July 10, 2023

HCAW July 2023 Public Policy Report

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Legislative/Political Landscape

The Governor's race for 2024 has started to heat up in WA State. This will make for some interesting politics over summer into next year! The field of candidates for Washington governor has steadily grown ever since Gov. Jay Inslee announced in May that he would not seek a third term in office.

Democrats have a growing list of candidates, including State Attorney General Bob Ferguson, Public Lands Commissioner Hilary Franz, and State Sen. Mark Mullet. Democrats currently control all three branches of government, but you never know in these unpredictable times who will move forward in our "top two" election system. The party preference information has no bearing on how officials conduct the election or who advances from the Primary to the General. Instead, which candidates advance depends solely on how many votes they receive in the Primary.

Dave Reichert has filed the paperwork this week to run for Governor. He was King County Sheriff from 1997 to 2005, after which he ran for Congress as a Republican. He was elected to represent Washington's 8th Congressional District in 2004. Other official Republican candidates, so far, include Dr. Raul Garcia of Yakima who ran in the last gubernatorial election, and Richmond School Board member Semi Bird. Washington's last Republican governor was John Spellman, who held office from 1981 to 1985.

State Budget Forecast

State revenue projection for 2023–25 forecast increased by $327 million (6/27/23, OFM) Washington's projected Near General Fund revenue collections for the 2023–25 state budget have increased by nearly $327 million, according to estimates released today by the Washington State Economic and Revenue Forecast Council. "Capital gains revenue collections have been stronger than expected and the forecast has been revised up to reflect that," said Steve Lerch, executive director of the Economic and Revenue Forecast Council. The council also increased the Near General Fund forecast for the following biennium (2025–27) by about $147 million, with total expected revenues of nearly $70.5 billion. The next revenue forecast is scheduled for Sept. 26. We will have a better idea of where the state budget will be closer to session after the meeting in September. State budget impact all aspects of health care funding in our state…so increased revenues is good news!

State Agencies

State Agencies are now preparing their Decision Packages (DP) to submit to the Governor's office for the 2024 Supplemental Budget. A DP is required for all incremental changes to the current biennial budget. They will be sending in their draft requests in July and final requests sometime in September. The Governor uses these Decision Packages to create his 2024 Supplemental Budget which will be released in December prior to the session starting. Supplemental Budgets basically fix issues in the Operating Budget passed last session. Typically, no new initiatives are proposed….

Now that the session is over, state agencies also begin the work of developing the recently authorized rulemaking and establishing workgroups that were initiated in the legislative session. This work will roll out over the summer and fall as they move through the Administrative Procedures Act that requires a public process for new state agency rules.

Health Care Authority (HCA)

Electronic Visit Verification: HCA sent a provider alert on April 21, 2023, informing providers about the electronic visit verification (EVV). This is a reminder:

- All home health care **agencies** must enroll all home health servicing providers at the individual level **now** to facilitate the submission of the EVV home health care services data.
- All home health ***providers*** must provide the data elements under EVV requirements to HCA or the managed care organization (MCO) under a mandate included in the 21st Century Cures Act. Not providing the data will cause claim denials.

If the newly required data is not included on home health claims for **dates of service on and after January 1, 2024**, the claim will be denied, and providers will be required to correct the claim and resubmit. For early review of these new requirements, please refer to HCA's July 1, 2023, Home Health (Acute Care Services) Billing Guide and the 837i Companion Guide listed under Timeline on HCA's EVV HHCS webpage

What do you need to do now? Enroll your servicing providers now! To facilitate the submission of the EVV home health care services data, your organization should begin enrolling all your home health *servicing* providers at the individual level now. Click on the brown box below.

Enroll as a health care professional practicing under a group or facility

HCAW EVV Meeting with HCA Expressing Concerns (Shelly McDiarmid Notes)

- EVV is required for Home Health Agencies (HHA) starting 1/1/2024 based on 21st Century Cures Act passed in 2016
- States have latitude as to how they implement EVV requirements

