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WHA Seeks “Amicus” Status in Fund Action *Fund attempts to expand provider’s liability*

As part of its ongoing efforts to protect Wisconsin’s uniquely balanced and strong medical liability system, the Wisconsin Hospital Association on November 20 sought to file an *amicus curiae* or “friend of the court” brief in the *Schultz v. Injured Patients and Families Compensation Fund* (“the Fund”) case.

As reported previously in the Valued Voice, *Schultz* is a Milwaukee County medical malpractice case in which the Fund, by filing a third-party complaint and cross-claim, is seeking to proceed in the nature of a plaintiff against a health care provider and the provider’s insurer. The Fund is arguing that Schultz’s injuries were caused, at least in part, by negligent training and supervision by the provider and that negligent training and supervision are claims *separate* from claims of medical malpractice. The Fund is seeking money from the provider’s professional liability and corporate general liability policies. *(continued on page 9)*

Need Info? Visit Updated Web-based WHA Toolkit



Health care can be a complicated industry, but accessing information on important industry topics is fast and easy on the WHA Web site. The WHA Toolkit, which can be accessed from

the front page of the WHA Web site (www.wha.org), includes summary papers on 21 health care issues. The papers include WHA’s position on the issue, the WHA staff contact and links to related resources available on the topic. Resources range from customizable PowerPoint presentations to brochures that can be personalized for individual hospital use.

Hospital leaders, senior managers and hospital trustees will also find the information useful in preparing for public presentations or internal briefings. The WHA Toolkit is updated on a regular basis and new papers are added as needed.

Toolkit papers recently updated include Billing and Collection, Community Benefits, Uncompensated Care, and Health Care Costs. A new paper on Recovery Audit Contractors was just added, and a new resource from AHA, “Community Accountability and Transparency” was added to the Community Benefit summary paper resource list.

For more information on the WHA Toolkit, contact Jenny Boese, 608-274-1820 or jboese@wha.org.

Supporting the WHA Foundation During the Season of Giving



In the spirit of the recent Thanksgiving holiday, the WHA Foundation

would like to thank those organizations and individuals who have already contributed over \$28,000 to this year’s fundraising campaign. Additionally, the WHA Foundation would like to recognize Aspirus, Wheaton Franciscan Healthcare, and WHA Financial Solutions for their support as Champion Donors.

In that same vein, as we continue on through the season of giving, the Foundation asks those who have not yet contributed to consider making a contribution to its annual fundraising campaign.

Currently, nearly 40 Wisconsin hospitals are employing one or more WHA Foundation Scholars Program scholarship recipient; more than 130 hospitals’ staff nurses attended one of the Foundation-sponsored Nurse Leadership Succession workshops; more than 200 health care professionals attended a free summit focused on health literacy in 2007, funded in part by the Foundation; and 26 hospitals have received recognition and financial support through the Foundation’s annual Global Vision Community Partnership Award. If your hospital has been directly affected by one or more of the Foundation’s initiatives, we ask that you consider giving back.

“We are asking our members to be generous this year in supporting the workforce development and quality and safety projects of the Foundation,” said Dan Hymans, 2007 WHA Foundation chair. *(continued on page 5)*

Mercy Health System Awarded Malcolm Baldrige National Quality Award

President George W. Bush and Commerce Secretary Carlos Gutierrez named Mercy Health System as a recipient of the 2007 Malcolm Baldrige National Quality Award. The award, given by the U.S. Department of Commerce, is the nation's highest Presidential honor for quality and organizational performance excellence.

"It is a great honor to receive this prestigious award," said Mercy Health System President/CEO Javon R. Bea. "It celebrates our strength as a system and recognizes our unwavering commitment to organizational excellence and our mission of 'providing exceptional health care services resulting in healing in the broadest sense.' For more than 18 years, we have devoted ourselves to the pursuit of excellence using our innovative Culture of Excellence quality initiative. This award is a testament to that initiative's success and to the incredible dedication of our physician and employee partners."

