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Wisconsin Rural Health Conference
Wisconsin Dells, WI

Throughout 2019
Health Care Workforce Resilience
Free Member Webinar Series

WHA Urges CMS & ONC to Advance Interoperability, Reduce EHR-Related Burden on Providers

On May 29, WHA submitted comments to the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health Information Technology (ONC), urging CMS and ONC to advance interoperability in a way that reduces the burden on providers of using electronic health records (EHRs).

WHA's comments were submitted to the two agencies in response to a request for comments on two proposed rules related to health care interoperability, which refers to the capacity to send and receive a patient's health information from multiple sources between different systems and locations.

In its letters, WHA voiced its support for interoperability as a way to improve health care coordination, safety, and quality; to empower patients; and to increase efficiency. WHA recommended that as CMS and ONC work to advance our mutual goals of interoperability, they do so in a way that reduces the burden on providers of using EHRs and aligns mandated EHR use with provider workflow and patient need.

"Because regulatory burden creates additional health care costs and limits provider productivity, reducing EHR-related burden on physicians and hospitals is a priority for WHA," the two letters say. "We believe that [CMS and ONC] should minimize EHR-related regulatory burdens and ensure that any additional EHR investments, additional time spent using EHR technology, or adjustments to workflow that are necessary to comply with regulatory requirements are outweighed by health care cost savings and improvements in patient outcomes." *(continued on page 6)*

State Lawmakers Release Bipartisan WHA-Priority Legislation to Further Team-Based Care

Legislation recognizes Advanced Practice Providers in state Power of Attorney and Living Will laws

A bipartisan group of four state lawmakers circulated a bill to address barriers experienced by hospitals and advanced practice providers looking to act upon the wishes of a patient documented through their Power of Attorney or Living Will. These barriers impact all hospitals, but can have a more significant impact on those facilities in rural areas and other areas that heavily rely on advanced practice providers.

While Advanced Practice Registered Nurses' (APRNs) and Physician Assistants' (PAs) education and training has evolved, Wisconsin law has not always kept up with these changes. The legislation, crafted alongside WHA, was circulated as LRB 1737 and recognizes APRNs and PAs professions in key provisions of Wisconsin's Living Will and Power of Attorney statutes:

- **Activation of an individual's wishes under the individual's Living Will.** Under current law, an individual's treatment wishes under a Living Will can only be acted upon following a determination by two physicians that the individual has a terminal condition or is in a persistent vegetative state. The bill modifies current law to require that the determination be made by one physician plus one physician, PA, or APRN. *(continued on page 2)*

- **Activation of an individual's health care Power of Attorney.** Under current law, an individual may create a health care Power of Attorney instrument that authorizes an agent to make health care decisions for the individual should he/she become incapacitated. Also, under current law, the agent's authority is only activated under the Power of Attorney document when two physicians or one physician and one psychologist examine the individual and determine that the individual is incapacitated. The bill modifies current law to require that the exam and determination be made by one physician plus one physician, psychologist, nurse practitioner, or PA.
- **Do-not-resuscitate orders.** Under current law and subject to several conditions, a patient can request that his/her attending physician issue a do-not-resuscitate order should the patient have a terminal condition or be in a persistent vegetative state. The bill changes "attending physician" to include PAs and APRNs serving as the "attending health care professional."

Reps. Pat Snyder (R-Wausau) and Steve Doyle (D-Onalaska), and Sens. Howard Marklein (R-Spring Green) and Janis Ringhand (D-Evansville) are lead authors of the legislation.

LRB 1737, a priority piece of legislation for WHA, is one of several team-based care proposals initiated by WHA that have advanced in the Legislature in recent years. Previous proactive legislation from WHA has included changes to Wisconsin's hospital regulations that allow an advanced practice nurse or physician assistant to admit a patient into a hospital. Last session, WHA worked with a group of lawmakers to clarify under Wisconsin's Medicaid statutes that an order from an advanced practice provider, like a physician order, is a valid order for a Medicaid beneficiary as long as the order is for a covered service and within the provider's scope of practice.

