



Enclosure to 4 Corners Letter Dated June 12, 2020

Subject: Request to Extend Emergency Proclamations 20-6, 20-10, 20-16, 20-18, 20-37, 20-38, 20-44, 20-52 (extension)

Proclamations 20-6 and 20-16 (extended through Proclamation 20-52) are key to reducing exposures to vulnerable long-term care residents by restricting visitation with some exceptions, such as end of life situations and visits by attorneys, administrative law judges, advocates, and similar others. Without the suspension of statutes and rules identified in these Proclamations, these restrictions will be lifted statewide regardless of individual county or facility risk, and exposures in our most challenged facilities may increase dramatically. It is critical those who are known to be most vulnerable to this disease be protected from exposure as much as possible in these first phases of re-opening. Currently multiple stakeholders, including our administration, are working closely with the Governor's office, providing guidance and recommendations for a safe and healthy approach to re-opening long-term care facilities in Washington.

To address this, we are requesting an extension of the visitor restrictions is vital to allow time for a safe and calculated plan for re-opening to be created and implemented.

Proclamation 20-10, Training & Certification (extended through Proclamation 20-52):

Without a statutory amendment to provide a transition period for long term care workers to register and complete training and testing which were not available through the Stay Home, Stay Safe orders they will not be compliant with statutory requirements and will not be able under law to continue working for the vulnerable clients they serve. Although training facilities are beginning to schedule training in compliance with phases of re-opening, in beginning phases class sizes must be smaller and therefore additional time is necessary to clear both the backlog of workers who have not been able to access training and testing, but also to address the needs of new long term care workers as they begin working and have the statutory timeframes for completion apply to them. Clients who receive care in their own home and community residential settings will be without critically needed staff jeopardizing their health and safety. DSHS estimates **12,000 long-term care workers** will be dismissed for not meeting training requirements within the statutorily mandated timeframe if the suspension of statute and WAC is not extended or a statutory amendment is not enacted. It will take several months for training and testing facilities to be able to provide services to the many who will be seeking training and testing in order to meet licensing and certification requirements and resume their positions with long-term care facilities or as individual providers to clients in the community. In the meantime, long-term care programs will be short of staff while the risk of COVID-19 resurgence is still present. This includes individuals who receive personal care services in their own homes.

In addition, staff records and credentials are reviewed during every annual survey to ensure staff hiring requirements are met. Home care worker qualifications are also routinely reviewed for compliance with statute and WAC. Without a statutory remedy, DSHS and Department of Health (DOH) would be obligated to enforce the statute as currently written for staff who worked in long-term care facilities or client's homes during the outbreak as they will not have met the long-term care worker training requirements. There is also significant audit risk of federal disallowances if individuals are allowed to continue working without the statutory suspensions.

To address this, we are requesting an extension of this Proclamation until statutes can be amended to allow a six month grace period for long-term care workers who were unable to complete required training and testing due to the COVID-19 outbreak. This will allow long-term care workers time to complete the training and testing requirements, and allow training and testing centers time to address the increased demand they will face as they reopen. The grace period would begin the day after the public emergency ends.

Proclamation 20-18 (extended through Proclamation 20-52) suspends annual inspections for Adult Family Homes, Assisted Living Facilities, Nursing Homes, and Enhanced Services Facilities and fingerprint background check requirements for Adult Family Homes, Assisted Living Facilities, and Enhanced Services Facilities, and in-home providers. During the outbreak, DSHS efforts are necessarily focused on inspecting facilities to identify and improve infection control measures, and investigate complaints that place residents in imminent jeopardy including complaints related to neglect, abuse, and exploitation. Currently in Nursing Homes the Center for Medicare and Medicaid Services (CMS) has tasked the state agency with continuing a focus primarily on infection prevention surveys and investigations, along with any immediate jeopardy concerns. Continuing annual inspections would be a hindrance to these activities both for DSHS and the facilities being inspected.

Should the Proclamation be lifted now, facilities and DSHS would be faced with routine inspections while also trying to meet the necessary inspections for COVID-19. DSHS would not be able to meet that demand and keep residents and staff safe from acquiring or transmitting the disease.

To address this, we are requesting an extension of this Proclamation until statutes can be amended to permanently suspend the standard survey requirements for the period of the outbreak, and to reset the timeframe for all required surveys and inspections with a reset date of October 1, 2020, allowing DSHS time to complete other essential functions such as critical complaint investigations and continued infection control investigations.

Fingerprint background check requirements are waived for Adult Family Homes, Assisted Living Facilities, Enhanced Services Facilities, and in-home providers out of necessity as many fingerprint check agencies that provide these services are not operating during the Stay Home, Stay Safe orders and in early stages of phased re-opening. . If the exemptions are not extended, staff who are unable to obtain fingerprint background checks as a result of the outbreak will be dismissed immediately, contributing to a staffing shortage crisis and leaving thousands of individuals without essential services.

