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TO: **Members of the Legislative Council Study Committee on the Use of Artificial Intelligence in Health Care**

FROM: **Andrew Hanus, Policy Counsel**
Abbey Rude, Vice President Government Relations

DATE: **November 12th, 2026**

RE: **WHA Feedback on Draft Legislation**

The Wisconsin Hospital Association (WHA) appreciates the opportunity to provide comments on the draft legislation prepared for the committee's November 12th meeting. As we noted in our September memo, AI utilization by Wisconsin's hospitals and health systems is not occurring in a regulatory vacuum. Rather, our members must already ensure compliance with multiple federal and state laws including HIPAA, the HITECH Act, the 21st Century Cures Act, Chapter 146 of the Wisconsin statutes, applicable FDA oversight, and professional licensure.

We agree with the committee's primary focus on the gaps that result in different standards for AI tools utilized by highly regulated health care institutions/professionals compared to independent AI tools utilized by consumers for health care needs that may handle identifiable health information with little to no accountability. We appreciate the committee's work to address those gaps, and we offer the following comments, questions, and concerns to the committee as it explores the initial bill drafts.

LRB-0401/P3; AI and Professional Licensure: In our September memo, WHA suggested the committee examine whether existing licensure laws would address a situation in which an AI tool acts independently as a "health care professional." We support the concept of restricting an AI tool from being licensed, or from representing that it is a licensed health care professional.

As noted during the October meeting discussion, s. 448.03(1) already prohibits the practice of medicine by any "person" without a license. Although AI tools are not specifically called out in that statute, under s.990.01(26), "person" is defined to include "all partnerships, associations and bodies politic and corporate."

If the committee believes that an AI tool should be explicitly specified in s.448.03(1) to provide explicit clarity that that section applies to an AI tool, we encourage the committee to explore that simpler approach within Wisconsin's existing statutory framework and policy rather than creating a separate and new statutory framework.

If the committee chooses instead to create a new statutory framework to prohibit an AI tool from acting as an independent health care professional, such as what is proposed in LRB-0401/P3, WHA encourages the committee to consider the following issues contained in the draft:

- **Wrong target:** In penalizing the deployer or operator (which could include well-intended health care professionals) of an AI tool, LRB-0401/P3 ignores the vendor that actually owns or developed the AI tool. Developers are the ones best situated to ensure safeguards are in place to protect against an AI tool "going rogue" or "hallucinating." Deployers and operators of AI tools may not even have contractual authority with an AI tool vendor to even have sufficient access to an AI tool's programming to prevent such a situation from happening. This modification would also (broadly) align the draft with the testimony to the committee on September 10th by Utah's Director of AI Policy Zach Boyd, PhD, regarding the increasing importance of having liability flow toward the party that designs the AI system rather than the party who deploys it.
- **Penalties are too severe:** LRB-0401/P3 subjects the "deployer or operator" of a violating AI system with up to a year in jail and/or a $10,000 fine for each instance. While AI tools continue to improve rapidly and most developers and deployers alike work hard to ensure safety and accuracy, no tool is 100% perfect 100% of the time. Therefore, consistent with our recommendation that the committee explore building off of the existing framework in s.448.03(1), WHA suggests the committee alternatively explore an initial public policy step of codifying an administrative enforcement action process utilizing an existing credentialing board, such as the Medical Examining Board rather than establishing a new criminal penalty. If over time there is evidence that such administrative enforcement authority is not deterring bad actors, then in the future it may make sense to for Wisconsin to consider creating new penalties
- **Preserve providers' clinical judgment to utilize AI tools in their practice:** "Protected practice" and "protected title" reference every credential in chapters 440 to 480, and therefore it is difficult to understand all the actions and uses of AI tools this legislation would implicate. It also seems to go beyond the committee discussion as noted in the October 1st minutes. For example, since WI Stat § 448.01 defines the practice of medicine to include diagnosis "by any means or instrumentality," this could be read to prohibit clinical tools used under a clinician's supervision. We are concerned that LRB-0401/P3 as drafted in its attempt to provide clarity unintentionally raises new legal questions regarding uses of AI tools that could limit the ability of licensed health care providers[1] to utilize AI tools to help care for their patients. Alternatively, as stated earlier, we believe a better approach would be to more explicitly clarify that s.448.03(1) applies to certain AI tools.

