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OCI Evaluates Options to Stabilize Individual Market as Costs Rise, Insurers Exit



From left: J.P. Wieske, Deputy Commissioner, Wisconsin Office of the Commissioner of Insurance; Eric Borgerding, WHA President/CEO; Kyle O'Brien, WHA Senior Vice President, Government Relations

Deputy Commissioner J.P. Wieske from the Wisconsin Office of the Commissioner of Insurance (OCI) told members of WHA's Public Policy Council at their November 16 meeting that the conditions are worsening in Wisconsin's individual market as insurers exit the market, leaving some counties with little or no choice in insurers and with triple digit premium increases in the Green Bay area, double in other counties.

According to Wieske, the individual insurance market in Wisconsin has lost \$400 million over the last three years. Premiums for the second least costly silver-level plan on the exchange are increasing an average of 50 percent for 2018, but that varies by region. In Green Bay, for example,

premiums for the second least expensive silver plan are increasing 105 percent. More than 200,000 people in Wisconsin purchase insurance on the exchange, most receiving an advance premium tax credit. Wieske said those who did not receive a tax credit are leaving the market, a trend he said is unlikely to change.

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WI Supreme Court Agrees to Hear Appeal of Medmal Cap Case

The Wisconsin Supreme Court agreed this week to hear an appeal of the July Court of Appeals opinion in *Ascaris Mayo v. IPFCF* holding that Wisconsin's \$750,000 cap on non-economic damages in medical malpractice cases is unconstitutional.

In its July decision, the Court of Appeals concluded that the medical malpractice cap was unconstitutional because the Legislature lacked a rational basis for enacting the non-economic damage cap. By accepting review of the case, the Supreme Court will have the final say on the constitutionality of Wisconsin's non-economic damage cap.

"WHA fought hard several years ago to enact bipartisan legislation establishing the current cap," said WHA President/CEO Eric Borgerding. "The Legislature held multiple hearings and received ample, credible supporting information as it debated this important public policy that impacts the accessibility of health care throughout Wisconsin. We believe that the Court of Appeals' July conclusion that this public policy choice by the Legislature lacks any rational basis was a significant error."

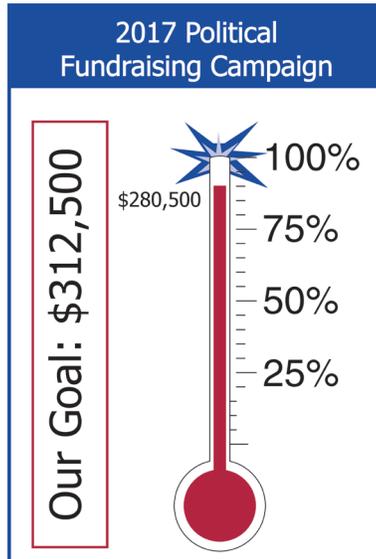
Just as WHA submitted an amicus brief in support of the non-economic damage cap with the Court of Appeals, WHA will be requesting permission from the Supreme Court to file an amicus brief in its review. It is expected that multiple health care and non-health care organizations concerned about the Court of Appeals decision will also be seeking to file amicus briefs in support of the non-economic damage cap in this case.

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Political Action Spotlight

Wisconsin Hospitals State PAC & Conduit Tops \$280,000

Progress on “\$50K in 50 Days” effort; Next contributor list runs Dec. 8



The 2017 Wisconsin Hospitals State PAC & Conduit campaign is racing toward year end and the goal of raising \$312,500. This week close to \$15,000 was contributed, putting the campaign at \$280,500 or 90 percent of goal.

“The Wisconsin Hospitals State PAC & Conduit had a great fundraising week with an average of \$2,000 contributed each day,” said WHA Advocacy Committee Chair Mike Wallace. “Thank you to the 292 individuals who have contributed to date. If you have yet to contribute, the clock is ticking, so please make your 2017 contribution now. Join your peers and help keep health care in Wisconsin moving forward.”

