



Establish Core State Law Waivers to Prepare for Future Emergencies

Background

Waivers of certain state health care laws have proven essential for hospitals and the health care system to respond to the threats to life and health posed by the COVID-19 pandemic. State law waivers, and federal law waivers, are critical for Washington State hospitals to quickly create surge capacity and provide essential care during a state of emergency. To better prepare for future emergencies, the state should establish a core set of waivers that can be quickly enacted to speed the health care response.

There are currently more than 150 health care related state law waivers in place. Unfortunately, it took more than 30 days following emergency declaration for the state to get many health care waivers in place. Washington State will face future emergencies and establishing a trigger for crucial health care system waivers is a necessary part of the state's all-hazards emergency preparedness, including preparedness for earthquakes and volcanic eruptions in addition to pandemics. We need to take what we have learned from this pandemic to ensure we are prepared in the future.

WSHA Position

Based on the experience of hospitals and health care providers during the current state of emergency, there are 30 state laws that must be immediately waived for hospitals to surge in the event of an emergency. These critical, core waivers fall into four groups: 1) Certificate of Need; 2) Facility licensure; 3) Pharmacy licensure; and 4) Health care provider licensure. Given the overlap of state and federal laws, when federal laws are waived during a national state of emergency, Washington State health care providers and facilities should be able to rely on the federal waiver until the state explicitly declines to waive the corresponding state law.

Key Messages

- Establishing an automatic trigger in a state of emergency for limited core health care waivers would streamline the state's process and rapid response. The governor's emergency powers are not altered. The governor may reject automatic waivers with a finding that compliance with the law would not prevent response to the emergency.
- During the COVID-19 pandemic, the federal government quickly instituted an array of federal law waivers. Although Washington State experienced the first COVID-19 case in the nation, state law waivers took much longer to institute. Essential state health care law waivers had been identified in several emergency preparedness reports over the years, but these state reports did not streamline the waiver process in an actual emergency.
- Core waivers related to Certificate of Need and facility licensure enable hospitals to add more beds, repurpose existing hospital space in new ways, quickly reopen closed acute care sites, transfer or discharge

patients to post-acute settings, and provide care at alternative sites. Core pharmacy licensure waivers allow expansion of pharmacy services, including at alternative care sites.

- State laws that mirror federal laws can pose impediments when the federal law is waived, but the state law is not. For example, federal law limits critical access hospitals (CAH) to 25 beds and our state law incorporates the federal limit. The federal government waived the CAH bed limit early in the COVID-19 pandemic and it took the state weeks to waive the equivalent state law. This leads to confusion and unnecessary delay in expanding rural hospital capacity.

Contact Information

Zosia Stanley
Associate General Counsel
ZosiaS@wsha.org | 206.216.2511

Lisa Thatcher
WSHA Lobbyist
Lisathatcher@comcast.net | 253.686.8746