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Bill Reforms WI's "outdated, duplicative and confusing" Hospital Regulations *Rep. Marklein, Sen. Vukmir circulate legislation to modernize DHS 124*

As part of a recent project in the state Legislature to "Right the Rules," Representative Howard Marklein (R-Spring Green) and Senator Leah Vukmir (R-Wauwatosa) circulated legislation January 29 to reform portions of Wisconsin's administrative code that regulates hospitals. The bill, beginning July 1, 2016, makes the Department of Health Services' (DHS) oversight of hospitals more efficient by allowing its hospital regulators to apply the same standards for state purposes as they do for the Centers for Medicare and Medicaid Services as agents of the federal government. DHS would retain the authority to promulgate state specific standards, if needed.

In fact, Governor Scott Walker's *2013 Wisconsin Regulatory Review Report* called for a reform of DHS 124. The report said that updates were needed to state regulations for hospitals because the rule is "outdated, duplicative and confusing for health care operators."

Companion legislation will be introduced in both the Assembly and the Senate. As the end of session is coming near, WHA expects swift action in both Assembly and Senate Committees on this legislation.

"Having to comply with both state and federal regulations can cause unneeded increases in costs for hospitals, thereby increasing costs for patients," said Rep. Marklein and Sen. Vukmir in a memo to their colleagues asking for co-sponsors. Their memo continued by stating that this legislation "would make
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Guest Column

Court to Examine Whether an Unpaid Health Care Intern is Protected Under HCWPA

By Attorneys Timothy W. Feeley, Sara J. MacCarthy and Marcus M. Hall, Hall, Render, Killian, Heath and Lyman, PC

On January 24, 2014, the Wisconsin Hospital Association (WHA) filed its amicus brief in *Masri v. LIRC*, in which the Wisconsin Supreme Court will determine whether an unpaid medical intern is an "employee" protected under the Wisconsin Health Care Worker Protection Act (HCWPA). See WIS. STAT. § 146.997.

The plaintiff, Asma Masri ("Masri"), was a doctoral candidate at UW-Milwaukee who was participating in an unpaid internship at the Medical College of Wisconsin (MCW). Masri worked 40 hours a week and was given office space, support staff, free parking, full access to facilities and patient records, and professional networking opportunities. During her internship, she met with an MCW official to report numerous alleged medical ethics violations she allegedly observed. Shortly thereafter, MCW terminated her internship.

Masri filed a retaliation complaint with the Equal Rights Division (ERD) of Wisconsin's Department of Workforce Development (DWD), asserting a violation of the HCWPA. The ERD dismissed the complaint
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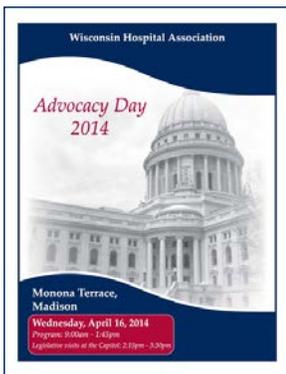
on the grounds that Masri was not an "employee." In early 2010, an Administrative Law Judge affirmed this determination. The Labor and Industry Review Commission (LIRC) affirmed in 2011. The circuit court affirmed LIRC's decision in April 2012.

The Wisconsin Court of Appeals held that LIRC's conclusion that the HCWPA applies only to an "employee" was consistent with the plain language of the statute. It also held that LIRC's classification of Masri as a non-employee was a consistent and reasonable interpretation of the HCWPA. According to the court, while the HCWPA does not expressly define the term "employee," other courts have consistently found that "some sort of compensation is essential to an employee/ employer relationship." Furthermore, the court noted that LIRC "has consistently looked to how an individual is compensated" when determining whether an individual is an employee, "requiring that there be some tangible benefit received apart from salary."

The WHA argued in its amicus brief that the language of the HCWPA revealed a legislative intent to limit the scope of the HCWPA solely to the employment relationship. WHA highlighted the fact that the predominant purpose of the HCWPA is to protect employees, not interns or volunteers. Though the HCWPA, in part, seeks to promote the reporting of unlawful conduct, the Legislature advances that goal by protecting employees—as opposed to unpaid interns—as employees have the training, workplace experience and knowledge base as health care facility employees to identify reportable conduct. Expanding the term "employee" to include unpaid interns would ultimately hinder the training of future health care workers by jeopardizing internship and volunteer opportunities.