- Due to confusing calls received by HHA/PDN (private duty nursing agencies) starting non 6/1/2023 (this was the first we heard about any of the state's plans) from MCOs – HCAW requested a meeting with HCA to clarify. That meeting occurred last Friday
    - Included in the meeting were HHA/PDN that are members of HCAW (Providence Home Health, Centerwell, Sunshine Home Health, Yakima Valley Memorial Hospital, PeaceHealth Home Health, Kaiser Home Health, CHI Franciscan at Home (Common Spirit), LHC/Assured Home Health, Alliance nursing, Maxim Health, Aveanna).
    - HCA representation
        - Michael Brown – Director for Program Integrity
        - George Wagner (Don't have title – part of EVV Workgroup)
        - Christine (don't have a last name – part of EVV workgroup)
        - Christina McDougall – Project Manager for HCA EVV project
- **HCA clarified that they will require all HHA staff to obtain individual NPIs and HHAs will need to add all elements of EVV requirements to 837i claim**
    - They are citing CFRs as their justification. They are misinterpreting the CFRs
- HHAs and PDN operate under a group NPI – our staff don't have NPIs and home health aides aren't eligible for NPIs
- HCA has given conflicting information regarding inclusion of PDN, or not, in the EVV requirements. Within the same call on Friday they said in scope and out of scope.
- HCAWs position is that HCA is placing undue burden on the providers for HCA's compliance requirements related to EVV and completely conflating provider language in the CFRs. We are also concerned that they may require non-compliant use of 837i if they implement their plan as communicated
- This will result in agencies (HHA and PDN) becoming unable to serve Medicaid beneficiaries thereby reducing access to care and further complicating difficult to discharge population

HCAW has raised this concern to WSHA and our hospital partners in the community due to the undue burden it will place on in-home service providers if HCA proceeds with their requirements. Inevitably it will reduce access to home health and PDN for Medicaid beneficiaries.

The next EVV meeting with the Health Care Authority is scheduled for July 11, 2 pm. HCAW has also been in contact with NAHC regarding this issue and is requesting a review of what is happening in other states.

Health Care Authority (HCA) Updated Telemedicine Policy: HCA has created the frequently asked questions (FAQ) documents listed in this Provider Alert to help highlight HCA's telemedicine policy during the COVID-19 pandemic. Now that the public health emergency (PHE) has ended, these documents are no longer necessary. HCA will sunset these documents **effective October 1, 2023.** To assist in this transition, updated versions of these documents, ***effective July 1,***

2023, have been loaded on HCA's Provider billing guides and fee schedules, under *Telehealth*, with important information concerning which policies will end and which will be found in program-specific billing guides. Email HCA's clinical policy team for any questions related to HCA's telemedicine policy.

Which documents related to home health and LTC have been updated?

1. *Apple Health (Medicaid) FAQ for home health providers during the COVID-19 pandemic*
2. *Apple Health (Medicaid) FAQ for long-term care facilities and skilled nursing facilities during the COVID-19 pandemic*
3. *Apple Health (Medicaid) FAQ for physical, occupational, and speech therapy during the COVID-19 pandemic*

From July 1, 2023, to September 30, 2023: These updated FAQ documents will remain on HCA's Provider billing guides and fee schedules webpage, under *Telehealth*.

Effective October 1, 2023

- HCA will sunset the FAQ documents, except for the *Apple Health (Medicaid) FAQ for behavioral health providers billing for services provided via telemedicine*. This FAQ will remain on HCA's Provider billing guides and fee schedules webpage, under *Telehealth,* to provide telemedicine guidance related to the *Service Encounter Reporting Instructions (SERI) Guide* and the *Mental Health Services Billing Guide.*
- Program-specific telemedicine/telehealth information will be in specific HCA billing guides located on HCA's Provider billing guides and fee schedules
- The main agency telemedicine policy will be in HCA's *Telemedicine policy billing guide* located on HCA's Provider billing guides and fee schedules webpage, under *Telehealth*.
- The main agency COVID-19 clinical policy will be in HCA's *Clinical policy for COVID-19 billing guide* located on HCA's Provider billing guides and fee schedules webpage, under *Telehealth*.

Budget Proviso Development for 20% Rate Increase for PDN 2024 Legislative Session: *HCAW has a meeting set up on July 13th at noon to discuss our request for next session.*
This meeting will be to discuss Home Care Association of WA (HCAW) intent to raise the PDN rate 20% during the next legislative session and the rational behind it.

Agenda Items:

1. 2023 Rate increase for skilled nursing rational was to keep up with PDN Rates increase from 2022.
    a. PDN agencies have much higher overhead with state regulatory requirements and taxes that RNs who are independent providers don't have.
    b. When you raise the RN rates to the same level as a PDN agency you eliminate differential between their cost of doing business.