Other health care organizations, including SSM Healthcare, have been honored by Baldrige in past years, however, Mercy Health System is unique in that its entire vertically integrated health system is being recognized for organizational excellence. This means that all entities across the entire system—from its three hospitals, to its 285 employed physicians and their offices, to its homeless center, to its insurance company and all other 64 entities—are also being recognized.

DHFS Asks CMS for Delay in NDC Reporting Requirement

Other implementation questions remain unresolved

The Department of Health and Family Services (DHFS) delivered a bit of good news for Wisconsin hospitals on November 28. DHFS officials informed WHA that the state has formally asked the Centers for Medicare and Medicaid Services (CMS) to postpone the requirement that National Drug Codes (NDCs) be included on outpatient hospital claims submitted for Medicaid reimbursement when drugs are provided or administered in that setting.

CMS is requiring NDC reporting to facilitate documentation of drug utilization for rebate purposes, beginning in 2008. However, Wisconsin and about a dozen other states have asked CMS for a delay. Wisconsin's request asks that the requirement be postponed until the new Wisconsin Medicaid Management Information System (MMIS) is implemented. DHFS anticipates that the MMIS implementation will happen no earlier than March 2008 and may be delayed until the second half of the year.

DHFS officials expressed optimism that CMS would approve the request within two weeks. They further indicated they will not seek NDC claims data retroactive to January 1, 2008 when the MMIS is implemented.

At a meeting with WHA staff and member representatives, DHFS acknowledged that reporting specific NDCs, rather than the more general HCPCS J-codes, presents serious challenges for billing offices.

WHA presented DHFS with a number of compliance questions. Among those still under consideration are:

1. Will the NDC reporting requirement apply to all multi-source drugs, or only the 20 most frequently prescribed such drugs (as specified in the CMS regulation)? WHA and member hospitals strongly discouraged DHFS from requiring NDCs for multi-source drugs that are not among the top 20, to limit the operational impact on hospitals.
2. Will an NDC be required on a claim only when a HCPCS drug code is included? Or will an NDC be required anytime a drug-related revenue code appears on a claim? In many cases (as with Critical Access Hospitals) the revenue code is sufficient under current billing practices. WHA and member hospitals believe that the intent of the regulation is to require the NDC only when a HCPCS drug code is reported.
3. What NDC or NDCs should be reported when a compound drug is billed?

DHFS representatives intend to issue written implementation guidance in December, after CMS' response is received.

President 's Column

CMS VBP Report is a Dud

The much-anticipated CMS report on Medicare Value-Based Purchasing (VBP) landed on Congressional desks this week. The 100-page report, outlining how the federal agency wants to link future hospital payments to quality of care measures, relies on reducing payments to hospitals by as much as 5 percent, and then allowing hospitals to recapture those dollars by performing well on publicly reported performance measures.

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The CMS recommendations represent a disappointing extension of the current approach, which requires PPS hospitals to participate in performance reporting in order to "earn" their annual Medicare inflation update. Instead of creating "incentives" that high performing organizations receive as rewards, the CMS proposals represent a punitive approach that amounts to little more than an ill-designed

Medicare cost-cutting initiative. Although the recommendation suggests that the 5 percent "withhold" could go into a pool for distribution based on a series of performance measures, CMS almost invites federal lawmakers to embrace the initiative as a cost-saver by noting that *Congress may choose to not require the redistribution of all the withheld funds.*

Wisconsin is already a veritable bargain for the Medicare program. As documented on numerous occasions in previous *Valued Voice* articles and columns, Wisconsin's cost effective hospitals and physician practices deliver Medicare services at a fraction of the national average. Our quality of care, led by hospital performance, was labeled "best in the nation" this past summer by the Agency for Healthcare

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Research and Quality (AHRQ). None of those real facts are likely to matter or be recognized in any significant way if the CMS recommendations are ratified by Congress next year.

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It is essential that Wisconsin hospitals articulate the message that *value must be rewarded as part of the Medicare VBP program.* And rewarding value must be founded on the principle that incentive payments be made that represent a meaningful add-on to current Medicare payments. The notion that a program that today pays Wisconsin hospitals less than

80 percent of actual costs can get away with anything less must be quickly and loudly refuted.

