

WSR 23-01-032

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 11, 2022, 12:44 p.m., effective January 11, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645 in chapter 246-335 WAC, In-home services agencies. The adopted rules expand the use of telemedicine for home health and hospice agencies. In an effort to align with recent telemedicine legislation, ESHB 1196 (chapter 157, Laws of 2021) and ESHB 1821 (chapter 213, Laws of 2022), the rule amends the definition of telemedicine to include supervision activities and creates new definitions for "audio-only telemedicine" and "established relationship." Home health and hospice agencies will have the option to conduct supervisory visits either on-site or via telemedicine. These rule amendments are also consistent with the intent of the federal government's "Patients over Paperwork" initiative.

When effective, these permanent rules will supersede emergency rules filed under WSR 22-23-166 on November 23, 2022.

Citation of Rules Affected by this Order: Amending WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645.

Statutory Authority for Adoption: RCW 70.127.120, 43.70.250.

Other Authority: RCW 70.12.120, 43.70.250; ESHB 1196 (chapter 157, Laws of 2021); and ESHB 1821 (chapter 213, Laws of 2022).

Adopted under notice filed as WSR 22-17-139 on August 23, 2022.

A final cost-benefit analysis is available by contacting John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2929, TTY 711, email john.hilger@doh.wa.gov, www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: December 9, 2022.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3165.5

AMENDATORY SECTION (Amending WSR 21-06-054, filed 2/25/21, effective 3/28/21)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Audio-only telemedicine" means the delivery of health care services through the use of HIPAA-compliant audio-only technology (including web-based applications), permitting real-time communication between the patient and the agency provider for the purpose of consultation, education, diagnosis, or treatment, as appropriate per scope of practice. "Audio-only telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Audio-only telemedicine" does not include the use of facsimile, electronic mail, or text messages.

(4) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW;

(c) A physician assistant licensed under chapter 18.71A (~~or 18.57A~~) RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

~~((4))~~ (5) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

~~((5))~~ (6) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

~~((6))~~ (7) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

~~((7))~~ (8) "Established relationship" means the patient has had, within the past two years, at least one in-person appointment with the

agency provider providing audio-only telemedicine or with a provider employed at the same agency as the provider providing audio-only telemedicine; or the patient was referred to the agency provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment with the patient and has provided relevant medical information to the provider providing audio-only telemedicine.

~~(9)~~ (9) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

~~((8))~~ (10) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

~~((9))~~ (11) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

~~((10))~~ (12) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

~~((11))~~ (13) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

~~((12))~~ (14) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

~~((13))~~ (15) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

~~((14))~~ (16) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

~~((15))~~ (17) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

~~((16))~~ (18) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along

with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

~~((17))~~ (19) "Patient" means an individual receiving home health services.

~~((18))~~ (20) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

~~((19))~~ (21) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

~~((20))~~ (22) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

~~((21))~~ (23) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

~~((22))~~ (24) "Telemedicine" means the delivery of health care services through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient (~~at the originating site~~) and the agency provider, for the purpose of consultation, education, supervision, diagnosis, (~~consultation~~) or treatment, as appropriate per scope of practice. "Telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Telemedicine" does not include the use of audio-only telephone, facsimile, ~~((or))~~ electronic mail, or text messages.

~~((23))~~ (25) "Therapist" means an individual who is:

- (a) A physical therapist licensed under chapter 18.74 RCW;
- (b) A respiratory therapist licensed under chapter 18.89 RCW;
- (c) An occupational therapist licensed under chapter 18.59 RCW;
- (d) A speech therapist licensed under chapter 18.35 RCW; or
- (e) A massage therapist licensed under chapter 18.108 RCW.

~~((24))~~ (26) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

[Statutory Authority: RCW 70.127.120 and 42 U.S.C. 1395f. WSR 21-06-054, § 246-335-510, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

- WAC 246-335-545 Supervision of home health services.** (1) A licensee must employ a director of clinical services(~~(†)~~).
- (2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence(~~(†)~~).
- (3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of (~~(ten)~~) 10 hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of home health services. Examples of appropriate training include, but are not limited to:
- (a) Agency sponsored in-services;
 - (b) Community venues;
 - (c) Community classes;
 - (d) Conferences;
 - (e) Seminars;
 - (f) Continuing education related to the director's health care professional credential, if applicable; and
 - (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available during all hours patient care is being provided(~~(†)~~).
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient care policies and procedures related to each service provided;
 - (b) Supervision of all patient care provided by personnel and volunteers. The director of clinical services may delegate staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
 - (c) Evaluation of services provided by contractors;
 - (d) Coordination of services when one or more licensed agencies are providing care to the patient;
 - (e) Compliance with the plan of care;
 - (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
 - (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW; and
 - (b) Licensed therapist supervision when using the services of a therapy assistant in accordance with the appropriate practice acts.
- (7) For patients receiving acute care services, supervision of the home health aide services (~~(during an on-site visit)~~) with or without the home health aide present must occur once a month to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine and must be conducted by a licensed nurse or therapist in accordance with the appropriate practice acts(~~(†)~~).