In early October, the Wisconsin Hospitals State PAC & Conduit also launched a “mini” challenge campaign of raising “\$50K in 50 Days!” That challenge runs through November 24. To date \$40,000 has been contributed since the challenge was issued.

The next full contributor list will be published in the December 8 edition of *The Valued Voice*. Make sure your name is on the list! Contribute now at www.whconduit.com or call WHA’s Jenny Boese at 608-268-1816 or Nora Statsick at 608-239-4535.

Encourage Physician Leaders to Attend WHA Physician Leadership Conference

Physicians new to leadership roles within your hospital or health system often need an opportunity to learn important and practical leadership skills that will help them move beyond their clinical training and take a new approach to managerial decision making and problem solving, allowing them to be most effective in their new roles. WHA’s annual Physician Leadership Development Conference can be just that needed opportunity.



Registration is now open for WHA’s 13th annual Physician Leadership Development Conference, scheduled for March 9-10, 2018 at The American Club in Kohler. Full information and online registration are available at www.wha.org or directly at www.cvent.com/d/ktql9j. Discounted registration is available to those registering by January 15, 2018.

This year’s conference will include a full-day session with presenter Allison Linney called “A Leader’s Guide to Resolving Conflict,” in which attendees will focus on the skills needed to make conflict productive and practice conflict management and effective communication skills. In addition, a half-day session called “Putting High Reliability Organizing (HRO) to Work,” led by Craig Clapper, will focus on the physician leader’s role in shaping performance culture, discussing the principles of high reliability organizing, and demonstrating various skills physician leaders can use to shape culture.

For questions about the annual Physician Leadership Development Conference, contact Jennifer Frank at jfrank@wha.org or 608-274-1820.

Tax Bills Moving in Congress

Several provisions impact not-for-profits

Both Chambers of the U.S. Congress have been moving rapidly on major tax policy legislation. Several provisions in those packages impact tax-exempt organizations, including hospitals. The Wisconsin Hospital Association (WHA) is particularly concerned with a provision included in the House tax package related to private activity bonds (PABs).

Private-activity bonds (PABs) are currently tax exempt for certain entities, including qualified 501(c)(3) organizations. Under the House legislation, the tax exemption is removed, which means interest on newly issued PABs would be included in income and thus subject to tax. If enacted, the provision would be effective for bonds issued after 2017.

WHA opposes removal of tax-exemption status for these PABs and has relayed its opposition to the Wisconsin Delegation. WHA is pleased to see the U.S. Senate Finance Committee has not included this provision in its legislation.

“These bonds play a critical role in helping not-for-profit hospitals and health systems access low-cost capital, enabling them to keep infrastructure expenditures low so they can efficiently fulfill their mission and focus on the work they do for the public good,” said WHA President/CEO Eric Borgerding.

In addition to PABs, several other provisions of note are:

- Advance refunding bonds. Both the Senate and the House tax packages repeal the tax exemption for advance refunding bonds. Advance refunding bonds are a refinancing option used to access better interest rates, including on qualified 501(c)(3) bonds, to help to lower capital financing costs.
- Excise tax on tax-exempt organization executive compensation. Both the Senate and the House packages place a 20 percent excise tax on executive compensation that exceeds \$1 million paid to the five highest paid employees. The provision applies to an “applicable tax-exempt organization,” which is defined as: 501(a)s, of which 501 (c)(3)s fall under; exempt farmers’ cooperative; a Federal/State/Local governmental entity with excludable income; and, a political organization. The applicable tax-exempt organization is subject to the excise tax.
- Individual insurance mandate. The Senate package reduces the penalty associated with the Affordable Care Act’s individual insurance mandate to \$0.

On November 16, the U.S. House of Representatives passed their tax package –The Tax Cut and Jobs Act (HR1). The U.S. Senate package has yet to receive a vote in the Senate, though one could occur by the Thanksgiving holiday. Because the Senate and House packages differ, both Chambers must reconcile these differences before any legislation could move forward to the President.