See the following resources for LRB 1737:

- WHA's Memo Requesting Lawmakers Co-Sponsor LRB 1737
- Memo from Lawmakers Circulating LRB 1737
- Draft Legislation

Active Week for WHA Behavioral Health Regulatory Reform Advocacy

The importance of removing overly burdensome and prescriptive regulations impacting mental health and substance abuse treatment providers and impacts on access to behavioral health services was a core message from WHA and its members to state policymakers at three separate recent hearings:

- The Speaker's Task Force on Suicide Prevention
- DHS 75 – revising rules governing Community Substance Abuse Standards
- DHS 40 – revising rules governing Mental Health Day Treatment Services for Children

Speaker's Task Force on Suicide Prevention

WHA spoke and provided written testimony to the Speaker's Task Force on Suicide Prevention in La Crosse on May 20. The hearing was preceded by a tour of the Gundersen Lutheran Inpatient Behavioral Health Unit. Two key messages emerged from that tour—the significant additional costs inpatient behavioral health units face to maintain compliance with increasing regulatory requirements, and the impact of Wisconsin's critical shortage of psychiatrists on the availability of inpatient psychiatric beds.

Legislators, Gundersen Health System staff, and WHA staff toured the Gundersen Lutheran Inpatient Behavioral Health Unit prior to the Suicide Prevention Task Force hearing.

"While inpatient capacity is typically looked at in terms of number of beds, Wisconsin's critical shortage of psychiatrists and other mental health professionals has made it difficult for hospitals to fully staff those beds," said Ann Zenk, WHA Vice President of Workforce and Clinical Practice, and Matthew Stanford, WHA General Counsel, in testimony to the Speaker's Task Force.

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"There are just not enough providers. Just not enough," reiterated Kayla Jones, Clinical Director, Gundersen Health System Inpatient Behavioral Health.

Key WHA recommendations included:

- *Continue to support psychiatrist graduate medical education.* First established in the 2013 state budget and resulting from a recommendation in WHA's 2011 Physician Workforce Report, Wisconsin's state matching grant program to support graduate medical education in Wisconsin is on track to support the annual graduation of nearly 30 new psychiatrists in Wisconsin by 2022.
- *Increase Medicaid reimbursement for psychiatrists to match Medicare rates.* In 2018, the Department of Health Services (DHS) increased Medicaid behavioral health reimbursement to match Medicare rates. However, the change had little impact on psychiatrists because the policy change did not include key E/M codes used by psychiatrists. WHA has and continues to advocate for a targeted policy change to address this exclusion.
- *Address payment and regulatory reform.* Hospital and clinic providers have expressed frustrations with the lack of alignment of regulatory and reimbursement policy with care delivery practices being encouraged. For example, although costly new ligature prevention requirements are coming online, Medicaid continues to reimburse psychiatric inpatient services well below the cost of providing care.

  Dr. John Lehrman, Medical College of Wisconsin, Chair, Psychiatry and Behavioral Medicine, reiterated the impact of poor reimbursement on the accessibility of behavioral health services. "The only reason we are able to provide these services at the rates we are paid is because health systems…cover these shortfalls," said Dr. Lehrman.
- *Remove barriers to telemedicine.* Despite demonstrated efficacy of telemedicine, outdated regulatory barriers impede use of telemedicine for behavioral health and other conditions. WHA's Telemedicine Task Force has developed bill language to address these barriers, and WHA looks forward to a bill circulating for introduction in the coming weeks.
- *Strengthen Wisconsin's acute mental health care infrastructure.* Just as Wisconsin has worked to strengthen its preventive and community-based mental health infrastructure, policymakers need to explore reimbursement and regulatory relief options to incentivize and strengthen Wisconsin's acute mental health hospitalization infrastructure.

See a copy of WHA's written testimony to the Speaker's Task Force.

DHS 75 – Revising Rules Governing Community Substance Abuse Standards

The Department of Health Services (DHS) held listening sessions in Eau Claire and Green Bay on May 21 and May 23 respectively, seeking input and experiences with Wisconsin's Community Substance Abuse Standards – DHS 75 – as DHS begins an effort to rewrite those rules. Matthew Stanford, WHA General Counsel, attended the listening sessions and is a member of a DHS advisory committee that will be convened this fall to work on a final proposed rewrite of DHS 75.

The rulemaking is an outgrowth of a recommendation from the Governor's Task Force on Opioids. During that Task Force, WHA noted concerns from substance abuse providers that Wisconsin's special substance abuse treatment rules can create costly and unnecessary burdens that are not keeping up with care delivery changes and create barriers to expanding substance abuse treatment services.

Health system substance abuse providers from HSHS/Libertas, Marshfield Clinic Health System, Gundersen Health System, and Mayo Clinic Health System attended the DHS listening session, as did several local agency substance abuse providers. Examples of common key themes of the comments provided included:

- The substance abuse treatment field has "professionalized" with professional education and licenses since these rules were first created. Because DHS 75 has not evolved with that professionalization, providers must navigate unnecessary and overlapping regulatory prescriptiveness and particularity.
- The DHS 75 clinical supervision requirements are outdated and often inconsistent with a modern "professionalized" substance abuse treatment delivery model.
- The DHS 75 rules frequently require multiple signatures and reviews that create paperwork burden but no meaningful benefit for patient care.
- Separate treatment service-type silos are creating unnecessary barriers to service model flexibility and integration.

