Washington State Medical Association
Physician Driven, Patient Focused

Governor Inslee updates non-urgent procedure proclamation

NOVEMBER 2020

On November 25, 2020, Governor Inslee issued updated guidance for the continued performance of non-urgent health care services, procedures, and surgeries.

Proclamation 20-24.2 amends and extends proclamations 20-05 and 20-24, and applies to all health care facilities, practices, and practitioners.

While the majority of provisions remain substantially the same, the updates include more specificity and adherence to additional agency guidelines (e.g., Department of Labor and Industries (L&I) Division of Occupational Safety and Health (DOSH)). Please note there are new, additional criteria for ambulatory surgical facilities, as outlined below.

It is effective December 3, 2020 through the end of the state of emergency, or until it is rescinded or updated.

The proclamation allows health care facilities, practices, and practitioners to provide non-urgent health care services if the facilities, practices, and practitioners act in good faith and with reasonable clinical judgment to meet specific criteria and making certain considerations, as detailed below.

As violating the proclamation could subject physicians to criminal penalties, the WSMA strongly urges you to review the proclamation.

With questions, please email policy@wsma.org.

COVID-19 assessment and expansion and contraction of care plan

Proclamation 20-24.2 as it applies to expansion/contraction of care plans

The proclamation requires each health care facility, practice, or practitioner to develop and maintain an expansion and contraction of care plan that is both congruent with the community COVID-19 assessment, consistent with the clinical and operation capabilities of the organization, and responsive to the criteria provided below.

Expansion and contraction of care plans should be operationalized based on the standards of care that are in effect in the health care facility, practice or practitioner's relevant geography as determined by that region's regional health care coalition, as follows:

- **Conventional Care Phase**: All appropriate clinical care can be provided
- **Contingency Care Phase**: All appropriate clinical care can be provided so long as there is sufficient access to PPE and, for hospitals, surge capacity is at least 20%.
- **Crisis Care Phase**: All emergent and urgent care shall be provided; non-urgent care, the postponement of which for more than 90 days would, in the judgement of the clinician, cause

harm; the full suite of family planning services and procedures, newborn care, infant and pediatric vaccinations, and other preventive care, such as annual flu vaccinations, can continue.

Defining patient harm

Proclamation 20-24.2 as it applies to the definition of "harm"

Non-urgent health care services, procedures, and surgeries are those that, if delayed, are not anticipated to cause harm to the patient within 90 days. The decision to perform any surgery or procedure should be weighed against the following criteria when considering potential harm to a patient's health and well-being:

- Expected advancement of disease process
- Possibility that delay results in more complex future surgery or treatment
- Increased loss of function
- Continuing or worsening of significant or severe pain
- Deterioration of the patient's condition or overall health
- Delay would be expected to result in a less-positive ultimate medical or surgical outcome
- Leaving a condition untreated could render the patient more vulnerable to COVID-19 contraction, or resultant disease morbidity and/or mortality
- Non-surgical alternatives are not available or appropriate per current standards of care
- Patient's co-morbidities or risk factors for morbidity or mortality, if inflicted with COVID-19 after procedure is performed

Diagnostic imaging, diagnostic procedures or testing should continue in all settings based on clinical judgement that uses the same definition of harm and criteria as listed above. The full suite of family planning services and procedures are not non-urgent.

Criteria

Proclamation 20-24.2 as it applies to the criteria for resuming, continuing, or discontinuing non-urgent procedures

To maintain surge capacity and appropriate levels of PPE, the proclamation requires health facilities, practices, and practitioners to comply with the following requirements:

- ☐ Exercise clinical judgement to determine the need to deliver a health care service in the context of the broader health care needs of patients and communities during the pandemic, as well as within the parameters of operation provided by the setting in which they are providing services.
- ☐ Monitor the COVID-19 status in the community, and monitor the capacity in the health care system to ensure there are sufficient resources, including:
    - Ventilators
    - Beds
    - PPE
    - Blood and blood products
    - Pharmaceuticals
    - Trained staff