LRB-0407/P1, LRB-0447/P2, and LRB 0647/P3; Privacy of identifiable and de-identified information

In addition to federal HIPAA, HITECH, 21st Century Cures Act, and 42 CFR Part 2 laws explicitly governing the privacy, use, and security of health information, Wisconsin also has overlapping, comprehensive health care information privacy statutes for general health care information in s.146.81-146.84, and behavioral health information in s. 51.30. In addition, Wisconsin also has other health care statutes that have processes for sharing health information in a way that balances patient privacy and public benefit, such as communicable disease reporting, fatality review teams, syndromic surveillance, disease registries, and children's code and school records.

We appreciate and agree with the committee's concern that some AI tools not connected to licensed health care providers that are offered to consumers receive patient identifiable information and provide information back to the consumer or others about their health likely fall outside of existing federal and state health care information confidentiality laws. Examples include for example, ChatGPT Health and services connected to wearable devices.

[1] For purposes of this memo, licensed health care provider is used in this memo to generally include all health care related licensed, certified, or registered individuals in chs. 440-466 and health care providers licensed under ch. 50. However this initial listing of providers is not an exhaustive list of all such regulated health care providers recognized in Wisconsin statute.

However, we believe both LRB-0647/P3 and LRB-0407/P1 take an unnecessarily complex approach to addressing that concern by layering other states' laws (Virginia and Washington, respectively) on top of existing Wisconsin law, rather than specifically addressing the concern within Wisconsin's existing health care information confidentiality statute.

Alternative approach – Incorporating independent AI tools into Wisconsin's existing Health Care Confidentiality statute

Instead, we encourage the committee to focus on amending Wisconsin's general health care information statute – s.146.81-146.84 and update that statute's definition of "health care provider" to add AI tools such as ChatGPT that act like a "health care provider."

Currently, s.146.81(1) defines "health care provider" as a lengthy list of licensed/regulated health care professions and entities. Under s.146.81(4), all "records related to the health of a patient prepared by or under the supervision of a *health care provider…*" are defined as "patient health care records." S. 146.82 then specifies the confidentiality of all "patient health care records." Thus, if 146.81(1) were amended to add an independently acting AI tool such as ChatGPT to the definitional list of "health care provider," then those "records related to the health of a patient prepared by" the independent AI tool would now be subject to Wisconsin's long standing 146.82 health care confidentiality statute.

Taking this approach to addressing the confidentiality of health care AI tools not currently covered by Wisconsin or potentially federal law has several advantages over importing the Washington state and Virginia-based laws. For example:

1) Independent AI health tools would be held to the same confidentiality requirements as traditional health care providers.
2) Wisconsin's health care confidentiality long-standing law predates HIPAA and is well understood in Wisconsin by courts, regulators, and providers. Adding a new, different legal framework for health care confidentiality for AI tools will add new complexity and questions which will result in less uniform application and more uncertainty, compared to adding independent AI health tools to Wisconsin's existing 146.82 health care confidentiality statute.
3) For Wisconsin's licensed health care providers, the privacy of patient identifiable information they maintain would continue to be protected by HIPAA and Wisconsin's health care confidentiality law, while preserving existing federal and state authorized uses of health care information that do NOT identify a patient or are allowed to be used to serve public benefits such as for public health.
4) Some of the provisions of the Washington state and Virginia based laws go beyond regulating AI tools and also implicate actions outside of health care, including stakeholders that have not been engaged in the work of the Study Committee on the Use of Artificial Intelligence in Health Care.
5) The multi-page Washington state and Virginia based laws raise several unaddressed questions, including how they would apply to legitimate everyday health care uses:
    - **Who is covered?** LRB-0647/P3 applies to any "controller" of sensitive data, with no exemption for HIPAA-covered entities, business associates, or other entities governed by Wisconsin's existing health care information privacy laws. Even the exemption that is present for information governed by HIPAA, for example, is limited to "the extent applicable," which introduces more ambiguity, increasing compliance burden and risk for health care providers.
    - **Other missing exemptions:** LRB-0647/P3 includes no exceptions for valid and important use cases like emergency situations, security or fraud prevention, or legal compliance. Is that intended, or an oversight? Are there other missing exemptions not captured that could limit intended allowable uses of AI tools?
    - **Felony Penalty:** Exacerbating concerns about unintended consequences, under LRB-0647/P3 a violation of this law would be a Class H Felony, punishable by up to six years in prison. It also includes no intent element

or ability to cure unintended violations. Given the significant penalty and complexity of the proposed statutory changes, would the penalty unintentionally chill intended allowable uses of AI tools?