Medicare Extenders (MDH/LVA) Proposal

CAH swing beds in the crosshairs

On November 15, the U.S. House Ways & Means Committee released a statement that the Chair and Ranking Democrat had reached a bipartisan agreement on a package of what are called Medicare payment “extender” policies. Several of the policies in this package are the Medicare Dependent Hospital (MDH) and the Low-Volume Adjustment (LVA), both of which expired September 30.

The MDH and LVA payments affect roughly 15-20 of Wisconsin’s rural, non-critical access hospitals each year, and WHA strongly supports their continuation. The Ways & Means Committee proposes extending both MDH and LVA out an additional two years.

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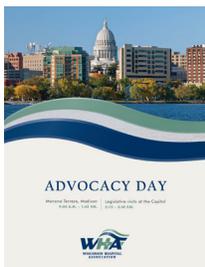
Continued from page 3 . . . Medicare Extenders (MDH/LVA) Proposal

Several other extenders in this package include:

- Two-year straight extension of the Medicare geographic payment cost index for physician payments;
- Permanent extension of exceptions process for Medicare with the repeal of the therapy caps;
- Five-year straight extension of the home health rural add-on; and,
- Five-year extension of the ground ambulance add-ons and ground ambulance payment modifications.

However, in order to help pay for these extensions, the Ways & Means Committee is proposing to modify the payment for critical access hospital (CAH) swing beds. WHA has already engaged with Members of Wisconsin's Delegation in opposition to this potential cut to swing beds and will also be in Washington, D.C. November 29 to discuss.

WHA will continue to advocate against this pay-for and further analyze the proposal as more details emerge. If you would like to express concerns to your Member of Congress, log onto www.voterveice.net/WIHA/Address.



2018 Advocacy Day: Register Today! **March 21, 2018 *** Monona Terrace, Madison**

Make an impact in Madison for your hospital by attending Advocacy Day
March 21, 2018.

Register Today at: www.whareg4.org/2018AdvocacyDay.

340B Legal, Legislative Advocacy Begins Over CMS Reimbursement Cut

On November 1, the Centers for Medicare & Medicaid Services (CMS) finalized a significant cut under the 2018 Outpatient Prospective Payment System (OPPS) rule that impacts certain 340B providers who bill under the OPPS. In finalizing this policy, CMS ignored the voice of a majority of both the U.S. Senate and U.S. House of Representatives and unified opposition from 340B providers. The response from 340B covered entities and organizations representing them has been quick and aggressive, including a lawsuit and legislation.

On November 13, the American Hospital Association, the Association of American Medical Colleges, America's Essential Hospitals and three hospital providers filed suit against the federal Department of Health & Human Services over the policy. The lawsuit seeks an immediate injunction to stop the policy from taking effect in January. On the legislative front, bipartisan legislation to stop the payment cuts was introduced by Reps. David McKinley (R-WV) and Mike Thompson (D-CA). The legislation was introduced as HR 4392. The Wisconsin Hospital Association supports HR 4392 and urges Wisconsin's House Members to cosponsor the bill.

As a reminder, under the new policy CMS will no longer reimburse certain 340B covered entities at the normal Medicare OPPS reimbursement rate of the Average Sales Price (ASP) + 6 percent. Instead, beginning January 1, 2018, it will reimburse 340B drugs at ASP -22 percent—an almost 30 percent reduction in reimbursement. This payment change applies to separately payable drugs. It does not apply to vaccines or pass-through payments. Certain 340B providers, liked critical access hospitals and others, will not be impacted by the policy. Refer to www.wha.org/wha-newsletter-11-3-2017.aspx#s3 for more details.

Wisconsin Fast Forward Grant Writing Training Available

High-quality care depends on a high-quality workforce. Wisconsin Fast Forward (WFF) grants can help WHA members build and sustain the workforce that has made Wisconsin #1 in health care quality. The Wisconsin Department of Workforce Development is offering a free informational grant application training session, "Submitting a Successful Wisconsin Fast Forward (WFF) Grant," Wednesday, November 29 from 10 a.m. - 12 p.m. The training session can be attended in person at GEF 1 Room F105, 201 E. Washington Ave. Madison WI 53707 or via webex. The training will increase applicants' understanding of the WFF grant application process, goals of the WFF grant program, process for funding and information on what makes a successful WFF grant application.

