



Washington State
Medical Association
Physician Driven, Patient Focused



NWONL | Northwest Organization
of Nurse Leaders



Date: April 2, 2020

To: Office of the Governor

From: Washington State Hospital Association, Contact: Taya Briley, tayab@wsha.org, 206-605-7437

- Washington State Medical Association
- Washington State Nurses Association
- Washington State Pharmacy Association
- Washington Academy of Physician Assistants
- Northwest Organization of Nurse Leaders
- LeadingAge Washington
- Washington Health Care Association
- American College of Cardiology – Washington Chapter
- WA Chapter – American Academy of Pediatrics
- WA Chapter – American College of Emergency Physicians
- Washington Academy of Eye Physicians and Surgeons
- Washington Academy of Physician Assistants
- Washington Ambulatory Surgery Center Association
- Washington Association of Obstetricians and Gynecologists
- Washington Rheumatology Alliance
- Washington Section, American College of Obstetricians & Gynecologists
- Washington Society of Addiction Medicine
- Washington State Medical Oncology Society
- Washington State Obstetrical Association
- Washington State Orthopedic Association
- Washington Osteopathic Medical Association
- Washington Society of Interventional Pain Physicians
- Washington State Radiological Society
- Washington State Society of Anesthesiologists
- Washington State Society of Oral and Maxillofacial Surgeons
- Washington State Society of Pathologists
- Washington State Urology Society
- Community Health Plan of Washington
- Community Health Network of Washington
- US Anesthesia Partners
- Washington Association for Community Health

**Washington State Podiatric Medical Association
Benton Franklin County Medical Society
Clark County Medical Society
Grays Harbor County Medical Society
King County Medical Society
Spokane County Medical Society
Thurston Mason County Medical Society
Northwest Medical Society
Washington Chapter American College of Physicians
Pacific Northwest University of Health Sciences**

Re: Protections for Health Care Workers

Background – Washington State Faces a Health Crisis that Places Unprecedented Demands on Health Care Workers. Washington State early on became the epicenter of COVID-19 outbreak in the U.S. and as of March 31, 2020 has 5,984 confirmed cases and 247 deaths. Community transmission of COVID-19 is widespread in the Puget Sound area. Cases are becoming more prevalent in the eastern part of the state. Surveillance data suggest that the number of COVID-19 cases in Washington State will continue to significantly increase for at least several more weeks, even with social distancing measures in place. On February 29, 2020, Governor Inslee issued an emergency proclamation. Recognizing the significance of the need, he directed the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented and directed state agencies and departments to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak.

In multiple forums, Governor Inslee has called health care workers and the health care system to action, requesting their full engagement in the emergency response. Washington's health care system, and its health care workers in particular, have responded. They have been pushed to the limit of their capacity and as models predict a further surge in COVID-19 patients, are racing to prepare for more.

As they respond to this crisis, providers are practicing health care in unprecedented circumstances and in unprecedented ways that may be seen to deviate from the prevailing standards of care. As the State Health Officer has noted, health care providers are being asked to provide care that delivers the greatest good to the greatest number of people. For example:

- On March 19, 2020 the governor issued an emergency proclamation limiting elective surgeries, with the stated goals of opening hospital space and preserving personal protective equipment (PPE) for a surge of COVID-19 patients. Physicians are making daily and hourly decisions, based on their best judgment about what procedures can be delayed. Delay of a surgery to remove a slow growing cancer, delay of a diagnostic imaging procedure or changing a treatment plan to avoid surgery are all decisions that carry risks. If physicians feel they cannot offer a procedure because of the Governor's proclamation, and the patient suffers from harm as a result, those physicians should have some protection from the liability they did not create.
- Providers are limited in PPE and reusing and conserving in ways that may conform to current guidance from the CDC and Washington State Department of Health, but that still are not normal practice in times without a PPE shortage. In long term care facilities, health care professionals including nurses, administrators, and nursing assistants, face significant staffing

and PPE shortages while caring for vulnerable residents. In pharmacies, PPE is being reused during compounding. In addition, the PPE shortage is limiting or precluding providers of pharmacy, lab, physical therapy, occupational therapy, speech therapy and x-ray services, from providing care and services. All of these professionals face potential civil liability and licensure action.

- Providers are caring for patients with potentially infectious diseases with limited availability of tests and testing capacity, leading to ever changing guidance on testing protocols. Both supplies of testing materials and availability of lab capacity to perform tests are in short supply. Many individuals who wish to be tested are not receiving tests. Statements from some public officials have led many people to believe testing is available on demand, and the inability of providers to meet this expectation has led to complaints by people seeking to be tested.
- The Department of Health has encouraged providers to prepare for deployment of Crisis Standards of Care in the event a region of the state experiences shortages of ICU beds, ventilators, or other resources that require clinicians to make painful decisions regarding allocation of care to patients.
- Providers must limit visitors at the hospital, which may impact communication and limit the kind of robust care planning or decision-making they generally would initiate.

State Law Favors Out-of-State Workers Over Washington Practitioners. Unfortunately, even as the Governor calls the Washington State health system and its workers to action to respond in unprecedented ways to the COVID-19 emergency, Washington’s providers are not extended the same protection as workers who arrive from other states. This is not right. It diminishes the incredible contributions of those working on the front lines and discourages them from continuing to make those contributions and place their own health at risk.

