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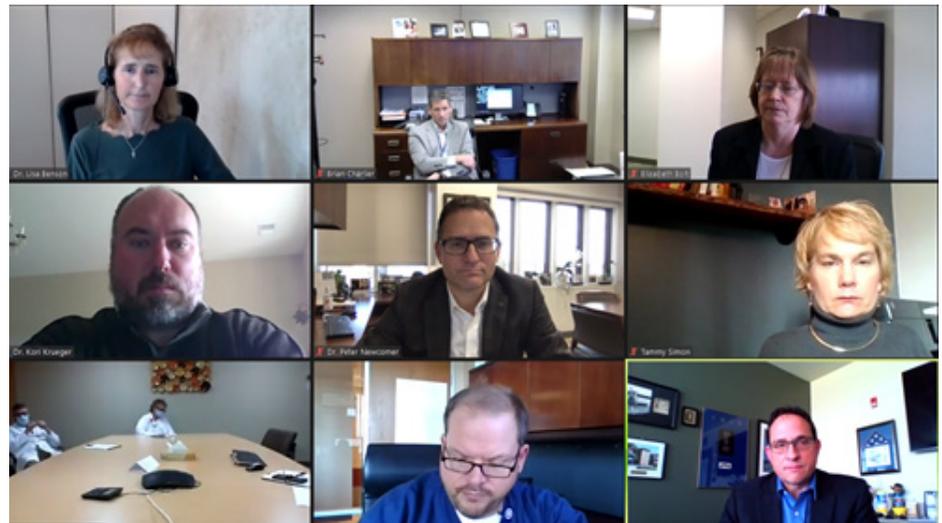
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**WHA hosts Virtual “Incident Command” for State Lawmakers and Staff**

*Incident Command leads from five member health systems call for action as they describe the realities inside Wisconsin hospitals*



*COVID response leaders from five member hospitals and health systems across the state briefed more than 70 attendees on various challenges they are facing in both rural and urban settings.*

The Wisconsin Hospital Association (WHA) hosted a virtual “incident command” briefing on Friday, Nov. 20, to provide Wisconsin legislators and the Evers administration, as well as their respective staffs, a direct-from-the source report of how COVID-19 threatens to overwhelm our health care system and its workforce in Wisconsin. COVID response leaders from five member hospitals and health systems across the state briefed more than 70 attendees on various challenges they are facing in both rural and urban settings.

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**EDUCATIONAL EVENTS**

**Starting December 7, 2020**  
*Chargemaster Coding Updates and Implementation for 2021*  
Self-study Modules

**December 15, 2020**  
*The Pursuit of Happiness: Methods vs. Mythology*  
Webinar

**December 16, 2020**  
*Enhancing Resilience: Survival of the Kindest*  
Webinar

**In Win for Hospital Value-Based Payments, HHS Finalizes Reforms to Stark Law and Anti-Kickback Statute**

On Nov. 20, the U.S. Department of Health and Human Services (HHS) released [two long-awaited final rules](#) governing the physician self-referral or Stark Law and Anti-Kickback Statute. Reform of the Stark Law has been a significant priority for WHA for a while, including in comments on a federal [Request for Information](#) (RFI) in 2018 and on the [proposed rule](#) in early 2020. Wisconsin’s Congressional Delegation has also supported efforts by WHA and others to [push for Stark Law reforms](#) and to encourage HHS to [finalize the proposed rule](#) earlier this year.

Named after its lead author, former California Congressman Pete Stark, the Stark Law was intended to guard against financial incentives physicians might receive for

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ordering unnecessary tests or procedures under Medicare. Unfortunately, more than 25 years after its passage, the law has been beset by a complex maze of rules and regulations that also intersect the Anti-Kickback Statute and make it difficult for hospitals to comply, creating a chilling effect on participation in value-based payment reforms that are intended to incentivize higher quality and higher value health care.



The new rule aims to draw more providers into value-based payment arrangements by creating specific exceptions from the Stark Law and safe harbors from the Anti-Kickback Statute to existing regulations. Specifically, it creates safe harbors or exceptions in three types of arrangements:

1. Care coordination agreements or value-based arrangements that require no financial risk but are entered into for the sake of improving quality, health outcomes and efficiency.
2. Value-based arrangements with substantial shared financial risk or meaningful downside financial risk to the physician (of at least 10% of a physician's remuneration under the Stark Law).
3. Value-based arrangements with full financial risk, typically paid via a capitated or per-member-per-month rate.