Oral argument is set for Thursday, March 13, 2014.

Plan to Attend WHA Advocacy Day, April 16 *Registration now open*



In 2013, Advocacy Day shattered all records with 900 attendees for the first time in the event's history. You won't want to miss this year's event April 16 at the Monona Terrace in Madison. Advocacy Day is one of the best ways your hospital employees, trustees and volunteers can make an important, visible impact in the State Capitol.

Advocacy Day 2014 will have a great lineup of speakers, including morning keynote and nationally-known pollster Larry Sabato, professor of politics and director of the University of Virginia's Center for Politics and creator of the website and weekly e-newsletter, "Sabato's Crystal Ball." Luncheon keynote will be Governor Scott Walker (invited), and our legislator panel discussion will round out the morning sessions.

The highlight of Advocacy Day is always the hundreds of attendees who take what they've learned during the day and then meet with their legislators in the State Capitol in the afternoon. WHA schedules all meetings, provides transportation to the Capitol, and prepares attendees for their visits. In addition to an issue briefing at Advocacy Day, WHA offers an optional webinar on legislative visits in the weeks leading up to Advocacy Day.

Start assembling your hospital contingent for 2014 Advocacy Day set for April 16 at the Monona Terrace in Madison. Registration is now open at <http://events.SignUp4.net/14AdvocacyDay0416>.

For Advocacy Day questions, contact Jenny Boese at 608-268-1816 or jboese@wha.org. For registration questions, contact Lisa Littel at llittel@wha.org or 608-274-1820.

Good Health Care Makes Good Politics

By Eric Borgerding, WHA Executive Vice President

The Wisconsin legislative session is nearing an end, and it's been quite a ride so far for WHA and with still a few "miles to go before (we) sleep." Key priorities remain to be achieved, and damaging proposals must be addressed. But it's not too soon to review the past 13 months and acknowledge what may seem counterintuitive, certainly often overlooked—the *bipartisanship that often leads to good health care policy*.

If one looks through the dissipating smoke of the Medicaid debate and sets aside, for a moment, the ongoing challenges of Obamacare, there are many great examples in Wisconsin of both parties joining to recognize and advance high-quality, high-value, patient-centered health care. And why shouldn't there be? We have much to be proud of when it comes to health care, much to tout, much to advance—and much to protect.

We all have a stake in what's been accomplished, and that means enacting policies that allow our hospitals, nurses and physicians to be even better—policies that strengthen our health care system rather than tear it down. In an era of acute partisan divisiveness we cannot lose sight of—or fail to recognize—those areas in health care where our elected leaders are working together. Laudable examples include:

Bipartisan Praise for High-Quality Health Care: Last week WHA released its 2013 Quality Report. The results achieved by Wisconsin's hospitals have garnered national attention and accolades, but perhaps none more important than these:

"These impressive results would not have been possible without the dedication of our nurses, physicians and the entire care team working together to implement better and safer ways to care for patients. We commend Wisconsin's hospitals for their success to date and for their ongoing commitment to improve the quality and safety of patient care in our state."

- Senators Leah Vukmir (R-Wauwatosa) and Tim Carpenter (D-Milwaukee), chair and ranking member, respectively, of the Senate Health Committee
- Representatives Erik Severson (R-Star Prairie) and Sandy Pasch (D-Shorewood), chair and ranking member, respectively, of the Assembly Health Committee

Speaker's Bipartisan Task Force on Mental Health: A bipartisan task force, created by Assembly Speaker Robin Vos (R-Burlington), chaired by Rep. Erik Severson and vice-chaired by Rep. Sandy Pasch came together and produced some of the most significant and meaningful legislation in years related to mental health. Several of those bills were strongly supported and lobbied by WHA, especially AB 452—the Mental Health Care Coordination Act, authored by Reps. Severson and Pasch and Sens. Vukmir and Carpenter. AB 452 counted 21 Republicans and 23 Democrats as sponsors. This WHA priority and many other good bills produced by the Speaker's Task Force will soon be signed into law by Governor Walker.

