.5 million GFS

During the COVID-19 pandemic, the health care system experienced dire supply chain shortages for personal protective equipment (PPE). In response to this shortage, DOH acted as a distributor of last resort. DOH is requesting ongoing funding to operate and maintain a leased warehouse that now holds 7.5 million high-quality masks and a 60-day supply of inventory that support the health care response to disasters and emergencies. See entire document:

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Preliminary Legislative

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DOH and DSHS will be jointly hosting a virtual Home Care Aides stakeholder engagement session: on Wednesday September 28, 10 – 11:30am**.** Topics include:

- Permanent Date of Hire rule change
- Emergency rules/end of Governor's waivers
- Application
- Training & Certification Exam

Join on your computer or mobile app: Click here to join the meeting

Meeting ID: 296 574 616 680 Passcode: EMvCzy

Download Teams | Join on the web

Or call in (audio only) +1 564-999-2000,,806509894# Phone Conference ID: 806 509 894#

Listening Session Scheduled for Home Health and Hospice CON: DOH is seeking feedback regarding any proposed changes to the Certificate of Need (CN) rules (WAC 246-310). As we begin the rulemaking process, we are hosting several listening sessions to hear from our stakeholders and the public. Specifically, we are seeking your feedback on the following:

- What is working well within the current rules?
- What challenges are you currently experiencing with existing rules?
- What specific changes to the current rules would you like the department to consider?
- Health equity is a priority for the department. What ideas would you propose to make rules more equitable?

These listening sessions are being held to help the department learn about your experiences with the current CN rules. We want to better understand any challenges being experienced with the current rules. We recognize that there are several challenges with how the rules are currently written, and as part of our efforts to modernize and simplify the rules, we will use these listening sessions as opportunities to hear from you.

The goals of the department in these efforts are to update the rules to more align with the current public health landscape, provide more equitable processes and rules wherever possible, and simplify the CN rules as much as possible making the CN process less complex for providers seeking to enter the healthcare system within Washington. These dates will also be posted on the DOH website in the coming days. Zoom links will be uploaded to our website and through GovDelivery reminders prior to each scheduled listening session. Email CNRulemaking@doh.wa.gov if you have any questions, or if you require accommodations to participate in these listening sessions.

Listening Sessions (all times are PST):

Hospice:	Home Health:
8/24 (1:30pm-3:00pm)	9/20 (1:30pm-3:00pm)
10/3 (10:30am-12:00pm)	10/26 (10:30am-12:00pm)
11/1 (5:00pm-6:30pm)	11/17 (5:00pm-6:30pm)
1/3 (4:30pm-6:00pm)	1/31 (4:30pm-6:00pm)

Certificate of Need and COVID Proclamations for Licensed Health Care Facilities: I attended the first meeting for the post COVID Proclamations that was attended by 68 people. 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. If you have any questions about what actions you should take now, technical assistance is available at COVIDwaiver@doh.wa.gov.

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. 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.

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.

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.

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. The CON Program's Rules Activity website soon. Email CNRulemaking@doh.wa.gov if you have any questions.

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)

DOH CON for Home Health Agencies: We are in line for one of the next CON updates for home health. As you saw above, we are scheduled for listening sessions for home health in the coming months to let the department know what changes we would like to make. 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.

SEIU Study to Increase Taxes on Home Care to Gain higher Federal Reimbursements: DOH has reached out to home care agencies regarding the voluntary survey to gather non-identifiable baseline information about the home care industry that would inform future consideration of a possible home care assessment to obtain more federal Medicaid dollars for the state. We have not seen the actual survey sent out to our membership yet…no guarantees of participation!

DOH Health Equity Rules: In 2021, legislature passed ESSB 5229. By January 1, 2024, health care professions that are subject to continuing education requirements must adopt rules requiring licensees to complete health equity continuing education training at least once every four years. DOH held 4 listening sessions and 4 rule-workshops to help develop proposed rules. The proposed rules create four new sections in chapter 246-12 WAC to implement RCW 43.70.613. **The proposed rules require completion of two hours of health equity continuing education every four years for all health professionals credentialed under RCW 18.130.040 with a continuing education requirement.** The proposed rules also require that the two continuing education hours include implicit bias training to identify strategies to reduce bias during assessment and diagnosis.

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Documents: CR-102CR-102 Proposed Rules Significant Analysis

Submit written comments through September 29, 2022, to Department of Health online rules comment web page or email Ashley.Bell@doh.wa.gov

The virtual rules hearing is September 29, 2022, at 11:00 a.m. Register in advance for this webinar Here If you can't access the meeting and wish to testimony, submit written testimony to healthequityimplementation@doh.wa.gov.