In addition to these three main criteria, the rules also contain additional flexibilities for patient engagement tools furnished to patients which may improve outcomes as well as electronic health record and cybersecurity technology upgrades. It also attempts to clarify the confusing definitions surrounding

- Commercially reasonable agreements;
- Fair market value;
- Patient choice and directed referrals; and
- An objective standard for compensation that "takes into account the volume or value of referrals."

WHA is exploring additional educational opportunities for members on these proposed reforms and will be in touch as opportunities arise. For more information, contact WHA Vice President of Federal and State Relations [Jon Hoelster](#) or Vice President of Education and Marketing [Leigh Ann Larson](#).

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## **Nursing Home Staffing Issues Take Center Stage at Post-Acute Work Group Meeting**

Staffing issues across the health care continuum were the focus of WHA's Post-Acute Work Group at its Nov. 20 meeting. Work Group members discussed how the lack of open nursing home beds constrains a hospital's ability to discharge patients who need that level of care. Nursing home beds may be unavailable because either an outbreak in the facility prevents admissions or because the facility doesn't have enough staff to keep beds open.

WHA staff described efforts currently underway to address these staffing shortages and detailed recent Department of Health Services (DHS) initiatives that have impacted bed availability in nursing facilities to which hospitals seek to transfer some of their patients ready for discharge.

After hearing from some member hospitals bordering Minnesota that could not find skilled nursing facility (SNF) placements for their patients, WHA contacted DHS about the feasibility of discharging Medicaid patients to nursing homes in Minnesota. DHS said this would be permitted if a Minnesota-based or another border-state provider is enrolled in the Wisconsin Medicaid program. If it is not, it may apply for enrollment, and its eligibility will be retroactive as long as the border-state nursing home is certified as a Medicaid provider in its home state.

WHA is also pursuing swing bed reimbursement under Wisconsin Medicaid as another way to expand nursing home bed access. WHA's proposes that Medicaid reimbursement be provided to critical access hospital swing beds, as well as to prospective payment system hospitals that apply for the Medicare swing bed program as permitted under federal COVID-19 waivers. This proposal is in progress.

WHA staff also reviewed DHS' respiratory outbreak policy [reported](#) in the September 24 issue of *The Valued Voice*. This guidance resulted in restricted admissions to nursing homes. Subsequent DHS guidance outlined a [process](#) that provides some flexibility in admissions facilities in the event of an outbreak.

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*(Nursing Home Staffing Issues Take Center Stage at Post-Acute Work Group Meeting . . . continued from page 2)*

DHS recently authorized federal CARES Act funding for nursing homes to incentivize admissions of hospital patients. This funding, explained in the [November 12 Valued Voice](#), will provide \$80 million of CARES Act funding to nursing homes. Noteworthy to WHA members is \$30 million allocated to a skilled nursing facility post-acute care admission incentive program. This program will offer a \$2,900 payment for every admission a nursing home receives directly from a hospital, covering the last two weeks of October until funds are expended or through Dec. 30, 2020, when the CARES Act funding expires. This will help meet DHS' statewide response goal of boosting the number of staffed SNF beds that can accept hospital discharges.

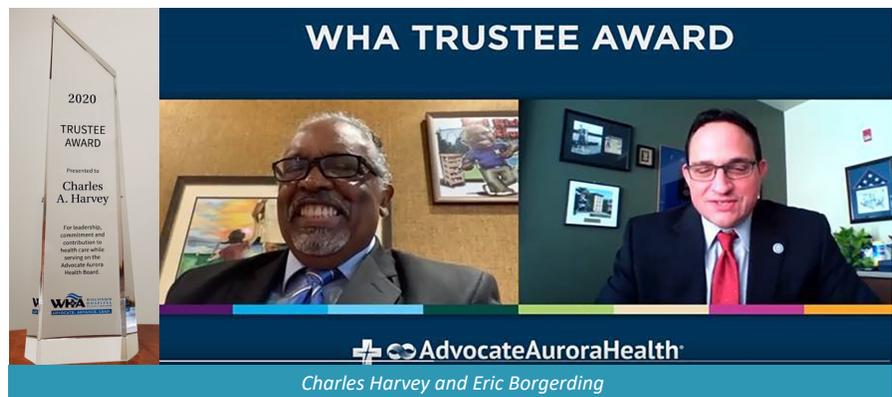
For further information on WHA's Post-Acute Work Group and the topics discussed in this article, contact WHA's [Laura Leitch](#) or [Laura Rose](#).