Bipartisan Letter Supporting Hospitals: Responding to an ongoing barrage of Medicare reimbursement cuts from Washington and the threat of more on the horizon, 79 state legislators (42 Democrats and 37 Republicans from Milwaukee to Superior) signed a letter in August to Wisconsin's congressional delegation urging them to oppose new federal policy that would devastate Wisconsin's rural hospitals. The letter, initiated by Sen. Sheila Harsdorf (R- River Falls), was unprecedented (at least in my 26 years of government relations) in the number of bipartisan legislators standing together to support high-quality, accessible health care for Wisconsin. *(continued on page 4)*

Combating Heroin Addiction: Rep. John Nygren (R-Marinette) is spearheading a series of bills aimed at curbing and treating the exploding problem of heroin addiction in Wisconsin—a scourge that is increasingly evident in homes and hospital ERs across Wisconsin. The first four bills in Nygren’s HOPE (heroin, opiate prevention and education) package gained widespread bipartisan sponsorship and support and will soon be signed into law by Governor Walker.

WHA and our members say a collective “THANK YOU” to our elected leaders who are reaching across the aisle to help enable and protect high-quality health care in Wisconsin.

Grassroots Spotlight

Rep. Tom Petri Visits Aurora Medical Center-Manitowoc County



On January 20, Aurora Medical Center – Manitowoc County hosted Rep. Tom Petri for a meeting and visit. Pictured from left to right are: Betsy Benz, Chief Nursing Officer; Rep. Tom Petri; Cathie Kocourek, President; Stacie Schneider, Director Human Resources; and, Carrie Penovich, Chief Clinical Services Officer.



Nash Focuses on Effect of Quality Movement on Physicians at WHA’s Physician Leadership Development Conference

David Nash, MD, internationally recognized for his work in quality outcomes management, medical staff development and quality improvement, will lead day one of the two-day, annual WHA Physician Leadership Development Conference, March 14-15, 2014 at The American Club in Kohler. Registration is now open online for the 2014 event at <http://events.SignUp4.com/14PLD>.

Nash will focus on the history of the quality and safety movement, with special attention to its current connection to health reform and its effect on physicians. He will also discuss the key measures developed for health reform and compare and contrast those measures that promote the goals of the Institute for Medicine. He will also discuss strategies for physician leaders to support a culture of quality improvement, and how they can engage their physician colleagues in supporting a culture where quality improvement is the expectation.

During day two of the conference, Tim Keogh, PHD, will focus on building the communication skills physician leaders need to gain influence, cooperation and colleague engagement. Both Nash and Keogh are nationally-recognized faculty from the American College of Physician Executives (ACPE), and both will discuss important and practical leadership skills that help physician leaders move beyond their clinical training and take a new approach to managerial decision-making and problem solving.

To view this year’s conference agenda or to register, visit: <http://events.SignUp4.com/14PLD>.

Over 50 CAH Leaders Meet With Rep. Sean Duffy

Osceola hosts roundtable discussion on impact of federal proposals

In response to ongoing reimbursement cuts and a continued focus on critical access hospital (CAH) designation, Osceola Medical Center hosted a roundtable discussion with Rep. Sean Duffy (R-7th Congressional District) and 50 leaders from a dozen CAHs from across the 7th Congressional District. The discussion focused on the importance of access to care in northwestern Wisconsin and on how



Rep. Sean Duffy, center standing, at Osceola Medical Center. Wisconsin Hospital Association President Steve Brenton, standing far right, helps moderate discussion with over 50 Critical Access Hospital leaders from across Rep. Duffy's district.

federal proposals targeting CAHs negatively impact that. Wisconsin Hospital Association President Steve Brenton moderated the hour-long discussion.

“The impact of changes to critical access hospital designations and other proposals will have a profound affect on the ability of rural hospitals to provide health care,” said meeting host and Osceola Medical Center CEO Tom Geskermann. “Rep.

Duffy and the others who gathered know how important the designation is to our care systems and the continuum of services it allows us to provide in our communities.”

For several years, CAHs have been the target of proposals seeking to strip CAH designation based on mileage from another hospital. One proposal has been to eliminate CAH designation for CAHs 10 miles from another hospital. Doing so also eliminates Medicare’s alternative reimbursement structure for these small, rural hospitals. WHA estimates eight Wisconsin hospitals would be impacted by the 10 mile proposal. Seven of those eight CAHs are in Rep. Duffy’s district, and they were in attendance at the meeting.

“It does not make sense for people in Washington to make decisions for a community few of them have visited and for patients they have never met. I heard this frustration echoed by several of the participants in last week’s meeting, and it is not unique to the designation determination,” said Rep. Duffy.