- **Identification of all unintended consequences?** LRB-0407/P1 exempts only health care *information* governed by HIPAA and existing state laws, rather than the health care providers already subject to those laws. Therefore, under LRB-0407/P1, Wisconsin's hospitals, clinics, and professional providers would become regulated entities and have to navigate yet another set of privacy requirements. Has the committee had enough time and input to fully identify all of the unintended consequences on Wisconsin's health care providers currently regulated by both federal and state health care privacy laws of layering a separate, additional confidentiality structure for those entities?
- **Geofencing example**: LRB-0407/P1 includes language impacting IP geofencing messaging. Is it the intent of the committee to restrict health care provider use of location-based tools such as notifications for patients when they arrive for appointments, even if the patient has consented?

LRB-0395/P2; Human Review of Health Insurer Coverage Decisions: WHA supports the notion that an insurance coverage denial should not be based solely on the decision-making of an AI system. Patients, families, health care providers and hospitals all feel the effects of these decisions. As the committee refines this draft, WHA suggests the committee consider whether "meaningful human review" should also require the reviewer to have appropriate clinical expertise in the relevant field, and whether "adverse determination" should be broadened to include partial denials and payment reductions, not just full denials.

LRB-0408/P1; Companion Chatbots: WHA supports the goal of LRB-0408/P1. Consumer companion chatbots that simulate human relationships, especially with minors, present risks, and the draft's disclosure and safety protocols respond to concerns raised by members and presenters. If the committee moves forward with this legislation, we suggest the following considerations:

- **Potential conflict created by required parental controls:** How would this reconcile with rights of minors to consent to certain care confidentially or without parental consent?
- **Avoid disclosure fatigue:** WHA asks how this would apply to tools deployed by health care providers within a treatment relationship, particularly in light of members' stated concerns regarding "disclosure fatigue" during the October meeting.

LRB-0410/P1; Support for the Health Care AI Regulatory Sandbox: WHA supports the inclusion of an AI regulatory sandbox proposal, as discussed in our September memo to the committee. That said, WHA offers the following comments specific to LRB-0410/P1:

- **Eligibility:** As drafted, LRB-0410/P1 limits participation to "developers" of AI systems. This should be broadened to allow for health care providers (who are more likely to be "deployers") to also participate, if they wish to do so.
- **Proper Agency Authority:** As mentioned in the drafter's notes, it may be unclear whether an office within DATCP could grant regulatory relief from requirements administered by other agencies. This would need to be clarified. Relatedly, WHA suggests considering housing the program within either the Department of Health Services or the Department of Safety and Professional Services. Either of those agencies will bring greater regulatory expertise and understanding for waivers that could impact patient care.

- **Liability:** The draft does not address liability in the event that an AI under testing causes harm. As noted during the September 10th meeting by Utah's Director of AI Policy Zach Boyd, PhD, there is already a concern within Utah's program that liability could fall too heavily on health care providers who don't actually design the AI systems. As the committee refines this draft, WHA suggests this may be an opportunity to address a known issue ahead of time.

As a potentially preferrable alternative to the Utah model, WHA encourages the committee to also explore and develop an alternative draft that rather than creating a new single agency with waiver authority of other agencies' rules, would instead amend ch. 227 to give all state health related agencies authority to waive or grant a variance to a requirement enforced by that agency, whether in rule or statute.

The legislation could be modeled after s.50.36(6m) to allow such agencies on a temporary basis, to simplify the myriad of complex health care regulations that often stymie innovation, allowing Wisconsin providers to develop and evaluate new technologies that could improve efficiencies, lower costs, or improve health outcomes, under terms established by the state agency that grants the waiver or variance of existing regulation. Creating this monitored flexibility at the agency level would help Wisconsin be an innovator in safe, effective uses of AI technology to improve health care delivery, while also preserving agency expertise and limiting new costs to state government.

Conclusion

WHA appreciates the committee's thoughtful consideration of these important issues and will continue to be a resource to ensure Wisconsinites can benefit from safe, accountable, and innovative uses of AI in health care. Please contact Andrew Hanus, Policy Counsel, or Abbey Rude, Vice President of Government Relations, with any questions or if WHA can provide additional information as the committee continues its work.