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POLICY NOTE

What Washington State got right during the pandemic, and why temporary regulatory changes should be made permanent

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Key Findings

1. In response to the COVID-19 health crisis state leaders moved swiftly to remove regulatory barriers to care, but only on a temporary basis.
2. These positive changes should be made permanent so people can continue to benefit after the present crisis has passed.
3. Positive changes include suspension of Certificate of Need laws so more beds and care facilities could be made available to serve patients.
4. The Governor suspended licensing barriers so doctors and nurses trained in other states could treat sick people in Washington State.
5. The Governor issued an order to allow patients to use telemedicine services on platforms previously disallowed.
6. Enacting long-term health insurance reform to make these and other regulatory changes permanent would give Washington residents greater access to medical care at lower costs, without having to go through another public health crisis.

Introduction

Throughout history, battlefield surgical techniques, developed out of necessity in times of crisis, have been incorporated permanently into civilian medical practice, because they proved superior. This resulted in great advances in patient treatments. During the early weeks of March 2020, we were faced with a new and unknown infection. As in times of war, the emergency revealed important advances in the practice of medicine.

The early response by our state government was swift and appropriate. In an effort to streamline health care, executive orders, mandates, and reforms were temporarily enacted that greatly increased people's access to care.

As we battled the pandemic, it has become clear that some of these improved policies have proven of lasting benefit to our state's population. In 2020, officials made rapid changes to healthcare laws that they deemed in the best interest of public health. These positive changes should be made permanent so the public can continue to benefit after the present crisis has passed.

The following proposals are offered to give our Governor and the Legislature the facts that support enacting these practical improvements into law. These proposals improve patient access and patient health while decreasing healthcare costs. Implementing these changes would have a positive impact on the healthcare delivery system in Washington, greater than we have seen in years.

Policy recommendations

Repeal Certificate of Need laws

Washington State officials suspended, that is, temporarily repealed, the state's strict Certificate of Need (CON) laws for long-term care facilities. Without the limitations imposed by CON, the state quickly set up non-hospital health care facilities to handle overflow from traditional hospitals and was able to provide the public with low-cost, easy-access COVID-19 testing sites. Under the CON legal process, it would have taken years and thousands of dollars to provide the public with the same health facilities.

This experience raises a disturbing question for lawmakers. Why is there any regulation that decreases patient access to hospital beds, ICUs, or surgical suites? In a time of crisis, this archaic regulation was clearly highlighted as a failure. Some have even speculated that pointless state rules contributed to the number of COVID-19 deaths. Certificate of Need in the health care setting has existed since the 1960s. The goal was to regulate the number of hospitals and services in certain areas. The thinking then was that by limiting the number of hospital beds, quality of care would improve, and the cost of care would decrease.

Experience soon showed the concept did not work. The federal Certificate of Need law was struck down in 1987 because it was not accomplishing these goals. Well-established and politically connected hospitals were awarded Certificates of Need, while doctors and facilities without strong lobbying operations were shut out. Predictably, as supply went down and patient demand increased, healthcare prices increased, resulting in reduced access. The economic justification of the original CON laws was debunked decades ago. It is clear CON laws eliminate competition on the false pretext of improving patient care and in doing so decreases the availability of Skilled Nursing Facilities, long-term care, hospital beds, and other patient services.

Research shows CON laws reduce access to care. Eichmann reported in the *Journal of Health Care Finance* (Summer 2011:37(4):1-14) that the states with CON laws reduced the number of available beds at a typical hospital by 12% and decreased the number of hospitals per 100,000 people by 48%.

In Washington State, entities that control Certificates of Need barter, negotiate and sell CONs using an unfair advantage because they have veto power over those applying to open a new health facility in their community. This limits competition which could drive down prices. There were ample reasons prior to the coronavirus crisis to repeal the Certificate of Need law. The COVID-19 crisis has highlighted and validated those reasons.