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"It's highly overregulated. All of these nitpicky rules reflect what was once an emerging field," said one local agency provider summarizing various comments from others. "Providers don't last if they are not doing a good job."

Additional DHS 75 listening sessions in Milwaukee, Waukesha, Lac du Flambeau, and Madison will be held beginning in mid-June through July. If you have questions or would like more information about these sessions, contact WHA General Counsel Matthew Stanford at 608-274-1820.

DHS 40 – Proposed Rule Revisions Governing Mental Health Day Treatment Services for Children

In May, WHA submitted a comment letter during the 14-day comment period on proposed rulemaking revisions to existing DHS 40 – Mental Health Day Treatment Services for Children.

The officially proposed revisions, which were largely developed in 2017 and 2018, are not final rules and still need to receive final review and approval by the DHS secretary, governor, and legislative committees.

"Particularly given the acute access challenges for children's mental health services…we believe that the Department should fundamentally and comprehensively reconsider, and even potentially repeal, the overly detailed and unnecessarily prescriptive DHS 40 regulation," wrote WHA in its comment letter on the proposed rule.

The comment letter highlighted:

- *Regulatory redundancies.* There is a lengthy list of other existing laws, rules, and standards that would continue to apply should DHS 40 be repealed.
- ***Wisconsin's outlier regulatory approach.*** Wisconsin's rule is an outlier compared to neighboring and other states. Even among the states that specially regulate child mental health day treatment, Wisconsin's existing and proposed detail, specificity and prescriptiveness is a significant outlier.
- *Ideal practice vs. critical protective standards.* WHA stated concerns that the rule expresses ideal practice scenarios that don't consider the diversity of community needs and resources, rather than critical standards that are fundamental to the protection of the public.
- *The economic impact is not fully captured.* The rule's economic impact analysis does not fully capture either the direct costs or the opportunity costs of the rule, such as paperwork burden on clinicians that increases clinician burnout and ultimately reduces the number of patients a clinician can see during the clinician's overall workday.

"We question whether layering DHS 40's [existing and] additional compliance obligations on youth day treatment providers onto an already highly regulated and scrutinized area of health care creates a marginal benefit to Wisconsin that outweighs the direct costs and compliance costs the rule has on existing and potential providers of scarce youth mental health services," wrote WHA.

See a copy of WHA's comment letter. If you have questions or would like more information about the DHS 40 rulemaking, contact WHA General Counsel Matthew Stanford at 608-274-1820.

MCW New Campuses in Green Bay and Wausau Graduate 40 New Doctors

2019 MCW-Central Wisconsin graduates

"The opening of a medical college is a rare and wonderful event," said Lisa Dodson, MD, Dean of the Medical College of Wisconsin's new Central Wisconsin campus. Dodson made her remarks in addressing the college's very first class of students at a ceremony in Wausau in 2016. WHA recorded the excitement of the entire community when the new students received their first white coats. As WHA noted back then, the opening of the Medical College of Wisconsin (MCW) Central Wisconsin campus was the second new medical school to open in Wisconsin since 2015. The MCW-Green Bay campus opened its doors to students in July 2015, led by Dean Matthew Hunsaker.

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Recently, both schools held graduation ceremonies—the first for the Central Wisconsin campus and the second for MCW-Green Bay. Combined, the two new schools graduated 40 students this year, 85% of whom will be going into primary care. This is good news for the overall physician workforce.

2019 MCW-Green Bay graduates

The impetus for the two new schools was largely based on the key findings of WHA's seminal physician workforce report, *100 Physicians a Year: An Imperative for Wisconsin.* The report found that 86% of physicians who grew up in Wisconsin, attended medical school in Wisconsin, and completed their residency in Wisconsin, ultimately stayed in Wisconsin to practice.

The creation of the medical schools was only one part of a multi-pronged approach to meeting the future workforce needs in Wisconsin. In addition, Wisconsin has also made significant progress expanding medical school class size at the University of Wisconsin School of Medicine and Public Health (UWSMPH), which has gradually increased the class size of their program, the Wisconsin Academy of Rural Medicine (WARM), since its inception in 2007. These programs are having a positive impact and provide an important component—Wisconsin students graduating from a Wisconsin Medical School—of WHA's "Grow Our Own" equation.