Recognizing that practicing outside of the traditional bounds of care delivery creates risk for the providers who respond in an emergency, the state has taken steps to protect providers who respond from other states to provide care in Washington. The Uniform Voluntary Emergency Health Practitioner Act applies to health practitioners who provide health or veterinary services whether or not the practitioner receives compensation for services. In the COVID-19 response these practitioners are protected from liability, except for acts or omissions constituting gross negligence or willful or wanton misconduct.

Request – Extend the Uniform Emergency Volunteer Health Practitioner Act to Washington Practitioners. We urge the Governor to take immediate action, under the powers granted in RCW 43.06.220(g) to waive or suspend portions of the Uniform Voluntary Emergency Health Practitioner Act in order to extend it to providers based in Washington State. Waiver of portions of the Act in the definition of “Volunteer health practitioner” would accomplish this task. Our requested changes to RCW 70.15.010 are below. We also ask this waiver be made retroactive to February 29, the date of the declared emergency. Recognizing the waiver can remain in effect for only 30 days after it is issued, we ask the Governor to prioritize this waiver for extension when conferring with legislative leadership regarding action to extend the duration of the emergency proclamation and waivers.

Requested Section for Waivers: RCW 70.15.010

Definitions

(16) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does ~~not~~ include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, ~~unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.~~

For Reference: RCW 70.15.110

Liability—Volunteer health practitioners—Operation, use, reliance upon volunteer health practitioner registration system.

(1) No act or omission, except those acts or omissions constituting gross negligence or willful or wanton misconduct, by a volunteer health practitioner registered and providing services within the provisions of this chapter shall impose any liability for civil damages resulting from such an act or omission upon:

- (a) The volunteer health practitioner;
- (b) The supervisor or supervisors of the volunteer health practitioner;
- (c) Any facility or their officers or employees;
- (d) The employer of the volunteer health practitioner;
- (e) The owner of the property or vehicle where the act or omission may have occurred;
- (f) Any organization that registered the volunteer health practitioner under the provisions of this chapter;
- (g) The state or any state or local governmental entity; or
- (h) Any professional or trade association of the volunteer health practitioner.

(2) A person that, pursuant to this chapter, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission constitutes gross negligence, an intentional tort, or willful or wanton misconduct.

Considerations. Requestors have conferred with staff of the Department of Health and Attorney General's Office regarding this request and identified three areas for consideration.

- **Registration of practitioners.** First, pursuant to RCW 70.15.020, in order to have the protections under the chapter, volunteer health practitioners must register with a system that meets statutory requirements. The Department of Health has established such a system. <https://www.doh.wa.gov/Emergencies/NovelCoronavirusOutbreak2020COVID19/HealthcareProviders/EmergencyVolunteerHealthPractitioners>. Registering all the Washington providers who are responding to the COVID-19 crisis will be a significant task for the Department. We propose that relevant commissions and board would register their respective licensed practitioners, extending the protections under the chapter to them in circumstances where practitioners are working "to the extent necessary to respond to an emergency" pursuant to RCW 70.15.010 (9). Further, our member organizations are committed to working with the Department to make the process manageable so as to not overwhelm the system. Hospitals and health systems can "batch" providers for submission.

- **Regulation of services by the department.** RCW 70.15.030 states that during the emergency, the department may limit, restrict, or otherwise regulate:
 - (a) The duration of practice by volunteer health practitioners;
 - (b) The geographical areas in which volunteer health practitioners may practice;
 - (c) The types of volunteer health practitioners who may practice; and
 - (d) Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

The partnership and collaboration between the Department of Health, the Governor’s Office, health care workers, and health care systems of Washington is strong and has been heavily relied upon during this response effort. We respectfully request a commitment from the Department of Health that for those workers brought under Chapter 70.15 as a result of the Governor’s waiver and subsequent registration, and who are employed by a hospital or health system, it will delegate decisions about where they will be directed to practice to their employing hospital or health system, that collective bargaining agreements between unions and hospitals will be honored, and that the Department will actively engage with workers, hospitals, and health systems regarding any other potential deployment of the health care providers.

- **Worker’s compensation.** Under RCW 70.15.100, a volunteer health practitioner who dies or is injured as a result of providing services is, “deemed to be an employee of this state for the purpose of receiving benefits for the death or injury under the worker’s compensation law of this state, Title 51, RCW, if:
 - (a) The practitioner **is not otherwise eligible for such benefits** for the injury or death under the law of another state; **and**
 - (b) The practitioner, or in the case of the practitioner’s personal representative, elects coverage under the workers’ compensation law of this state” (emphasis added)

The requested waiver should not increase the obligation of the State under this statute because the only individuals affected by the waiver will be those already employed in Washington and therefore already covered under and eligible for workers’ compensation benefits provided by their existing employer.

Conclusion. We urge the Governor to take swift action to extend the protections of the Act, already available to those coming in from out of state to work, to Washington health care providers. The state is asking much of its people on the front lines and they are responding by caring for the state’s citizens in extraordinary ways. We, in turn, ask the Governor to care for its health care providers by extending these commonsense protections to them.