Telehealth care should be reimbursed to reflect the market. Allow the advances in digital health technology to be utilized

The state should not interfere with or place barriers between the patients and providers who use telemedicine for consultation to improve access to care. At the start of the health crisis state officials rightly declared that telemedicine visits would be temporarily reimbursed at the same rate as in-person visits. This temporary policy should be made permanent.

The telemedicine visits were authorized on social media platforms, over the telephone, or on a computer. In the COVID-19 crisis, the HIPPA rules limiting telemedicine were suspended.[1] This transformed the delivery of healthcare overnight. Physicians and healthcare systems bought digital platforms to provide care, employ staff to provide training, and to implement telehealth services.

1 "Emergency order on telehealth coverage extended to Feb. 7," Office of the Insurance Commissioner, January 8, 2021, at https://www.insurance.wa.gov/news/emergency-order-telehealth-coverage-extended-feb-7.

Patients in underserved rural communities may benefit the most from telemedicine. The economic benefit to the health care system is avoiding unnecessary trips to the emergency room, as early intervention can prevent serious complications that require costly hospital services.

Another patient benefit is avoiding excess time off from work to drive to a doctor's office. It is clear the advantages of telemedicine will continue after the COVID-19 crisis. Physicians must be allowed to decide which patients would benefit from telehealth, and policymakers should respect the decisions of patients to use telemedicine services.

State regulators and insurance companies should not pre-empt patient/doctor interactions. Lawmakers should help extend the use of telemedicine, offer guidelines, and protect patients' and clinicians' right to use telemedicine.

Allow healthcare providers who are credentialled in other states and by valid regulatory agencies to practice in Washington state

This licensing should be streamlined. The COVID-19 crisis sparked significant deregulation of the healthcare workforce. Government licensing of physicians is a barrier to care.

The Inslee Administration allowed medical volunteers who are not credentialled in Washington state to help patients without being threatened with lawsuits.[2] These providers are permitted to provide emergency services.

Allowing physicians, nurses, and other providers with valid credentials from other states to practice medicine in Washington would allow patient access to national telehealth providers. Changes in the law have the added benefit of easing the looming physician shortage. The state's costs of credentialing clinicians would be decreased. There is precedence in laws allowing military spouses with out-of-state credentials to practice medicine in Washington.

Enact health insurance reform - increase short-term, limited liability insurance from 3 months to 36 months

National reforms to the short-term limited duration (STLD) plans allow people 36 months of coverage at a lower price than the ACA plans. These are the people who are unemployed, whose businesses closed, cannot afford the state plans, or are out of the window of enrollment. We should not eliminate these options for Washington residents. Premiums in the STLD plans are 6% lower than ACA plans, for the same protection (excluding maternity) and cover more hospitals and providers.

Washington State legislators have the opportunity to give the public more choice for fewer health care dollars. The state should increase the current STLD insurance limits of 3 months to 36 months of coverage with possibility of renewal.

2 "Inslee signs health care licensing waivers and other COVID-19 related orders," Office of the Governor, Washington state, March 26, 2020, at https://www.governor.wa.gov/news-media/inslee-signs-health-care-licensing-waivers-and-other-covid-19-related-orders.

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Conclusion – Enact practical and proven healthcare reform

Washington State officials mandated several health insurance changes unilaterally and quickly in response to the COVID-19 crisis. Changes can be made expeditiously for the benefit of the public.

When evaluating reforms, policymakers should look at the history of past efforts. For example, they should compare what was expected with the actual outcomes of the Affordable Care Act (ACA).

It was expected that 25 million American lives would be covered, the true number is closer to 10 million (60% lower than projected). The Affordable Care Act was passed with the expectation healthcare costs would be driven down or leveled. That did not happen. The Centers for Medicare and Medicaid Services (CMS) estimate national health care spending consumed 17.7% of GDP in 2018 and spending increased to $3.81 trillion in 2019.

The federal government is on the verge of expanding this system. Instead, we should evaluate the ten-year history, reinforce the best policies as recommended by this study, and abandon government-centered, expensive, low-yield policies.

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