Even worse, in August 2013 the federal Department of Health & Human Services’ Office of Inspector General (OIG) recommended the elimination of CAH designation for roughly 850 of the nation’s 1,300 CAHs, again based on their distance from another hospital. If the OIG were to be adopted by Congress, it would impact the vast majority of Wisconsin’s 58 CAHs.

“Unfortunately, Congress continues to focus on all types of hospital payment cuts as the go-to ‘pay-for’ when dollars are needed for other programs and priorities,” said WHA President Steve Brenton. “In fact, earlier this year some in the United States Senate proposed cutting hospital payments in order to extend the unemployment insurance program. That vote failed but shows the penchant for targeting hospitals.”

WHA estimates that reimbursement cuts enacted by Congress over the past few years already equals over \$4 billion dollars to Wisconsin hospitals, including CAHs.

“I know the positive impact that these doctors and hospitals have on our rural communities because I see and hear about it frequently from the patients who have been well served by them. I will take our conversation with me to Washington, continue the fight against the implementation of mileage changes to critical access hospitals, and keep working toward solutions that will actually improve this critical access to care instead of reducing it,” according to Duffy.

Summit Focuses on Successful ICD-10 Implementation for Hospitals and Clinics Scheduled March 17-19 in Wisconsin Dells

The *ICD-10 Summit: Ready. Set. Go Live!*, scheduled March 17-19 in Wisconsin Dells, is the premier statewide event focused on ICD-10 preparation and implementation. WHA, along with the Wisconsin Medical Society and the Wisconsin Medical Group Management Association, have teamed up to offer the ICD-10 Summit to health information management professionals, hospital and clinic coding and billing specialists, and practice managers.

This programming has been approved for 29 continuing education units, with a maximum of 15 CEUs per participant, for use in fulfilling the continuing education requirements of the American Health Information Management Association (AHIMA). Granting prior approval from AHIMA does not constitute endorsement of the program content or its program sponsor.

ICD-10 will affect all aspects of health care in 2014, and this statewide Summit will provide hospitals and clinics the tools and confidence needed for a smooth transition on the go-live date of October 1, 2014.

A full Summit brochure and online registration can be accessed at: www.wha.org/icd-10summit.aspx.

WHA Webinar on Aurora Health Care's Behavioral Health ED-Intake Team Study

On February 7, 2014, from 12:00 to 1:00 pm, WHA will host a one-hour webinar presentation of the results of Aurora Health Care's study on the use of a Behavioral Health Intake Team in the Emergency Department setting to reduce ED length of stay and inappropriate admissions.

Presenters will include Dr. Vani Ray and Joy Mead-Meucci from Aurora Health Care. This study was presented at the Academy of Psychosomatic Medicine's Annual Meeting in November 2013. An abstract of the presentation can be found at: <http://apm.org/ann-mtg/2013/poster-details.shtml#po126>.

To sign up for this free webinar open to WHA members and their staff, go to: <http://events.SignUp4.com/BevHealthEDIntake>.

Register Today for WHA Wisconsin RAC Summit, March 26 in Wisconsin Dells

Hear directly from Wisconsin audit contractors, physician leaders, RAC appeals gurus and case management specialists at the WHA Wisconsin RAC Summit March 26 in Wisconsin Dells.

This one-day event will help educate and connect WHA hospitals and systems with top-of-mind issues related to the ever-changing audit landscape. Attendees will gain practical tips that can immediately be put into action and take advantage of a valuable networking opportunity.

Plan to join hospital and health system colleagues at the WHA Wisconsin RAC Summit, and take advantage of the discounted "early bird" fee by registering before February 21. The full event agenda and online registration are available at <http://events.SignUp4.com/14RACSummit>.

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compliance and oversight less confusing for hospitals and the state regulators, thereby reducing those costs associated with hospital regulatory compliance."

In Wisconsin, hospitals comply with the federal Medicare Conditions of Participation (CoP) and state licensure requirements. Many Wisconsin hospitals are accredited by a national accrediting organization and comply with those stringent standards as well. These sometimes conflicting standards make compliance inefficient and confusing.

Rep. Marklein and Sen. Vukmir's memo and the legislation can be found at www.wha.org/pdf/MarkleinVukmirMemo1-29-14.pdf and www.wha.org/pdf/13-2897.pdf.

