JAY INSLEE
Governor

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PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 AND 20-24, et seq.

20-24.2

Requirements for Non-Urgent Medical and Dental Procedures

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations; and

WHEREAS, I issued Proclamations 20-25, et seq., first entitled "Stay Home – Stay Healthy," in which I initially prohibited all people in Washington State from leaving their homes except under certain circumstances, which I later amended to "Safe Start – Stay Healthy – County-By-County Phased Reopening," gradually relaxing those limitations based on county-by-county phasing, and on November 16, 2020 again amended 20-25, et seq., to "Stay Safe – Stay Healthy - Rollback of County-By-County Phased Reopening Responding to a COVID-19 Outbreak Surge," in response to a large surge of new cases of COVID-19, increased hospitalizations and ongoing COVID-19 related deaths in Washington State; and

WHEREAS, the COVID-19 disease, caused by a virus that spreads easily from person to person which may result in serious illness or death and has been classified by the World Health Organization as a worldwide pandemic, is again broadly spreading throughout Washington State, in a new wave of infections and hospitalizations, significantly increasing the threat of serious associated health risks statewide; and

WHEREAS, the health care personal protective equipment (PPE) supply chain in Washington State has been severely disrupted by the significant increased use of such equipment worldwide, such that there are now shortages of this equipment for health care workers. To curtail the spread of the COVID-19 pandemic in Washington State and to protect our health care workers as they provide health care services, it is necessary to prohibit all medical, dental and dental specialty facilities, practices, and practitioners in Washington State from providing non-urgent health care and dental services, procedures and surgeries unless specific procedures and criteria are met; and

WHEREAS, in accordance with the state comprehensive management plan, the State Departments of Enterprise Services, Health, and Military have facilitated the purchase and delivery of vital PPE and other health care equipment, to assist the state's hospitals, health systems, and other providers of clinical services to address the health care crisis created by the COVID-19 pandemic; and

WHEREAS, Washington State's collaborative approach has been effective in addressing the significant public health issues associated with the disease, while greatly expanding the clinical and operational capacity of the health system to effectively care for COVID-19 patients and safely provide preventive, diagnostic, outpatient, ambulatory, acute, and post-acute care for all people in need of care via both in-person and virtual means. The professionalism, expertise, and compassion of Washington's clinicians, nurses, and other health care professionals during the COVID-19 pandemic has been exemplary; and

WHEREAS in the early days of the pandemic, I, in collaboration with the Washington State Department of Health and health care system partners, established a data-driven approach to addressing the health and safety of Washington's citizens and communities, which was successful in reducing the impact of the disease in the State and must continue to direct the state's health care response to the pandemic; and

WHEREAS, I have requested and will again request that the leadership of the Legislature extend Proclamation 20-29, et seq., to require telemedicine payment parity through year-end 2020, when the new parity law in ESSB 5385 will take effect; and

WHEREAS, recognizing that health status is impacted both by social determinants of health and untreated or inadequately treated health conditions, it is vital that public and private sector participants in the health care system work to enhance public health capabilities and capacity, such as testing, contact tracing and follow-up, and that access to appropriate care be expanded as safely as possible; and

WHEREAS, the exercise of clinical judgement by healthcare and dental professionals related to the care of patients is essential, and it is essential for all of our health and dental partners to follow the same procedures as outlined in this proclamation and work together to protect the health of all of our residents; and

WHEREAS, access to medical services is imperative to maintaining the health and welfare of all our residents, so that our residents do not forego medically necessary care unnecessarily and risk their own safety and welfare; and

WHEREAS, the worldwide COVID-19 pandemic and its progression throughout Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of this ongoing incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to

support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people.

NOW, THEREFORE, I, Jay Inslee, Governor of Washington, as a result of the above-noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim that a State of Emergency continues to exist in all Washington State counties, that Proclamation 20-05 and all amendments thereto remain in effect, and that Proclamations 20-05 and 20-24, et seq., are amended to immediately prohibit certain medical and dental procedures, with exceptions, and as provided herein.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Also, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

FURTHERMORE, based on the above situation and under the provisions of RCW 43.06.220(1)(h), to help preserve and maintain life, health, property or the public peace, I hereby prohibit all health care, dental and dental specialty facilities, practices, and practitioners in Washington State from providing non-urgent health care and dental services, procedures, and surgeries, unless they act in good faith and with reasonable clinical judgment to meet and follow the procedures and criteria provided below:

Expansion and Contraction of Care Plan
Each health care, dental or dental specialty facility, practice, or practitioner must 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 operational capabilities and capacities 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 healthcare 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 judgment 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.