## Advocate Aurora Board Member Charles Harvey Receives 2020 WHA Trustee Award

During a virtual meeting on Nov. 18, WHA President and CEO Eric Borgerding presented the 2020 Trustee Award to Charles Harvey, a member of Advocate Aurora Health's board of directors. Many of Harvey's accomplishments were highlighted, some of which include:

- Aurora board member since 2013
- Board member of the Milwaukee World Festival
- Previous board memberships:
  - » The United Way of Greater Milwaukee and Waukesha County
  - » Milwaukee Public Policy Forum
  - » United Performing Arts Fund

Harvey is a dedicated corporate and civic leader who, among other things, has devoted himself to increasing diversity in corporate America and leading urban economic development in Milwaukee. In 2012, he cofounded the Morehouse Scholars Program, now known as the MKE Fellows, to provide scholarships for academically talented African American men from Milwaukee to attend Morehouse College in Atlanta. MKE Fellows has financed the educations of nearly 150 young leaders to date. In 2014, as cofounder of Partners for Community Impact, Harvey joined four other African American business leaders to buy a share of the Milwaukee Bucks, ensuring the NBA franchise would receive the investment necessary to flourish—and that the resulting economic benefits would reach all city residents.



Jim Skogsbergh, president and CEO of Advocate Aurora Health, nominated Harvey for this award. Skogsbergh stated, "Chuck is a pillar of the community, a passionate advocate for equity and a respected business leader with four decades of experience. I am lucky to have him beside me as we work to transform health care in Wisconsin and beyond."

In conjunction with this award, a \$250 donation will be given to a charity of Harvey's choice.

Congratulations Charles Harvey!

For more than 60 years, WHA has recognized outstanding member trustees—those who go above and beyond the call to provide difference-making volunteer leadership to a member hospital.

To be nominated for this award, candidates must demonstrate

- Long-term service and leadership on a hospital governing board;
- Leadership in understanding and addressing community health needs;
- Participation in local, state or national activities through association and societies; and
- Recognition shown by others for their commitment and service

## WHA Submits Letter on Proposed DHS Substance Use Disorder Rulemaking

On Nov. 13, WHA submitted a comment letter to the Department of Health Services' (DHS) Division of Care and Treatment Services on [proposed rulemaking revisions to DHS 75](#) relating to community substance abuse service standards. The officially proposed revisions are not final rules and still need to receive final review and approval by the DHS secretary, governor and legislative committees.

"The full administrative costs of the proposed rule are difficult to fully and precisely quantify, but together with professional requirements regulated by the Department of Safety and Professional Services, federal Substance Abuse and Mental Health Services Administration rules and requirements, payer requirements, liability risk mitigation and other overlapping state and federal regulatory requirements and processes that also assure minimum levels of quality and safety, the requirements in proposed DHS 75 add up to not insignificant administrative and opportunity costs for health care providers," wrote WHA in its [comment letter](#) on the proposed rule.

"We believe that the rule on the whole still needs additional work to reduce the regulatory burden and compliance costs of DHS 75 in order to achieve the goals to expand access to substance abuse treatment throughout Wisconsin," WHA's comment letter continued. "We appreciate that the draft proposed rule does eliminate some outdated and unnecessarily prescriptive provisions that should reduce unnecessary regulatory cost. However, in many cases throughout the recreated rule, unnecessary detail and prescription remains, and in cases such as the new regulation of office-based opioid treatment, will create new compliance requirements and costs."

The comment letter highlighted the following points:

**The impact of over-regulation on access to substance use disorder services** – The letter highlights multiple comments and discussions that have occurred in task forces, listening sessions, and committees—including the 2017 executive order identified as the impetus for the rulemaking—emphasizing the need to simplify and streamline substance use disorder regulation to ease access to substance use disorder services.

**Comparative complexity compared to the current rule and other states' requirement** – To help objectively measure the regulatory complexity and prescriptiveness of the proposed rule, the letter analyzed the word count, paragraph count, and definition count of the proposed rule, the current rule and comparative federal and other states' rules. That analysis found that by each measure, the proposed rule significantly exceeds the current rule and the comparative rules.