- ☐ Monitor the facility's, practice's, or practitioner's supply of PPE and maintain sufficient access to PPE. Health care facilities, practices, and practitioners must comply with Department of Health (DOH) rules and guidance, and Department of Labor and Industries (L&I) Division of Occupational Safety and Health (DOSH) rules and guidance on personal protective equipment (PPE).
- ☐ Comply with all applicable state and federal labor and employment laws and provide the staffing and safe work conditions necessary to provide safe patient care.
- ☐ Update and implement infection prevention policies and procedures as necessary to reflect current best practice guidelines for universal precautions issued by the CDC, DOH, and L&I.
- ☐ Circulate infection prevention practices to staff, and train staff on relevant infection prevention practices.
- ☐ Regularly evaluate and improve a formal employee feedback process to obtain direct input regarding care delivery processes, PPE, and technology availability.
- ☐ Utilize telemedicine as permitted by law for the type of care being provided in order to facilitate access to care while helping minimize the spread of the virus to other patients and/or health care workers.
- ☐ Implement policies for non-punitive employee leave that adhere to CDC return-to-work guidance and applicable law.
- ☐ Post signage that strongly encourages staff, visitors, and patients to practice frequent hand hygiene with soap and water or hand sanitizer, avoid touching their face, and practice cough etiquette.
- ☐ Follow CDC Guidance on *Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic*, including ay subsequent amendment, for COVID-19 symptom screening for all patients, visitors, contractors, volunteers, and staff prior to, or immediately upon, entering a facility or practice.
- ☐ Limit visitors to those essential for the patient's well-being and care. As required under Proclamation 20-25.7, including any subsequent amendments, require visitors to wear face coverings in compliance with the Secretary of Health's order including the exceptions and exemptions therein.
- ☐ As required under Proclamation 20-25.7, including any subsequent amendments, and the requirements of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd, and other applicable state and federal laws, require patients to wear face coverings in compliance with the Secretary of Health's order, including the exceptions and exemptions therein.
- ☐ To the greatest extent possible given the constraints of the facility layout, maintain strict physical distancing in patient scheduling, check-in processes, positioning, and movement within a facility. Set up waiting rooms and patient care areas to facilitate patients, visitors, and staff to maintain ≥6 feet of distance between them whenever possible, consider rooming patients directly from cars or parking lots, space out appointments, and consider scheduling or spatially separating well visits from sick visits.
- ☐ Except when physical distancing would interfere with providing health care, require, ensure, and provide adequate space, procedures, and means to maintain physical distancing of at least six feet by all employees in all areas of the hospital/clinic, including public areas, halls, office areas, breakrooms and cafeteria rooms.
- ☐ Frequently clean and disinfect high-touch surfaces regularly using an EPA-registered disinfectant, in accordance with guidance issued by the CDC, DOH, and L&I. Follow CDC guidelines to clean after reports of an employee with suspected or confirmed COVID-19

illness. This may involve the closure of the facility or areas of the facility until the location can be properly disinfected.

- ☐ Notify the local health jurisdiction where the facility or practitioner is located within 24 hours of identification of a COVID-19 outbreak, defined as suspected transmission among staff, patients, or visitors within the facility as defined in the *Department of Health's COVID-19 Outbreak Definition for Healthcare Settings*, including any subsequent amendments. Subject to applicable privacy and confidentiality laws and rules, create and maintain a list of staff, patients, contractors, volunteers, and visitors with confirmed or suspected cases or exposure.
- ☐ Exclude employees infected with or with known or suspected high-risk exposure to COVID-19 from the workplace in accordance with the CDC's *Interim U.S. Guidance for Risk Assessment and Work Restrictions for Healthcare Personnel with Potential Exposure to COVID-19* and *Criteria for Return to Work for Healthcare Personnel with SARS-CoV-2 Infection*, subject to the direction of the local health jurisdiction.
- ☐ Promptly offer and make available, either on-site or by directing to an external local testing location, testing to employees who have signs or symptoms consistent with COVID-19.
- ☐ Educate patients about COVID-19 in a language they best understand. The education should include the signs, symptoms, and risk factors associated with COVID-19 and how to prevent its spread.
- ☐ Follow the requirements in Governor Inslee's Proclamation 20-46 - *High-Risk Employees – Workers' Rights,* as amended.
- ☐ Follow any direction, order, requirement, or guidance issued by the LHJ, Department of Health or the Department of Labor and Industries for the implementation of this proclamation.

If a facility, practice, or practitioner cannot or does not comply with any of these requirements, non-urgent services, procedures, and surgeries must be reduced or stopped until compliance is achieved in accordance with the direction, order, requirements, or guidance issued by the Department of Health (DOH) or Department of Labor and Industries (L&I).