~~((e))~~ (8) For patients receiving maintenance care or home health aide only services, supervision of the home health aide services ~~((during an on-site visit))~~ with or without the home health aide present must occur every six months to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine and must be conducted by a licensed nurse or licensed therapist in accordance with the appropriate practice acts ~~((; and~~

~~(d) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts))~~.

~~((7))~~ (9) A supervisory visit conducted via audio-only telemedicine in subsection (7) or (8) of this section is only permitted for patients that have an established relationship with the provider consistent with WAC 246-335-510(8).

(10) A supervisory visit conducted via telemedicine or via audio-only telemedicine in subsection (7) or (8) of this section may not be used to fulfill the annual performance evaluations and on-site observation of care and skills requirements in WAC 246-335-525(16).

(11) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-545, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-610 Definitions—Hospice. The definitions in this section apply throughout WAC 246-335-605 through 246-335-660 unless the context clearly indicates otherwise:

(1) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's physical, psychosocial, emotional and spiritual status related to their terminal illness and other health conditions. This includes evaluating the caregiver's and family's willingness and capability to care for the patient.

(2) "Audio-only telemedicine" means the delivery of health care services through the use of HIPAA-compliant audio-only technology (including web-based applications), permitting real-time communication between the patient and the agency provider for the purpose of consultation, education, diagnosis, or treatment, as appropriate per scope of practice. "Audio-only telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Audio-only telemedicine" does not include the use of facsimile, electronic mail, or text messages.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state and authorized to approve a hospice plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW; or

(b) An advanced registered nurse practitioner as authorized under chapter 18.79 RCW.

~~((3))~~ (4) "Bereavement services" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

~~((4))~~ (5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

~~((5))~~ (6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home health and hospice agencies.

~~((6))~~ (7) "Established relationship" means the patient has had, within the past two years, at least one in-person appointment with the agency provider providing audio-only telemedicine or with a provider employed at the same agency as the provider providing audio-only telemedicine; or the patient was referred to the agency provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment with the patient and has provided relevant medical information to the provider providing audio-only telemedicine.

(8) "Home health aide" means an individual who is a nursing assistant certified under chapter 18.88A RCW.

~~((7))~~ (9) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of permanent or temporary residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

~~((8))~~ (10) "Hospice services" means symptom and pain management to a terminally ill individual, and emotional, spiritual and bereavement services for the individual and their family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

~~((9))~~ (11) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

~~((10))~~ (12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

~~((11))~~ (13) "Medication administration" means assistance in the application, instillation or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW, 246-840 WAC, and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

~~((12))~~ (14) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice services according to WAC 246-335-615 (4) (a).

~~((13))~~ (15) "Patient" means an individual receiving hospice services.

~~((14))~~ (16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

~~((15))~~ (17) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

~~((16))~~ (18) "Restraint" means:

(a) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely. Restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm, or to physically guide a patient from one location to another; or

(b) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard hospice or palliative care treatment or dosage for the patient's condition.

~~((17))~~ (19) "Seclusion" means the involuntary confinement of a patient alone in a room or an area from which the patient is physically prevented from leaving.

~~((18))~~ (20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

~~((19))~~ (21) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

~~((20))~~ (22) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

~~((21))~~ (23) "Telemedicine" means the delivery of health care services through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient (~~at the originating site~~) and the agency provider(~~)~~ for the purpose of consultation, education, supervision, diagnosis, (consultation) or treatment, as appropriate per scope of practice. "Telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Telemedicine" does not include the use of audio-only telephone, facsimile, (~~or~~) electronic mail, or text messages.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-610, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-645 Supervision of hospice services. (1) A licensee must employ a director of clinical services.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of (~~ten~~) 10 hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of hospice services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

(f) Continuing education related to the director's health care professional credential, if applicable; and

(g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.

(4) The director of clinical services or designee must be available (~~twenty-four~~) 24 hours per day, seven days per week.

(5) The director of clinical services or designee must ensure:

(a) Coordination, development, and revision of written patient and family care policies and procedures related to each service provided;

(b) Supervision of all patient and family care provided by personnel and volunteers. The director of clinical services may assign staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;

(c) Evaluation of services provided by contractors;

(d) Coordination of services when one or more licensed agency is providing care to the patient and family;

(e) Compliance with the plan of care;

(f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and

(g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.

(6) The licensee must document supervision including, but not limited to:

(a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW; and

(b) Licensed therapist supervision when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) Licensed nurse supervision of home health aide services ((during an on-site visit)) with or without the home health aide present once a month to evaluate compliance with the plan of care and patient and family satisfaction with care (~~and~~

(~~c~~) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts)). The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine.

~~((7))~~ (8) A supervisory visit conducted via audio-only telemedicine in subsection (7) of this section is only permitted for patients that have an established relationship with the provider consistent with WAC 246-335-610(7).

(9) A supervisory visit conducted via telemedicine or via audio-only telemedicine in subsection (7) of this section may not be used to fulfill the annual performance evaluations and on-site observation of care and skills requirements in WAC 246-335-625(15).

(10) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-645, filed 3/6/18, effective 4/6/18.]