Death With Dignity Barriers Survey: Fred Hutchison Cancer Research Center has reached out to associations 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.

Home Health and Hospice Telemedicine Supervisory Visits: These rules mainly impact private duty nursing agencies that are allowed to provide these visits virtually. At this time home health and hospice to not have approval by CMS to do so, but maybe in the future!! DOH filed a CR-102 with the Office of the Code Reviser (WSR 22-17-139) proposing revisions to the In-Home Services Agencies rules under chapter 246-335 WAC. The purpose of the CR-102 is to notify the public of the department's proposed rules and sets a public hearing date. Our proposed rules would expand the use of telemedicine for home health and hospice supervisory visits, giving these agencies the option to conduct supervisory visits either on-site or via telemedicine. WSR 22-17-139.pdf . You can comment on the proposed rule in the following ways**:** Submit written comments by September 27, 2022 using one of the following options:

1. The department's online rules comment webpage
2. The U.S. Mail:
   John Hilger
   PO Box 47852, Olympia, WA 98504-7852
3. Attend an online rules hearing on September 27, 2022, at 9:00a.m.
4. Register in advance for the rules hearing:
   https://us02web.zoom.us/webinar/register/WN_aVGEpEIDSQqgkjf6hj-gfg

Please contact John Hilger at 360-236-2929 or john.hilger@doh.wa.gov if you have any questions.

Nursing Care Quality Assurance Commission (NCQAC)

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 due to the COVID-19 Waivers which postponed the training during the pandemic. The state has set up testing sites in 18 community colleges around the state and are working on that as we speak. The deadline for them to get the skills testing done by late October to meet the 120 deadline from CMS to be certified after written testing is done.

In our recent meetings last week with DOH and the Nursing Care Quality Assurance Commission (NCQAC) we learned more about the DOH 2023 Preliminary Legislative and Budget Proposal. Out of the two professions listed below, home care aides (HCA) carry $6.2 million of the debt listed… this is due to a number of reasons, but mainly that the department has chosen to put the HCA in 21 different languages that was never budgeted for. Nor was it ever done in RCW or WAC…it was a request by SEIU.

Please keep in mind that an agency request legislative proposals and has not been accepted by the Governor yet to be in his budget which comes out late November or early December prior to session starting. None of this is set in stone and will still have to pass the legislature.

In the DOH meeting they stated that next year the rates for licensure for home care aides could go from $85.00 to $100.00. They will still need to do a rulemaking process to establish these rates and that would be done after session. It can take months to complete a rulemaking process and even more if its controversial. The rates could possibly change during this time depending upon how the rulemaking goes.

Emergency Rules (CR-103E) filed for Nursing Assistant Registered (NARs) and Home Care Aides (HCAs): WAC 246-840-930 and WAC 246-841-405, Amending specific training requirements for Nursing Assistant Registered (NARs) and Home Care Aides (HCAs). These rules continue the initial emergency rules filed March 14, 2022. The Nursing Care Quality Assurance Commission (commission) is refiling these emergency rules to allow a registered nurse delegator to delegate nursing tasks to a NAR or HCA without verifying the NAR or HCA has completed basic caregiver training in accordance with WAC 246-840-930(8)(b). To align with the corresponding NAR rule, the commission is adopting emergency language in WAC 246-841-405(2)(a) to remove the requirement that a NAR must show proof of completion of the basic caregiver training before performing any delegated nursing task. Filed as WSR# 22-15-020

PDN Issues and Possible Pediatric Certified Nursing Assistant: HCAW has set up an internal workgroup for PDN issues, and at this time it is specifically about the work that we are doing 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.

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. This project is sponsored by the NCQAC and DOH. They are starting out with a pilot project in skilled nursing facilities (SNF).

Health Care Authority (HCA)

Palliative Care Benefit for Medicaid, PEBB, SEBB: We have been a bit disappointed with the Health Care Authority (HCA) response so far to begin designing the palliative care benefit for Mediciad and PEBB and SEBB (the retiree benefits programs). I am still working on a timeline for them to hire a consultant to develop a plan for a palliative care benefit. More to come…

Pediatric Palliative Care Rates: I will be working with WSHPCO on a rate increase for pediatric patients and suggest that HCAW also support this rates increase for next session. 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 selected to continue to participate in the states Dementia Collaborative! I will continue working on a various committees to make sure that they continue to include in-home services in the collaboratives discussions.

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/