Steve Brenton
President

Nurse Leaders Meet With Rep. Terry Moulton

Discuss health care and building legislative relationships



The Wisconsin Organization of Nurse Executive's (W-ONE) Board and Legislative Committee met with Rep. Terry Moulton recently. Rep. Moulton, a member of the Assembly Health Committee and Assembly Public Health Committee, presented

an overview of health care issues and legislation, including workforce wellness, electronic medical records, and health care reform.



L to R: Lynn Frank, Ellen Zwerlein, Rep. Moulton, Bev Hoege, Jean Surguy

"As legislators, we cannot be experts on everything," Rep. Moulton told nurse executives. "I have to rely on people in the field. It's the personal letter or relationship that has the impact."

In the give-and-take discussion, nurse leaders provided information to Rep. Moulton on how proposals would impact the practice of nursing, especially with respect to issues like a ban on mandatory overtime, mandatory nurse-to-patient staffing ratios and others.

The W-ONE board also asked Rep. Moulton how best to interact and build relationships with their legislators. He suggested the following:

- Invite legislators to your organization to see your operations firsthand.
- Avoid the use of form letters or form emails.
- Make a personal contact.
- Develop and submit position statements outlining the facts and affects of potential legislation on you, your communities.
- Attend and testify at hearings.

Ministry Health Care Meets with Senators Lassa and Kreitlow

Ministry Health Care has been especially busy hosting elected officials in recent days. Senator Julie Lassa met at Hope Lodge of Marshfield with Saint Joseph's Hospital Vice President Terri Richards and Saint Joseph's Foundation Director Ann Boson. Hope Lodge is a home for oncology patients receiving treatment at Saint Joseph's Hospital and Marshfield Clinic. At Hope Lodge, Terri and Ann focused their conversation with Senator Lassa on a number of key issues facing hospitals.



Our Lady of Victory CEO Cindy Eichman greets State Sen. Kreitlow

Our Lady of Victory Hospital in Stanley welcomed State Senator Patrick Kreitlow. Hospital President Cynthia Eichman treated the Senator to a tour of the hospital, during which they discussed critical issues facing hospitals. Kreitlow was also able to learn more about the hospital's community benefits, including the Community Link program.

Following the tour and discussion, Sen. Kreitlow was on hand as hospital employees presented a check to Sister Bernie Palma for hospital mission efforts in the Dominican Republic.

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Grassroots Spotlight (cont'd.)

Aurora-Central Region Meets With Cong. Petri, Sen. Leibham and Rep. Kestell

Aurora Health Care met with their legislators to discuss Aurora's role in care management and the latest advances in health care. The presentation was well received by legislators and helped elected officials understand the vital role prevention and advancement in technology play in the ever-changing world of medicine.



L to R: Randy Roeper, Vice-President, Aurora Central Region Business Development; Dan Bonk, Executive President, Aurora Central Region; Cong. Tom Petri; Mike Hert, Aurora Health Care consultant; State Rep. Steve Kestell; State Sen. Joe Leibham

RWHC Receives FCC Assistance to Build Telehealth Network

The Rural Wisconsin Health Cooperative (RWHC) was chosen to participate in the FCC's new \$417 million initiative to construct 69 statewide or regional broadband telehealth networks in 42 states and three U.S. territories under the Rural Health Care Pilot Program (RHCPP). RWHC will receive up to \$1.6 million. St Joseph's in Chippewa Falls is the second grantee in Wisconsin, receiving up to \$655,000.

The initiative will significantly increase access to acute, primary and preventive health care in rural America. Broadband deployment is one of the Commission's top priorities – particularly in rural America. And nowhere is the need for broadband greater than in rural healthcare, where isolated clinics can save lives by using advanced communications technology to tap the expertise of modern urban medical centers.

The Commission's RHCPP will support the connection of more than 6,000 public and non-profit health care providers nationwide to broadband telehealth networks. The health care facilities participating in the Pilot Program include: hospitals, clinics, universities and research centers, behavioral health sites, correctional facility clinics, and community health centers.