**Access impacts caused by the unnecessary—and last minute—creation of significant new regulatory burden on office-based buprenorphine providers** – The letter requests that DHS remove a new office-based opioid treatment section that would overlay on top of federal Drug Enforcement Administration (DEA) regulations significant new state regulatory requirements on office-based providers authorized to prescribe or administer buprenorphine. Multiple Wisconsin task forces have identified the need to encourage more buprenorphine prescribers in office-based settings, and the existing federal DEA requirements on buprenorphine prescribers already deter physicians from becoming buprenorphine prescribers. The letter further raises concerns that this significant additional regulation was never discussed by the DHS 75 Advisory Work Group.

**A list of specific regulatory issues with current DHS 75 previously identified by WHA members** – The letter reiterated several specific issues previously identified by WHA members to reform current DHS 75, some of which are addressed in the proposed rule. The letter asked that each of the specific issues be addressed in the final rule.

DHS has reached out to WHA to continue discussing the proposed DHS 75 rule. WHA will continue working with DHS on improving the proposed rule prior to its final publication.

If you have questions or would like more information about the DHS 75 rulemaking, contact WHA General Counsel [Matthew Stanford](#) at 608-274-1820.

## Borgerding Becomes WHA's Fifth President/CEO



Eric Borgerding became president and chief executive officer of the Wisconsin Hospital Association on Jan. 1, 2015, just the fifth person in that role since the position was established in 1944.

Before serving in his current position, Borgerding led WHA's advocacy efforts for 13 years, as vice president for government relations beginning in 2002, senior vice president of WHA in 2003, and then as executive vice president beginning in 2007. Borgerding brought

more than 25 years of experience in government relations and advocacy to the WHA top post, including time as the chief state lobbyist for the University of Wisconsin-Madison, director of legislative relations at Wisconsin Manufacturers and Commerce, and a previous stint as WHA's director of legislative relations in the early 1990s. Borgerding first became a licensed lobbyist in Wisconsin in 1988; his career in health care, public policy and advocacy now spans over three decades.



Eric Borgerding

Eric and his wife Dana have been married 32 years, have three adult children and, recently, welcomed a new grandson. Borgerding is an avid musky fisherman, collector, and historian, serving on the Wisconsin Historical Society Board.

In one of his first interviews after becoming president, Borgerding recognized WHA's members, all of Wisconsin's hospitals and health systems. "I'm very proud of where our state is and the commitment of hospitals and health systems across the state to quality and outcome improvement. We have just as much engagement from our smallest, 25-bed, critical-access hospitals to quality improvement as we do from our largest hospitals. That's really a testament to Wisconsin." Borgerding also said in the interview with Guy Boulton of the Milwaukee Journal Sentinel, "One of the reasons WHA has been so successful and one of the best parts of this job is working with some (health care) leaders in Wisconsin who really are national leaders...They make representing Wisconsin hospitals and health systems very rewarding."

Five years later, a [video](#) commemorating WHA's 100th Anniversary, Borgerding reiterated his praise for WHA's members by reflecting on the role of the organization. "Everything we do at WHA is about enabling our members to do what they do best—deliver great care in Wisconsin...What more could we ask than to be an advocate for individuals and organizations who are making peoples' lives better? That is a privilege and an honor, especially in this, our one-hundredth year."

This week, WHA made national headlines calling for bipartisan leadership and action to address the pandemic and to support the women and men who are on the frontlines of this battle. In a letter to Governor Evers and legislative leaders Nov. 19, Borgerding wrote, "No one is more burned-out from COVID-19 than the health care heroes who staff our state's hospitals, yet they go to work every day to save lives. They are tired from working months of long hours behind masks, face shields and gowns, yet remain dedicated to their co-workers, patients and communities. But their exhaustion, and increasingly their frustration, is compounded by the still unmitigated spread of COVID. The spike in cases, surge in hospitalizations and increasingly strained health care workforce is a devastating combination that calls for unity and action."

When asked recently what he was most proud of in his nearly 19 years at WHA, Borgerding immediately responded, "Our team. These incredibly talented and dedicated professionals are in the trenches together, seven days a week these past several months, and not only provide outstanding support and service to our members, but also to each other. I can't say enough about them, and it is my privilege to work with them."