Other considerations

Additional considerations for making health system capacity decisions

In addition to the criteria listed above, facilities, practices and practitioners must consider:

1. The level and trending of COVID-19 infections in the relevant geography;
2. The availability of appropriate PPE;
3. Collaborative activities with relevant emergency preparedness organizations and/or LHJ;
4. Surge capacity of the hospital/care setting; and
5. The availability of appropriate post-discharge options addressing transitions of care.

Further criteria for ambulatory surgical centers, hospitals

Proclamation 20-24.2 as it applies to ambulatory surgical centers and hospitals

In addition to the above, the proclamation also requires hospitals and ambulatory surgical centers to meet the following requirements:

- ☐ For clinical procedures and surgeries, develop and implement setting-appropriate, pre-procedure COVID-19 testing protocols from Department of Health guidance or, if none is issued, relevant and reputable professional clinical sources and research.
- ☐ For employees with known or suspected high-risk workplace exposure to SARS-CoV-2, notification to the employee and, with the employee's authorization, to their union representative, if any, by the facility must occur within 24 hours of confirmed exposure. For all high-risk exposures, testing must be offered and made available within an appropriate timeframe according to CDC guidelines for testing healthcare personnel. Testing must be conducted in accordance with the CDC's *Interim Guidance on Testing Healthcare Personnel for SARS-CoV-2*, including any subsequent amendments, subject to the direction of the local health jurisdiction. Per the CDC, test results should be available rapidly, within 24 hours of specimen collection. If the health care facility is unable to provide testing results within this timeframe, the employee should be referred to another testing site.
- ☐ Healthcare organizations may, at times, due to PPE shortages created by disruptions to global supply chains, operate in a contingent/crisis mode regarding PPE usage. In such situations, healthcare organizations must utilize PPE protocols that are consistent with CDC guidelines for non-conventional PPE usage. During times when contingent/crisis PPE protocols are in use, healthcare organizations must implement active epidemiological monitoring protocols, including testing of all employees with COVID-19-like illness symptoms within 24 hours of the onset of those symptoms, and implement randomized surveillance testing of employees in consultation with the local health jurisdiction.
- ☐ Develop and implement, or continue, and regularly evaluate and improve a management/employee/union (if applicable) group to review current PPE, projected PPE burn rates, and projected delivery of PPE supplies and understand how that impacts operations for PPE use twice a month.
- ☐ **HOSPITALS ONLY:** Submit accurate and complete data, as required by any Department of Health (DOH) guidelines, to the WA HEALTH data reporting system to allow for a state-wide common operating perspective on resource availability.
- ☐ **HOSPITALS ONLY:** Before providing non-urgent care, hospitals must have sufficient resources to allocate staff and provide meal and rest periods and work hours according to the standards that apply in non-emergent circumstances. Specifically, to be able to continue providing non-urgent care, hospitals that are engaged in the COVID-19 response must meet the following requirements when providing non-urgent services, procedures, and surgeries:
    - For hospitals defined in RCW 70.41.410(1), assign nursing personnel for all non-urgent services, procedures, and surgeries in accordance with the hospitals nursing staff plan adopted under RCW 70.41.420.For hospitals that are employers under RCW 49.12.480, provide employees, as defined in RCW 49.12.480(3)(a) who are providing non-urgent services, procedures, and surgeries, with meal and rest periods as required by WAC 296-126-092, except that rest periods must be scheduled and the employers must provide employees with uninterrupted meal and rest breaks, unless there is a clinical circumstance as described in RCW 49.12.480(1)(b)(ii) that interrupts the break.
    - For health care facilities, as defined in RCW 49.28.130(3)(a), do not require, compel, or force any employee, as defined in RCW 49.28.130(1)(a) who are providing non-

urgent services, procedures, and surgeries, to work overtime, unless the circumstance falls under the exceptions listed in RCW 49.28.140(3)(d).

*This document is provided for general informational purposes only. It is not intended to provide or be relied upon for legal advice. It is not intended to be a definitive interpretation of the proclamation, and may not be comprehensive or ensure compliance with the requirements. Accordingly, before utilizing this checklist, the WSMA strongly urges all physicians seeking to provide care during the pandemic to read the proclamation to understand requirements in detail.