WHA supported the Wisconsin Fast Forward legislation as another significant investment in workforce development that helps employers recruit and retain employees through training and education. WHA encourages its members to identify regional training opportunities and to connect with workforce partners to develop WFF applications. Grants for health science and health care related occupations range from \$5,000 to \$400,000. The training will be a relatively brief presentation followed by a detailed question and answer session focusing on the key elements of submitting a successful customized skill training grant for DWD's open grant cycle that closes on December 31, 2017 at 12:00 p.m.

Past WHA member awardees include:

- \$38,041 to Agnesian HealthCare in Fond du Lac to develop and deliver training to ten incumbent workers and two new hires in nursing informatics.
- \$206,702 grant to train 254 workers at the St. Elizabeth Hospital – Fremont Tower to provide staff with the customized performance improvement skills that are required within a new, state-of-the-art facility.
- \$175,393 to Upland Hills Health to provide customer service and technology training to 468 workers at its rural hospital. The goal of the training was to increase the skills and knowledge of staff as the organization implements an electronic health record system and other patient-centric tools.

Register now to reserve your seat at <http://dwdlearningcenter.wi.gov>. If you have questions, contact WisconsinFastForward@dwd.wisconsin.gov or call Andy Heidt, program and policy analyst, WI Fast Forward, at 608-266-0174.

Member News: Euclide New CEO at Rusk County Memorial Hospital

The Rusk County Memorial Hospital Board of Trustees announced Jeff Euclide is the new CEO at Rusk County Memorial Hospital. Euclide previously served as interim CEO at RCMH.

Prior to joining RCMH, Euclide had more than 29 years of leadership experience at hospitals in Wisconsin and Michigan, including as interim chief administrative officer for Aurora Medical Center Washington County and as the vice president of patient care services and chief nursing officer at a 222 bed hospital in Michigan. There, he led the quality improvement team, which saw drastic improvements in patient engagement and HCAHPS scores. He also made strides in employee leadership development and review processes.



Jeff Euclide

Euclide received his associate degree in nursing at Milwaukee Area Technical College, a bachelor of science in nursing from Marquette University, and an MBA from the University of Wisconsin- Oshkosh. He is a certified nursing executive advanced through the American Nurses Credentialing Center.

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The case does not impact economic damages, and unlike successful plaintiffs in non-medical liability suits who must rely on the solvency of the defendant to recover economic damages, Wisconsin patients who are injured by medical malpractice are guaranteed recovery of an unlimited amount of economic damages through the Injured Patient and Family Compensation Fund (IPFCF) funded by provider assessments.

The July Court of Appeals decision overturned the non-economic damage cap passed with significant bipartisan support in the Legislature and signed into law by Governor Jim Doyle in 2006. WHA, together with the Wisconsin Medical Society and American Medical Association filed a joint amicus brief with the Court of Appeals in 2015 supporting the constitutionality of the non-economic damage cap.

In the July Court of Appeals majority opinion, Judge Joan Kessler wrote, "We are left with literally no rational factual basis in the record before us which supports the Legislature's determination that the \$750,000 limitation on noneconomic damages is necessary or appropriate to promote any of the stated legislative objectives."

The Court of Appeals decision overturns the lower court decision in this case by Milwaukee County Circuit Court Judge Jeffrey Cohen that found the non-economic damage cap generally constitutional but unconstitutional for the particular plaintiff in this case. Judge Cohen reached a different conclusion than the Court of Appeals regarding whether the Legislature had a rational, factual basis for establishing the non-economic damage cap.

"[T]he Court has conducted a thoughtful examination of the statutory scheme and determined that the Cap is rationally related to the Legislature's goals," stated Judge Cohen in the 2014 lower court decision in this case on the facial constitutionality of the caps. "Studies, reports, and testimony were considered by the Legislature, which then saw fit to advance four specific goals supported by this evidence. That some studies were inconclusive is not enough to show there is no rational basis here. Plaintiffs must disprove the basis for every 'plausible policy reason' for the challenged classification. Having reviewed the documentation on which the Legislature relied, the Court cannot say that the goals articulated are 'wholly irrelevant.' The documents on which the Legislature relied contain evidence to reasonably support each goal."