Continued from page 1 . . . Supporting the WHA Foundation During the Season of Giving

The WHA Foundation is a 501(c)3 organization, and gifts made to the Foundation are tax-deductible. To make a contribution or for more information about the WHA Foundation, contact Jennifer Frank at 608-274-1820 or at jfrank@wha.org.

Campaign Contributions to Date

Champion Donors – gifts of \$5,000 or more

Aspirus, Wausau
WHA Financial Solutions, Madison
Wheaton Franciscan Healthcare, Milwaukee

Contributions from Organizations

Affinity Health System, Menasha
Agnesian HealthCare, Fond du Lac
Amery Regional Medical Center, Amery
Flambeau Hospital, Park Falls
Hayward Area Memorial Hospital, Hayward
Luther Midelfort, Mayo Health System, Eau Claire
Memorial Medical Center, Ashland
SSM Health Care of Wisconsin, Madison

Contributions from Individuals

Jenny Boese, Wisconsin Hospital Association
Steve Brenton, Wisconsin Hospital Association
Jennifer Frank, Wisconsin Hospital Association
Mary Kay Grasmick, Wisconsin Hospital Association
Dan Hymans, Memorial Medical Center, Ashland
Roger Lucas, Aspirus, Wausau
Paul Merline, Wisconsin Hospital Association
Brian Potter, Wisconsin Hospital Association
George Quinn, Wisconsin Hospital Association
Terri Richards, Saint Joseph's Hospital, Marshfield

Basic Life Support Certification Renewal Available Online at careLearning.com

Health care providers now have a convenient way to renew their American Heart Association Basic Life Support certification—online via careLearning.com and WHA.

WHA is pleased to announce a partnership with the American Heart Association for online renewal of the AHA Basic Life Support (BLS) for Health Care Providers. This online course contains a series of modules that cover the required adult, child and infant CPR sequences. Upon completing the skills check with a certified AHA instructor, participants will receive an AHA BLS for Health Care Providers certification card.

The cost for the course is \$23 per person and provides access for six months from registration. Advantages to using online renewal include easy access to the course, convenient training, standardized AHA programs, increased efficiency for the AHA instructors, and tracking and reporting capabilities. An additional fee may apply for the skills check.

To register for the AHA BLS online renewal course, visit www.carelearning.com and click on the Course Catalog. Click on "Patient Care" and scroll to the desired course.

careLearning.com is a non-profit organization operated by more than 40 state hospital associations, including WHA and the American Hospital Association, to provide its health care members with quality, cost-effective online education and tracking capabilities. careLearning.com is available to WHA hospital members as a simple, affordable way to keep employees up-to-date on mandatory training, as well as regulatory and policy issues.

careLearning.com was developed nearly five years ago as simply a series of 13 health and safety compliance courses designed to help hospital staff meet educational and licensing requirements of the OSHA and Joint Commission. Today, careLearning.com has expanded to cover more than 240 courses on a variety of topics, many of which can be tailored to fit the needs of each individual hospital and its departments. The extensive catalog of courses includes education on nursing, patient care, business management, compliance, and now AHA BLS certification renewal, as well as Web-based seminars.

You can experience careLearning.com now by visiting www.carelearning.com and requesting a free full-course demo in the visitor section. Or, for more information, visit www.wha.org or contact Jennifer Frank at 608-274-1820 or jfrank@wha.org.

Former WHA Chair Ted Besser, 82, Will Be Remembered

Theodore (Ted) Besser, age 82, of Hudson, former Hudson Memorial Hospital administrator, died November 21, 2007, at Comforts Of Home in Hudson. He was born in 1925 in Kinsley, Kansas, to Mary and Ernest Besser. He attended St. Nicholas Parochial School prior to attending Kinsley High School. Ted enlisted in the armed forces where he proudly served in the U.S. Navy during World War II. During this time, he received ROTC schooling in business prior to receiving a bachelor's degree from the University of California at Berkeley in 1947. He was united in marriage to Mary at St. Mark's Catholic Church in St. Paul in 1947. Ted worked for the University of Minnesota in their business office before transferring to the University of Minnesota Hospital. While there, he was selected to serve as Hudson Memorial Hospital's administrator. He was administrator at Hudson Hospital from 1955-1975 and was proud to be instrumental in constructing the Convalescent Home in conjunction with the hospital. Later, he would serve as administrator at New London (WI) Community Hospital from 1975-1989. He was a past chairman of the Wisconsin Hospital Association board and Wisconsin Delegate to the American Hospital Association for ten years. He received the WHA award for excellence in hospital administration.