Criteria for Resuming, Continuing, or Discontinuing Non-Urgent Procedures

Until there is a widely available effective vaccine or herd immunity, hospitals, emergency management agencies, regional healthcare coalitions, professional associations, unions and local health jurisdictions will work together to maintain surge capacity in our health care system and use PPE so that we can keep health care workers safe and provide the needed health care to our communities. To this end, the following must be met by health care, dental and dental specialty facilities, practices, and practitioners in order to provide non-urgent services, procedures, and surgeries. If a health care 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 and in accordance with the direction, order, requirements, or guidance issued by the Department of Health (DOH) or Department of Labor & Industries (L&I), if any:

- Exercise clinical judgment to determine the need to deliver a health care or dental service in the context of the broader health care and dental needs of patients and communities and in the context of the pandemic, and within the parameters of operation provided by the health care, dental or dental specialty facility, practice or practitioner setting in which they are providing services.
- Continuously monitor the COVID-19 status in the communities they serve.
- Continuously monitor capacity in the health care system to ensure there are sufficient resources, including ventilators, beds, PPE, blood and blood products, pharmaceuticals, and trained staff available to combat any potential surges of COVID-19.
- Continuously monitor the facility's, practice's, or practitioner's supply of PPE and maintain sufficient access to 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 infection prevention policies and procedures as necessary to reflect current best practice guidelines for universal precautions issued by the Centers for Disease Control and Prevention (CDC), DOH, and L&I, and implement such policies and procedures.
- 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 to 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 any subsequent amendments, 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 20-25.8, including any subsequent amendments, require visitors to wear face coverings in compliance with the Secretary of Health's order (20-03.1), including the exceptions and exemptions therein.
- As required under Proclamation 20-25.8, including any subsequent amendments, and subject to 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 (20-03.1), 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 at least six 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 Environmental Protection Agency (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*, including any subsequent amendments, 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, et seq., *High-Risk Employees – Workers' Rights*.

- Follow any direction, order, requirement, or guidance issued by the local health jurisdictions, DOH or L&I for the implementation of this proclamation.

In addition to the above requirements, hospitals and ambulatory surgical facilities must also meet the requirements below in order to provide non-urgent services, procedures, and surgeries. As provided above, if a hospital or ambulatory surgical facility cannot or does not comply with any of the requirements in the lists above or below, non-urgent services, procedures, and surgeries must be reduced or stopped until compliance is achieved and in accordance with the direction, order, requirements, or guidance issued by DOH or L&I, if any:

- For hospitals only, submit accurate and complete data, as required by any DOH guidelines, to the WA HEALTH data reporting system to allow for a state-wide common operating perspective on resource availability.
- To maintain health system capacity and staff readiness during the COVID-19 epidemic, hospitals that are engaged in the COVID-19 response must meet the following requirements when providing non-urgent services, procedures, and surgeries:
    - For hospitals as defined in RCW 70.41.410(1), assign nursing personnel for all non-urgent services, procedures, and surgeries in accordance with the hospital's nurse staffing plan adopted under RCW 70.41.420.
    - For hospitals that are employers within the meaning of RCW 49.12.480, provide employees, as defined in RCW 49.12.480(3)(a), who are providing non-urgent services, procedures, or 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 is providing non-urgent services, procedures, or surgeries, to work overtime, unless the circumstance falls under the exceptions listed in RCW 49.28.140(3)(d).
- For clinical procedures and surgeries, develop and implement setting-appropriate, pre-procedure COVID-19 testing protocols from DOH 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 in accordance with 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.

FURTHERMORE, I hereby prohibit all health care, dental and dental specialty facilities, practices, and practitioners in Washington State from failing to comply with Department of Health and Department of Labor and Industries Division of Occupational Safety and Health rules and guidance on PPE.

ADDITIONALLY, for purposes of this proclamation, non-urgent health care and dental 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 in health care, dental and dental specialty facilities and offices 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 judgment 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.

ADDITIONALLY, when making health system care capacity decisions, health care, dental and dental specialty facilities, practices, and practitioners must, in addition to the above, consider:

- the level and trending of COVID-19 infections in the relevant geography,
- the availability of appropriate PPE,

- collaborative activities with relevant emergency preparedness organizations and/or local health jurisdictions,
- surge capacity of the hospital/care setting, and
- the availability of appropriate post-discharge options addressing transitions of care.

ADDITIONALLY, given the geographic diversity of Washington, the variability in COVID-19 disease burden within the state, and health care system capabilities and capacity, no uniform approach to expanding access to care is possible nor would any such approach be effective or wise. It is essential that health care system participants act with good judgment within the context of their patients' needs, their environment, and their capabilities and capacity.

This Proclamation goes into effect at 12:01 a.m. on December 3, 2020, and shall remain in effect until the state of emergency, issued on February 29, 2020, pursuant to Proclamation 20-05, is rescinded, or until this order is amended or rescinded, whichever occurs first.

Violators of this order may be subject to penalties pursuant to RCW 43.06.220(5).

Signed and sealed with the official seal of the state of Washington on this 25th day of November, A.D., Two Thousand and Twenty at Olympia, Washington.

By:

/s/
Jay Inslee, Governor

BY THE GOVERNOR:

/s/
Secretary of State