2. The billing codes you sent us have an agency rate and an individual rate for skilled nursing in your June 8th email.
    a. We would like to know more about how you distinguish between the rates for agencies and individuals.
    b. Is it a percentage?
    c. Is the authority for a different rate structure for agencies vs individuals in statute or rule?
3. What is the difference for DSHS or HCA between home health skilled nursing provided for chronic care under the waiver, acute care home health or private duty nursing care provided by home health agencies?
    a. Are there different rates for agencies and individuals for each of theses categories of home health?

DSHS Skilled Nursing Rate Increase: *We have confirmation that this does not apply to our private duty nursing agencies who care for medically fragile children and adults.* We are in discussions with the Rates Manager, Peter Graham at DSHS, about rates increases. According to Peter, the funding provided in the last legislative session established increased rates for RN Nurse Delegation and Skilled Nursing Services. There was a minor increase in rates of approximately 2% for all individual providers and a larger 24% increase to any provider that meets the definition of an agency. This was modeled based on rate increases PDN providers experienced in the supplemental 2023 session. Agency providers are defined as an entity who provides these services and have a home health license.

Medicaid Pediatric Palliative Care Rate in Final Budget: Medicaid rates for pediatric palliative care have not been raised since 2006 and have fallen significantly behind. Pediatric Palliative Care has been severely underutilized in WA State. We sincerely hope that this new funding will increase the ability of pediatric palliative care providers to utilize this funding source in their agencies and care for more children in WA State starting January 1, 2024.

Difficult to Discharge Pilot (Health Care Authority): Funding is provided for incentive payments, administrative support, and development of home and community assessment requirements for pilot participants in cooperation with DSHS for a five-site pilot program for difficult to the discharge individuals. The final budget funds multiple programs designed specifically to address the populations facing the most barriers to post-acute care placement and long-overdue investments in increased payment rates to Medicaid long-term care providers.

Update on Palliative Care Benefit: We received the OHSU Center for Evidence-based Policy "WA Palliative Care Reimbursement Project" Report from Sophie Miller at HCA. We are still waiting to hear from Sophie about future sessions to discuss details

Palliative Care Reimb
Project Final Report (2

Home Care Safety Net Assessment Workgroup: SHB 1435 requires consumer-directed employers and in-home services agencies to submit specified financial information to DOH to inform the development of a home care safety net assessment to secure federal matching funds under the state's Medicaid plan. Establishes the Home Care Safety Net Assessment Work Group to develop the home care safety net assessment proposal. I contacted Evan Klein at HCA to assure that we are at the table for these discussions and here is his response:

"Thanks for reaching out. We are aware of the requirement for Home Care, Home Health, and Hospice to be at the table when the HCSNA Workgroup gets underway and I've passed your recent note along to the relevant staff. At this time, the manager overseeing this work is in the process of hiring new staff to support the Workgroup and this specific safety net assessment development. As the agency just received funding on July 1, it will take some time for someone to be brought on board and for the work to get underway. There is no current timeline for an initial workgroup meeting. As we have more information to share, I'll be certain to do so."

Department of Health (DOH)

Home Care Aides: Due to recent legislation there are a lot of changes coming up for the home care aide profession! Please be sure your contact information is up to date on the Department of Health website. The following changes **will take place on July 23, 2023**:

- If a home care aide credential is expired less than five years, no continuing education is required to renew the credential. You will simply complete the required forms and pay the fee. If a credential is expired for more than five years, retraining and examination is required.
- If a caregiver in training changes employers or returns to employment with a former employer, they may now start over with a new date of hire. This starts over the 200 days they have to receive their credential. To restart the 200 days:
    - If you are obtaining an initial credential, speak with your credentialing specialist by email or phone.
    - If you are renewing an expired credential, submit an updated Employment Verification Form online.

- You will be able to provide care to the following individuals without obtaining or maintaining a home care aide credential:
- Biological, step, or adoptive child or parents.
- Siblings, aunts, uncles, cousins, nieces, nephews, grandparents, and grandchildren (including by marriage or domestic partnership).
- If you care for one of the above individuals, work with the Consumer Direct Care Network Washington to be classified as an exempt family caregiver.
- You will be required to obtain and maintain a home care aide credential when caring for a spouse or registered domestic partner, **unless** you qualify for one of the following programs:

- The long-term services and supports trust program; or
- The US Dept of Veteran Affairs home and community-based programs.

The following changes **will take place on September 1, 2023:** From September 1, 2023 through July 1, 2025, if your credential has been expired for more than six months but less than two years, your credential will be automatically renewed with no fee, forms to complete, or CE requirements.

