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TO: Members of the Assembly Committee on Health

FROM: Matthew Stanford, General Counsel
Jon Hoelter, Vice President Federal & State Relations

DATE: July 29, 2021

RE: WHA Testimony on AB 296 – Support for telehealth provisions with an additional amendment

The Wisconsin Hospital Association thanks the Committee for the opportunity speak again on advancing telehealth in Wisconsin. WHA was pleased to work with Representatives Loudenbeck and Kolste and Senators Kooyenga and Bewley on bipartisan Medicaid telehealth legislation in 2019. That legislation, which became 2019 Act 56 in March 2020, was governed by a simple premise: telehealth is health care.

That public policy approach to telehealth has served Wisconsin extremely well and helped Wisconsin health care providers quickly transition to from in-person care to care delivered via telehealth during the COVID pandemic. And based on very favorable patient satisfaction and quality data, it seems clear that patient demand for telehealth will continue well beyond the pandemic.

We appreciate Representative Loudenbeck and Senator Kooyenga's goal of Assembly Bill 296 to continue to remove barriers to telehealth by standardizing a definition of telehealth for the DSPS health care licensing boards. However, as we noted in a previous hearing on this legislation's Senate counterpart, SB 309, in the Senate Committee on Insurance, Licensing and Forestry, we believe that goal can be furthered by also including the sections included in the Medicaid telehealth act that protect telehealth from being regulated differently than in-person care, if the telehealth service is functionally equivalent to in-person care. If telehealth is health care – then it should be regulated the same as in-person health care.

Following the COVID pandemic, we are now beginning to see examining boards at DSPS contemplate promulgating special telehealth rules ostensibly to further support telehealth practice in Wisconsin. For instance, the Psychology Examining Board has proposed a simple telehealth rule making clear that the standards of practice and professional conduct are the same for telehealth as they are in person, and that a psychologist providing telehealth in Wisconsin must hold a Wisconsin license. From our members' perspective, making that clear in rule makes perfect sense.

Similarly, the DSPS Occupational Therapists Credentialing Board held a hearing in June on proposed telehealth rules that also include clarification similar to the Psychology Board rules. However, original proposed occupational therapy rules also included a number of other requirements that would unnecessarily treat functionally equivalent telehealth services differently than face-to-face services. The proposed rule, for example, would require a unique telehealth focused informed consent, unique telehealth collaboration requirements, and special technology training requirements, to name a few. Following concerns raised by the WHA Telehealth Work Group and the Wisconsin Occupational Therapy Association, that these additional requirements would be burdensome to document and operationalize, the Occupational Therapists Credentialing Board reversed itself and directed DSPS staff to revise the proposed rule to remove additional requirements that would treat functionally equivalent telehealth services differently than face-to-face services .

More importantly, WHA's Telehealth Work Group is concerned that the DSPS Psychology Board rule and DSPS Occupational Therapist Board rules could just be the beginning of a rush of multiple new and unique telehealth rules from multiple different DSPS boards – all of which would require their systems to develop different telehealth policies varying by provider type for compliance. The result could be a maze of inconsistent and differing standards depending on provider type that would create confusion for both patients and providers.

To guard against a future patchwork quilt of telehealth regulations from multiple DSPS boards, WHA supports an amendment to Senate Bill 309 that would incorporate language similar to Wisconsin's Medicaid telehealth statute. The amendment would provide a common standard among all DSPS health care licensing boards that licensed professionals are not required to meet additional requirements solely because the service was delivered through telehealth if the transmission of information through telehealth is functionally equivalent to a face-to-face contact. At the same time, boards would not lose their ability to require Wisconsin licensure for telehealth providers or apply any requirement that is applicable to services provided in person to any service provided via telehealth. WHA appreciates the opportunity to continue working with the bill authors and other concerned parties on the amendment language.