Currently, Wisconsin's noneconomic damage cap is technically now unconstitutional statewide as a result of the Court of Appeals decision. A decision from the Supreme Court is expected sometime in 2018.

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To mitigate the price increases and get more healthy lives into the market, OCI is looking at options within the 1332 waiver process. The state has released a request for information (RFI), and is seeking a contractor to help them craft a proposal.

"We feel we need a vendor for a couple of reasons. First, we need someone who can do an economic analysis in partnership with an actuary, but, secondly, we also need someone who can do a 'back-of-the-envelope' calculation before we go full blown," Wieske said. While reinsurance was discussed as one option, Wieske said it puts money into the system but it does not solve the basic problem, which is to get more people into the exchange. He said Gov. Scott Walker is concerned about the "benefit cliff" for people with income at 400 percent of the federal poverty level (FPL) when tax credits fall off -- people are foregoing raises and promotions to keep the subsidy because those with income over 400 percent FPL can't afford to purchase insurance. Wieske said OCI is open to options, and is looking at Iowa, Indiana and other states for possible ideas of what might work in Wisconsin. Because currently the

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federal law requires that 1332 waiver proposals be approved in state law, the timeline for developing a proposal is short. To affect the 2019 benefit year, a proposal would have to pass the state legislature in March, and be submitted to the federal government by April.

"We all have to row in the same direction and have agreement," according to Wieske. "2019 might be an unrealistic deadline. We might have to do one piece at a time and then do a second round. But we are willing to look at options with a goal to affect the insurance market by 2019 because of the crisis we feel we are in."

WHA President/CEO Eric Borgerding reiterated WHA's key priority which is for any reform to sustain the gains in coverage. He referenced current federal proposals to repeal the individual mandate. He also noted that the ACA requires that 1332 waivers have certain "guardrails," including that the state demonstrate that the proposal would provide the same level of coverage, the same level of affordability, and the same level of insured lives as would occur without the waiver. Given that, he asked Wieske for his opinions on the individual mandate, and on what changes to the 1332 waiver guardrails might be helpful to the state.

"I am not convinced the individual mandate has helped. People respond to appropriate economic incentives and try to get around them," according to Wieske. "Voluntary coverage is more effective...The simple reality is that there are those who will not buy certain coverage and it's expensive. The way is to offer a product they can afford, get them in the system, and use those dollars to subsidize others."

On the 1332 waivers, Wieske noted that the state would be interested in offering less comprehensive benefit packages that might be cheaper and incent younger and healthier individuals to sign up for coverage. But, if nothing happens in Congress, Wieske said OCI will have to live within the parameters they now have and use those to move the market.

"I don't believe in ideal situations. If it gets better, we have more flexibility," he said. "If it doesn't, we'll live with what we got."

The State Budget and Fall Session

In his report, WHA Senior Vice President Kyle O'Brien said Wisconsin's 2017-19 biennial budget was signed into law on September 21, laying out the state's \$76 billion spending plan through June 30, 2019. The budget bill Walker signed includes nearly all of WHA's key initiatives, including a significant increase in the state's Medicaid Disproportionate Share Hospital (DSH) program, a \$1.5 million increase in graduate medical education grant funding, and investments to support training the state's rural health care workforce as part of the Rural Wisconsin Initiative.

Wisconsin's Medicaid DSH program was increased by over \$60 million, taking Wisconsin's total Medicaid DSH program up to \$134 million over the two-year budget. In addition, the Joint Finance Committee (JFC) recognized rural hospitals who do not qualify for DSH because of a federal law criteria that requires the hospital to provide OB services. The JFC provided \$1.2 million in state and federal funds to support these rural hospitals who treat the same level of Medicaid patients as Medicaid DSH hospitals.