Stories From Our Hospitals

Moundview Memorial Hospital & Clinics, Friendship ***Hospital food drive benefits those on low incomes***



The holidays can be a solemn time for those on low incomes who are unable to afford special meals and celebrations. Some may receive assistance through food pantries, but others may be too embarrassed to ask for help or are determined to make it without government assistance.

Since 1997, employees at Moundview Memorial Hospital & Clinics have organized a food drive to benefit those individuals who sometimes fall through the cracks. The first drive was coordinated by the hospital's rehabilitation staff, and other departments have taken turns as coordinators through the years.

In 2006, 12 area families benefited from Moundview Memorial's food drive. From mid-November through mid-December, employees brought in cash donations, non-perishable food, and Christmas items ranging from stuffed animals to decorations. Contributions were also sought from a select number of area businesses including potatoes, cheese, and monetary donations.

Each year the department in charge of the food drive obtains the names of families who could use extra help during the holidays from local elementary school staff, hospital employees, churches, and other community service organizations. The department staff purchase perishable food items with cash donations and sort the canned and boxed goods and Christmas items into holiday decorated boxes. They then deliver the boxes to each family's home. One year Santa delivered the items from the ambulance.

"Our food drives have benefited a variety of families including widowed senior citizens, single parents, those who have recently lost their job, persons who are ill or injured and large families," says Dee Draeger, physical therapy assistant at Moundview Memorial's Rehabilitation Department who helped start the hospital's first food drive. "The hospital staff is very supportive of the food drives. Each family receives at least one week of meals and they are so grateful for the donation. It's worth it to see a smile on their face and to know we made their holiday a little brighter."

Gundersen Lutheran Medical Center, La Crosse ***Helping make our environment mercury free***

Mercury, a potent neurotoxin and developmental toxin, can impact human health at extremely low levels. By eliminating mercury, Gundersen Lutheran is helping to protect vulnerable populations like infants, pregnant mothers and young children from the damaging effects of mercury pollution.

To help reduce mercury in the community, Gundersen Lutheran conducted a mercury thermometer exchange that resulted in the distribution of more than 300 free digital thermometers and public education about the dangers of mercury. Within the organization, Gundersen Lutheran eliminated blood pressure cuffs with mercury, uses only mercury-free wall mounted thermometers and eliminated lab fixatives containing mercury.

Gundersen Lutheran Health System in La Crosse is proud to have earned the Making Medicine Mercury Free Award, a prestigious national award given by Hospitals for a Healthy Environment (H2E). The award is given to facilities that have met the challenge of becoming virtually mercury-free.

"We believe that part of our mission to promote the health of the community is to protect the environment we all share," says Nick Nichols, environmental coordinator, Environmental Safety & Health, Gundersen Lutheran. "Making our community healthier by replacing mercury devices in our facility with safe and effective alternatives just makes sense, and we are proud to be recognized for our efforts."

Submit hospital community benefit stories to Mary Kay Grasmick, editor, at mgrasmick@wha.org.

Member News: Aurora Announces Leadership Transitions

Daniel Meyer has been named the new chief administrative officer for Aurora BayCare Medical Center in Green Bay. Meyer succeeds Linda Smith, who was administrator since the hospital opened in 2001. Smith will continue her role as executive vice president of Aurora Health Care's north region. Meyer has more than 20 years' experience as a hospital administrator, most recently as administrator of Aurora Sheboygan Memorial Medical Center. Meyer received a bachelor's degree from Loras College in Dubuque, Iowa, and a master's degree from the University of Iowa.