The next community partners meeting will be held on **August 1, 2023, at 3:00 p.m**. Please save the date! We will provide an agenda and more information as the date gets closer. If you have questions, please contact the program manager at Tracie.Drake@doh.wa.gov.

CR-103E Emergency rule filed continuing previous emergency rule that removed the time limit between training and testing: The Home Care Aide Program has updated WAC 246-980-100, Examination and reexamination for home care aide certification. WAC 246-980-100 (5)(c) required that home care aide certification testing occur within two years of training. This emergency rule removes the two-year limit on the validity of training.

Lasting impacts from the COVID-19 pandemic have impacted the home care aide workforce by creating backlogs that limit access to training and testing. Continuing to require testing within two years of training would require many uncertified individuals to repeat training, delaying and possibly preventing them from becoming credentialed as a home care aide.

These emergency rules were filed as WSR 23-13-068 on June 13, 2023. These rules continue emergency rules initially filed on October 17, 2022 under WSR 22-21-102 and continued on February 14, 2023 under WSR 23-05-083. They are being continued while permanent rulemaking is in progress to consider training timelines for home care aides.

Death with Dignity Act Changes: The WA Legislature passed Engrossed Substitute Senate Bill (ESSB) 5179 in 2023 that made changes the Death with Dignity Act. *The changes become effective on July 23, 2023*. ESSB 5179 did the following:

- Allows more licensed healthcare providers to participate in the Death with Dignity Act.
- Added a definition of "qualified medical provider" that includes physician, physician assistant, and advanced registered nurse practitioner.
- Added independent clinical social worker, advanced social worker, mental health counselor, and psychiatric advanced registered nurse practitioner to the "counseling" definition.
- Reduces the timeframe a qualified patient must wait to make a second oral request for medication from 15 days to 7 days.
- Allows pharmacies to accept prescriptions electronically, dispense to a person designated by the patient, and offer secure delivery.
- Allows healthcare providers to submit Death with Dignity forms electronically to the DOH.

For more information about the Death with Dignity Act and implementation timeline, please visit the Death with Dignity Act | Washington State Department of Health website.

DOH Home Health and Hospice Certificate of Need: ***No new news on timeline*****.** Our internal HCAW CON Taskforce is meeting regularly to prepare for the home health rulemaking at DOH.

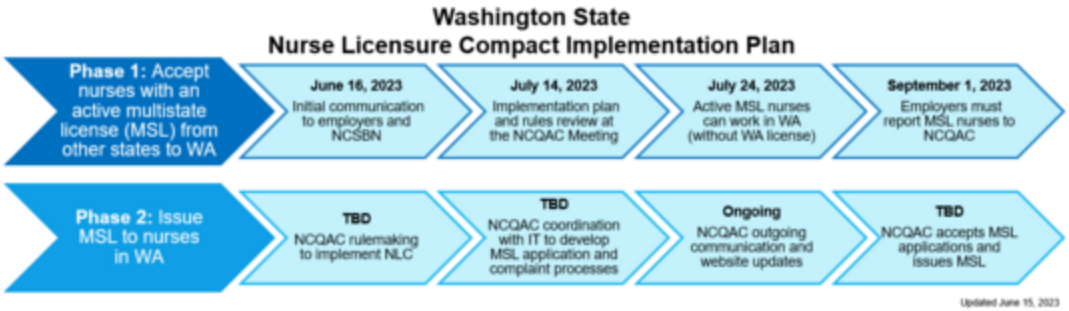
Eric Hernandez: "We have not yet planned rule making for hospice or home health rules at this time. We are in the process of opening a CR-101 for ESRD (kidney dialysis) rules. The recent passage of SSB 5569 has required us to address ESRD rules first to being rulemaking to implement the new legislation, and we will be opening additional ESRD rules as the bill did not take into consideration other impacts to our rules that emergency expansion may have our need methodology and the potential of inadvertently artificially inflating/deflating need in planning areas."

Washington State Board of Nursing (WA BON) (Formerly Nursing Quality Assurance Commission)

Implementation of the Nurse Licensure Compact (NLC): On April 21, 2023, Gov. Jay Inslee signed the Substitute Senate Bill (SSB) 5499 Multistate Nurse Licensure Compact into law. Washington is the 40th jurisdiction to enact the NLC.