To address this, we are requesting an extension of this Proclamation until statutes can be amended to allow a six month grace period for long-term care workers who were hired during the COVID-19 outbreak to meet the background check requirements. The grace period would begin the day following the end of the public health emergency.

Proclamation 20-37 suspends nursing assistant requirements for nursing homes in order to be consistent with requirements waived by the Center for Medicare and Medicaid Services (CMS). These requirements were waived by CMS in order to address the staffing shortages in Washington state and across the country, and will be in place until the end of the national declaration of the public health emergency. Should Proclamation 20-37 expire, Nursing Homes will be subject to conflicting requirements between state and federal regulations, and the measures taken by CMS to address national staffing shortages will be undone in Washington state by our more stringent state requirements.

Nursing Homes are uniquely impacted by the potential of immediate implementation of state statutes that have been waived and suspended under the Proclamations. Approximately 1,600 nursing assistants have been registered during the COVID-19 outbreak. The majority of these staff work in Nursing Homes, the long-term care facilities most impacted by the COVID-19 outbreak. Most are awaiting the reopening of the training and testing facilities in order to complete the criteria to become a Certified Nursing Assistant.

Classroom instruction must re-open in order to provide training and testing to those registered nursing assistants hired during the COVID-19 crisis. Certification testing centers must also be opened. Recent communications with testing centers indicate suspension of testing may remain in place until July 13, 2020. Should the Proclamation be allowed to expire, registered nursing assistants who have not completed the training due to the COVID-19 outbreak, and are currently unable to receive training and testing, would be dismissed immediately, creating a staffing shortage crisis across the state and exacerbating an already challenging situation.

To address this, we are requesting an extension of this Proclamation until statutes can be amended to provide a transition period for training and testing of the Nursing Assistant Registered staff. Otherwise, many of these staff will be dismissed for not meeting training requirements within the statutorily mandated timeframe. It will take several months for training and testing facilities to address the backlog and provide services to those who will be seeking training and testing in order to meet licensing and certification requirements and resume their positions with the nursing homes.

Additionally, careful coordination with federal requirements is necessary to prevent conflict between state and federal regulations. The transition to operating under the full effect of the statute must be coordinated with CMS so that implementation of both state and federal requirements is consistent.

Proclamation 20-38 suspended certain construction review requirements for Assisted Living Facilities and Nursing Homes, as well as Certificate of Need requirements for Nursing Homes to

increase bed capacity and assist in meeting the demand being placed on the health care system. These additional facilities and beds are often specifically allocated for COVID-19 positive residents who would otherwise be cared for in hospitals. Without these suspensions, the approval process for new facilities and increased bed capacity takes weeks longer, leaving health care facilities with insufficient resources to meet the care demands of this outbreak.

For facilities that received approval to increase bed capacity, ending that approval at the expiration of the Proclamation would potentially have severe consequences for those residents who are living in the approved spaces. The facility would need to immediately find alternative placement for the residents regardless of the health status of the resident. Not only would this create an additional burden for the facilities, it could endanger the health and safety of the residents, particularly those being treated for COVID-19. A transition period after expiration of the Proclamation to allow placement of these residents is essential to honoring the commitment made to care for them and to reducing the likelihood of spreading COVID-19 and the potential of preventable death.

To address this, we are requesting an extension of this Proclamation until statutes can be amended to allow a four month grace period for facilities to use these temporarily approved facilities for residents placed during the period of the outbreak, and to continue care for these residents until they either recover or are placed in another fully approved facility. The grace period would begin the month following the end of the public health emergency.

Proclamation 20-44 also addresses coordination between Washington state nursing home laws and those waived by CMS until the end of the first full quarter after the national declaration of the public health emergency concludes. Specifically, the Proclamation coordinates transfer and discharge requirements to cohort residents and provide more flexibility in addressing the capacity of nursing homes to care for all their residents without increasing risk of COVID-19 transmission. Like Proclamation 20-37, should this Proclamation expire without a corresponding grace period, Nursing Homes will be subject to conflicting requirements between state and federal regulations, and the measures taken by CMS to address the unique impacts of the COVID-19 outbreak on Nursing Homes will be undone in Washington state by our more stringent state requirements.

Under [RCW 74.42.450](#), a resident has the right to appeal such a transfer or discharge. Under the Proclamation, the right to appeal is maintained and only the process is modified so that the discharge or transfer can proceed while the appeal is being considered. This procedural change to the appeal process is critical to prevent reintroduction of COVID-19 into facilities caring for our most vulnerable populations during this public health emergency.

To address this, we are requesting an extension of this Proclamation until statutes can be amended to specifically direct DSHS to coordinate transition back to full implementation with CMS and to ensure federal and state requirements are consistent.