

WSR 21-04-059

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed January 28, 2021, 9:58 a.m., effective January 28, 2021, 9:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-335-510 Definitions—Home health, the department of health (department) is continuing the emergency rule amendment to WAC 246-335-510(3) to include physician assistants in the list of practitioners authorized to order home health services and to sign plans of care, consistent with federal regulation changes due to the coronavirus disease (COVID-19) pandemic.

This continues previous emergency rules, without changes, while expedited rule making is in progress to adopt permanent rules. Emergency rules being continued were initially filed as WSR 20-12-075 and later continued as WSR 20-20-029. Expedited permanent rule making, still in progress, was filed as WSR 20-23-089 on November 17, 2020.

The emergency rules adopted are consistent with federal changes authorizing physician assistants to certify the need for home health services. These changes were initially made by the federal Coronavirus Aid, Relief and Economic Security (CARES) Act, H.R. 748, in response to the COVID-19 pandemic; soon afterwards, these changes were incorporated into federal regulation at 42 C.F.R. §§ 484.2 and 409.43. Amending the department's rules to allow physician assistants to order home health services will not only align department rules with federal regulation, but also allow health care facilities to better respond to the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 246-335-510.

Statutory Authority for Adoption: RCW 70.127.120.

Other Authority: 42 U.S.C. 1395f.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The immediate continuation of this emergency rule is necessary for the preservation of public health, safety, and general welfare. By extending the emergency rule amendments, the department aligns with other state and federal actions that assist facilities to meet the needs of more patients on a more expedient timeline. Expanding the types of authorizing practitioners to include physician assistants allows facilities to more quickly discharge appropriate stable patients by ordering home health services, rather than have a delayed stay in a hospital or other facility during the continuing public health emergency during the COVID-19 pandemic.

Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the federal guidelines.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, 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 0, 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 1, Repealed 0.

Date Adopted: January 20, 2021.

Jessica Todorovich  
Chief of Staff  
for Umair A. Shah, MD, MPH  
Secretary

## OTS-2308.2

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

**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) "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)~~)

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

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

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

(14) "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) "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) "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) "Patient" means an individual receiving home health services.

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

(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.

(21) "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) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "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) "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 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]