The NLC increases access to care while maintaining public protection at the state level. Under the NLC, nurses with an active multistate license (MSL) can practice in other NLC states/territories, without obtaining additional licenses. The state which is the primary state of residency (or home state license for military) issues multistate licenses.

The Nursing Commission plans to implement the NLC in two phases.



Phase 1: Accept nurses with an active multistate license (MSL) from other states

Beginning **July 24, 2023**, nurses with an active MSL issued from another state will be able to practice in Washington state. Please note, if an MSL nurse is making Washington state their primary state of residency (PSOR or "home state"), then they must apply for a Washington state "single state" license until Phase 2 of this implementation plan is complete.

What Nurses Need to Know: Nurses with an active MSL from another state may begin working in Washington state beginning July 24, 2023, once they:

- Verify and communicate their MSL information to their employer.
- Complete the required Suicide Prevention Training and report completion to their employer.
- Update or submit demographic data via Nursys e-Notify and report completion to their employer.

What Nursing Employers Need to Know: Employers may begin reporting MSL nurses to the Nursing Commission beginning July 24, 2023, and are required by law to report no later than September 1, 2023. Nurses may begin to work as of July 24, 2023, in advance of employers submitting this information. Beginning September 1, 2023, and thereafter, employers must report MSL nurses to the Nursing Commission within 30 days of hire.

Employer Compliance Form: Employers who have hired, or wish to hire, nurses that will work only with an active multistate license (without a WA state license) are required to:

- Verify and report MSL nurses to the Nursing Commission.
- Attest that the nurse has completed the required Suicide Prevention Training.
- Attest that the nurse has updated or submitted their demographic data via Nursys e-Notify.

How do I report this information to the Nursing Commission? Employers will be able to attest to these requirements via the Nursing Commission's Employer Compliance Form. The form will be available on our website by July 24, 2023. We will share additional information in the next few weeks (nursing.wa.gov).

Reporting is a legal requirement after September 1, 2023, and will be enforced for those facilities by DSHS and DOH according to mandatory reporting requirements under SSB 5499, this includes hospice care centers.

NLC Information on our Website

- The Nursing Commission is developing information for nurses, nursing students, and employers for our website. This information will be available in the next few weeks.
- A webpage specific to military spouses and the NLC will also be available.
- The Nursing Commission is planning informative webinars on this process and requirements. We will share dates in the next few weeks.

NCQAC Name Change: As directed by SSB 5499, the Nursing Care Quality Assurance Commission (NCQAC)'s name will be changed to the **Washington State Board of Nursing (WA BON).**

Phase 2: Issue Washington state multistate licenses (MSL)

At the July 14, 2023, business meeting the Nursing Commission will review and potentially approve the NLC implementation plan and determine next steps for relevant rulemaking. The Nursing Commission is completing ongoing work on the following prior to determining the future effective date for issuing multistate licenses to nurses in Washington state:

NCQAC Coordination with Department of Health IT Services

- Develop MSL applications and related internal processes.
- Coordinate efforts and implementation timing with the Healthcare Enforcement and Licensing Modernization Solution (HELMS).

Rulemaking to Implement the NLC: For more information about rules, please visit our Rules in Progress page on our website or email NCQAC.Rules@doh.wa.gov.

Employment Security Department (ESD)

Washington Cares Act: Exemptions are available for some Washington workers who aren't likely to use their WA Cares benefits in the future. ESD will process all WA Cares Fund exemption applications submitted on or before June 1, 2023, before premiums take effect in July. For more information, visit wacares.wa.gov/exemptions.

Policy Related Meetings

LTC Initiative - Education & Career Pathways Subcommittee: I attended the state Workforce Development Board meeting in Port Angeles at the Peninsula Community College on June 21st. I was very persuasive in getting them to acknowledge that hospice, palliative care and home health should be considered as part of the LTC spectrum.

I spoke with the Chair of the LTC Workgroup about setting up a meeting with In-Home Services providers to discuss our workforce needs and he said he would love to meet with us! I am in the process of setting up that meeting with him and WSHPCO, HCAW and HCAOA-WA sometime in July or August.

I was also in discussions with Leading Age about the issue of a loss of hospice in-patient beds. The skilled nursing facilities are only about 65% full right now and have bed space available. **Would there be a way to work together to reserve beds for either respite care or for people who do not have families to care for them at home at the end of life?**

Dementia Action Collaborative (DAC): I participated on the subcommittee on Health and Medical. I advocate for them including palliative and hospice in their ongoing development of the new Updated Dementia State Health Plan.