WHA led a coalition of health care organizations, and worked very closely with the chair of the Wisconsin Board of Nursing, to advance an enhanced Nurse Licensure Compact in Wisconsin. Since 2000, Wisconsin has been part of an interstate licensing agreement that reduces regulatory burden on nurses looking to practice in Wisconsin and provides nurses with license portability to treat patients in 24 other Compact states. [Senate Bill 417](#) has passed both the State Senate and Assembly, clearing the way for this bill to be sent to the desk of Governor Walker for his signature. The Governor has already publicly

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expressed his support for [Senate Bill 417](#) by incorporating the legislation into his recently released “Rural Agenda.”

O’Brien noted [Senate Bill 417](#) passed the Assembly and Senate unanimously. WHA expects the bill to be signed into law in the coming weeks. A group of 97 bipartisan coauthors sponsored the bill, led by Sen. Howard Marklein (R–Spring Green) and Rep. Nancy VanderMeer (R–Tomah).

O’Brien said the Assembly has unanimously approved [Assembly Bill 538](#), a WHA-led bill reconciling Wisconsin’s emergency detention law with federal EMTALA (Emergency Medical Treatment and Active Labor Act) requirements for appropriate transfers of patients and providing additional liability clarity for health care providers treating patients during a mental health crisis. The bill has been in development for several years in conjunction with WHA, the Wisconsin Counties Association and in consultation with law enforcement organizations.

Matthew Stanford, WHA General Counsel, led a Council discussion on licensure bill proposals currently being advanced by advance practice nurse and physician assistant groups. Stanford shared work and proposals that WHA has proactively offered to advance and reduce confusion regarding the licensure of nurse practitioners, CRNAs, certified nurse midwives, and clinical nurse specialists and to remove regulatory barriers to the practice of advance practice nurses in a team-based care setting.

WHA leads coalition to oppose medical fee schedule in worker’s comp program

A proposal that would enact government price controls for medical care delivered to injured workers is facing strong opposition from a coalition of health care providers, led by WHA. And the facts do not support the allegations that are being used to support the latest effort to reduce provider rates in the worker’s compensation program, according O’Brien.

O’Brien said WHA has been working with health care liaison partners and a broader coalition of provider organizations to oppose the legislation. That group has highlighted the fact that effective October 1, Wisconsin employers experienced a significant reduction in worker’s compensation premiums for the following year, all without implementing a government fee schedule for health care services.

“Our members are working in partnership with local employers to help them manage their health care costs and prevent work-related injuries,” O’Brien said. “If workers are injured on the job, they receive some of the highest quality care in the nation. Because of that, they use fewer medical services, are more satisfied with their care, initiate fewer litigated claims and return to work faster than every other state in the nation. Wisconsin’s health care providers are delivering value to our work comp program. Worker’s comp is an asset in Wisconsin for job creation, not a liability.”

Federal update: Repeal and replace

Jenny Boese, WHA vice president, federal affairs and advocacy, reviewed the latest developments at the federal level related to regulations and a variety of legislation of importance, including recent tax reform legislation pending in both the U.S. Senate and U.S. House (see “tax article” on page 3); 340B legal and legislative advocacy (see “340B article” on page 4); Medicare extenders (see “MDH/LVA” article on page 3) along with the outlook for the rest of 2017.

WHA activities supporting members’ integrated physician enterprise

The Council discussed how WHA can best support its members’ integrated physician and clinic enterprise now and in the future, in particular providing guidance regarding future WHA reimbursement advocacy.

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This discussion was a continuation of the work of the WHA Physician Leaders Council and the WHA Board at its July planning session and October meeting.

“As WHA’s members’ focus has evolved beyond the traditional ‘walls’ of the hospital to a presence as local and regional integrated health systems, WHA’s focus has similarly evolved,” said Borgerding. “The input provided by the Public Policy Council will help guide WHA as we continue to work to ensure WHA’s advocacy efforts serve the needs of our members now and in the future.”

WHA State PAC & Conduit Report

Boese and Nora Statsick updated the PPC on fundraising efforts for the Wisconsin Hospitals State PAC & Conduit is at 90 percent of its 2017 goal of raising \$312,500. (See PAC article on page 2)