Borgerding's tenure to date has been about far more than the coronavirus, and coming issues of *The Valued Voice* will feature a few highlights.

## ***WHA hosts Virtual “Incident Command” for State Lawmakers and Staff . . . continued from page 1)***

The incident command leads from Ascension Wisconsin, Gundersen Health System, Hospital Sisters Health System, Marshfield Clinic Health System and UW Health described the significant challenges they are facing due to rapid community spread of COVID-19.

Among the many challenges panelists shared were issues related to hospital capacity and access to resources. All stressed the toll the pandemic is having on their workforce both physically and emotionally.

“I have been a nurse for almost 22 years, and I’ve never seen anything like this for this long,” related Ken Nelson of Hospital Sisters Health System in Green Bay. “People are tired in so many ways. We’re seeing a lot of burnout, a lot of stress—our own coworkers getting sick, and everyone just picking up for that.” Nelson added, “I see the staff working extra hours, staying over shifts, coming in on their days off, getting constantly called in every day. It has been really taxing.”

“Our units are full, our resources are scarce, and that means we’ve had to institute unprecedented measures,” said Dr. Kori Krueger of Marshfield Clinic Health System. “We’re starting to run drills on what we will do when we run out of resources.”

Incident command leaders discussed the extraordinary efforts hospitals are taking to add capacity to their hospitals. Over the last several months, Wisconsin hospitals have notified the Wisconsin Department of Health Services of their efforts to increase hospital capacity by more than 1,400 beds over their licensed bed counts on an emergency basis; however, significant staffing challenges remain the largest barrier to being able to care for patients in those beds.

“Since the pandemic started, we’ve added 26% more beds to our facility,” said Beth Smith-Houskamp, chief operations and chief nursing officer for Gundersen Health System. “It takes time, money and effort to expand this much capacity, but this also created a deficit of 75 nurses in one department alone that needed to be filled. While we are managing record numbers of COVID patients, we’ve also experienced the highest census in our history; babies are born, people still have accidents, people still have strokes.”

While Gundersen Health is doing everything it can to manage the significantly increased need for inpatient care, it is also losing staff to virus exposure and infection resulting from community spread. “In the last ten days, we’ve had over 500 staff out on a daily average due to COVID positive or quarantine; primarily due to community exposure and not exposures within our facility,” said Smith-Houskamp.

Dr. Peter Newcomer, chief clinical officer at UW Health, said, “We have a window right now to slow this down before we run out of capacity. Unlike other states, we won’t have the ability to transfer out. We are all running out of capacity together, not just in Wisconsin, but across the Midwest. Help us get through the next few months, so we can get our health care workers and our communities immunized.”

Dr. Newcomer noted that UW Health had 400 providers and staff out due to COVID quarantine and isolation, putting even more stress and responsibility on those able to care for patients in the hospital.

WHA President and CEO Eric Borgerding closed out of the meeting by calling on lawmakers to take action in support of our state’s health care workforce, reminding lawmakers and staff that the most important priority right now for elected officials needs to be slowing down the spread of COVID-19.

“Lastly, I want to say thank you to the thousands of people who aren’t on this call today because they are in the emergency department, they’re in the COVID wings, they’re cleaning hospital rooms, they’re preparing patient meals and restocking medical supplies and PPE —they are doing everything they can to keep up with this pandemic and keep people alive,” said Borgerding. “We owe them an ongoing debt of gratitude. The best way to say thank you...is to slow this down—not just pat them on the back or take out newspaper ads. It’s time to say thank you to them by giving them a break. And the way we do this is by getting even more serious about slowing down this terrible pandemic that’s only going to get worse unless we act together.”

Borgerding provided specific policy recommendations [in a letter](#) sent last week to Governor Tony Evers and legislative leaders.

Future incident command briefings involving more hospitals and health systems from around the state are being planned to continue educating policymakers about the stark, ground-level impacts of COVID.



# Thank you #HealthcareHeroes

As we reflect on the unprecedented health care challenges COVID-19 has visited upon our state and the world over the past year, WHA is heartened by the dedication of our member hospitals and the courageous caregivers working within their walls who devote themselves every day to the health and safety of our communities. In this special week, we express our gratitude to Wisconsin's health care heroes!

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