Bobbe L. Teigen, MHA, FACHE, former chief administrative officer for Aurora BayCare, will become the chief administrative officer for Aurora Sheboygan Memorial Medical Center on December 3. She was formerly CEO at Aurora Medical Center of Manitowoc County. Teigen has more than 19 years of experience as a health care leader, most of them in Wisconsin. For the past three years, Teigen oversaw all aspects of Aurora Medical Center in Two Rivers as chief administrative officer. Prior to that leadership role, she served for nine years as the chief executive officer of Sauk Prairie Memorial Hospital & Clinics in Prairie du Sac.

Member News: Ela Selected for Fellowship in the American Academy of Nursing

Sue Ela, RN, senior vice president for Aurora Health Care, and president of its metro region, has been chosen for Fellowship in the American Academy of Nursing (FAAN).

The Academy creates initiatives that drive reform of America's health care system. It is governed by a 10-member board of directors who are elected by the elite group of 1,500 Fellows. Fellows are highly accomplished nursing leaders in education, management, practice and research who have been recognized for their extraordinary nursing careers.

Ela has more than 30 years of nursing and health care leadership experience. Ela played a key role in establishing the Wisconsin Center for Nursing. In her current role at Aurora, she is responsible for hospitals, clinics and facilities in Milwaukee County.

Member news: Aspirus Recognized for Critical Care Nursing Excellence

The American Association of Critical-Care Nurses has recognized a specialized cardiac nursing unit at Aspirus Wausau Hospital for national excellence. The Aspirus Cardiac Intensive Care Unit is one of just 21 units from 17 U.S. hospitals to receive the Beacon Award for Critical Care Excellence recognizing the nation's top hospital critical care units.

Beacon Award recipients demonstrate success in criteria that affect patient care:

- Education, training and mentoring
- Research and evidence-based practice
- Patient outcomes
- Leadership and organizational ethics
- Healing environment
- Recruitment and retention

Continued from page 1 . . . WHA Seeks “Amicus” Status in Fund Action Against Provider

WHA retained experienced lawyers from the Appellate Consulting Group to prepare and submit the *amicus* brief. In its brief, WHA argues that Chapter 655 of the statutes is the exclusive system for resolving medical malpractice claims in Wisconsin and that such exclusivity is essential to the chapter’s fulfilling its purpose. The brief underscores that the statute specifically sets out the financial obligations of the health care provider and, no less specifically, sets out the limits of the health care provider’s liability. With its lawsuit, by contrast, the Fund improperly seeks to extend the financial obligations of the health care provider beyond the liability limits set out by statute. Anne Berleman Kearney of the Appellate Consulting Group summarizes the matter as follows: “We argue to the court on behalf of WHA that, as alleged, the plaintiff’s claims are ones that in fact are for malpractice. If the Fund can maintain that it should receive additional monies from the health care provider by recharacterizing the claims as ‘negligent supervision,’ ‘negligent training,’ or ‘negligent management,’ the health care provider’s liability would be expanded beyond that contemplated by the Chapter 655 system.”

The brief sets forth why the Fund’s actions seeking to extend the liability of the health care provider are contrary to the Chapter 655 system, which controls and limits the circumstances in which the Fund may maintain actions in its own right. The brief explains that where a health care provider or its insurer in the face of a malpractice claim has satisfied the statutory limits of health care liability, courts have not permitted the Fund to bring suit. The brief observes that this makes sense as the Fund is held in trust not only for plaintiffs, but also for health care providers. The Fund therefore has been permitted to sue health care providers only in limited circumstances insofar as necessary to ensure compliance with Chapter 655 obligations where non-compliance could materially impair the Fund.

“The potential public policy effects of the Fund’s action are substantial,” noted Kearney. “The Fund’s actions in this case may require hospitals on a going-forward basis to obtain additional insurance to cover claims such as those alleged by the Fund—more professional liability insurance or general liability insurance plans. The longer-term effect could very well be to diminish the quality of health care provided by physicians and hospitals in Wisconsin. Should additional insurance be required, the incentive to locate and continue to provide health care services in this state would be decreased.”

Watch *The Valued Voice* for updates on the *Schultz* case.