The "Grow Our Own" Equation

In addition to increasing class size, the next step to keep physicians in Wisconsin is to create residencies right here in Wisconsin. Over the past four years, WHA has worked closely with the Administration and Wisconsin Legislature to create matching grant funding for new residency programs and to expand existing programs. Physician education is resource intensive, and while the state matching grants help defray some of the expenses, they do not cover all the costs associated with supporting a residency or a clinical rotation.

On this part of the equation—creating residencies—we are also making strides. Of the 40 graduates this year from the new MCW campuses, 17 (or 43%), will do their residency in Wisconsin, a rate that exceeds the state's historical trend. Further, 15 of those 17 graduates grew up in Wisconsin—again an important part of keeping physicians in Wisconsin.

However, that still means that more than half of the graduates, some of whom also hail from Wisconsin, will leave for opportunities elsewhere. Good public policy like the Graduate Medical Education (GME) matching grants has created more residencies for these students, and if Wisconsin is successful in continuing to expand these programs, the number of new doctors staying in Wisconsin should continue to increase. Obtaining a residency position in the Wisconsin pipeline is a competitive process with an average of ten applicants for each open position; the demand for residency positions outweighs the supply. Examples from new GME residency programs in high-demand primary care specialties highlight the issue:

- One new matching grant-supported Family Medicine residency in the St. Croix Valley with five available positions received more than 1,000 applications;
- A new MCW Central Wisconsin Psychiatry residency program created with the help of a GME grant received more than 800 applications for three positions; and,
- The new MCW Northeast Wisconsin Psychiatry program, also supported through a GME grant, received more than 1,000 applications for four positions.

"The fact that Wisconsin has 40 new doctors graduating this year from these two campuses is a tremendous accomplishment, thanks to the partnership and hard work of many stakeholders," said Eric Borgerding, President and CEO of WHA. "We are on the right track toward meeting our goals for increasing the number of physicians in Wisconsin. Sustaining and accelerating the progress made through programs like the WHA-created GME grants is essential to this goal, so we can continue the proud tradition and support of high-quality health care here in Wisconsin."

Indeed, the new doctors graduating from Wisconsin medical schools this past week were inspired by their school leaders to strive for excellence in taking on the challenges of health care in their communities and beyond. "Society needs you," Dodson told the Central Wisconsin campus graduates. "We know you'll make us proud," Hunsaker said, speaking to the graduates during the ceremony in Green Bay. "We hope your endurance, determination and devotion are the fuel for the fire of medicine that burns brightly here today."

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Joe Kerschner, MD, Dean of the School of Medicine and Executive Vice President for MCW, led the graduates in reciting the Physician's Pledge, beginning with the solemn pledge to dedicate their lives to the service of humanity. Kerschner reminded them that the campus was created because there were underserved areas in Wisconsin, and encouraged graduates to "do what you can to bring equity in health to all those in your communities." John Raymond, Sr., MD, President/CEO of MCW, broadened this message, telling the new doctors that their graduation ceremony "marks the beginning of your lifelong journey as healers who will elevate the health and well-being of your communities and the world around us."

Federal House and Senate Committee Leaders Release Surprise Billing Proposals

Bipartisan proposals expected to move this summer

Over the last few weeks, several different federal health care price transparency and surprise billing proposals have been unveiled by President Trump and U.S. House and Senate members. While the numerous proposals vary in some regards, they also share many similarities.

A common theme between the proposals is an idea that balance billing should not be allowed in situations where patients did not reasonably choose their setting of care. In other words, balance billing would not be allowed in settings of emergency care or care that patients would expect to be in-network (such as situations where providers contract with and work out of hospitals, but are not in the same network as providers directly employed by the hospital). Another theme common to the proposals is the idea that patients should receive information on out-of-network providers and costs associated with seeing them prior to receiving care.

Where the proposals diverge is determining how to resolve reimbursement disputes between payers and providers. Two proposals introduced in the Senate would use an independent arbitration process combined with median contracted rates to determine how payments are awarded. Legislation introduced by Congressmen Pallone and Walden of the House Energy and Commerce Health Subcommittee would use median contracted rates as determined by the Secretary of Health and Human Services, but would not utilize an arbitration process. Furthermore, legislation introduced by Senator Lamar Alexander and Patty Murray of the Senate Health Education Labor and Pensions (HELP) Committee would require facilities to guarantee that all their practitioners are in-network. Any providers who remain out-of-network would be prohibited from sending a balance bill to patients.

As of now, all proposals would apply only to self-insured plans that are covered under the federal Employee Retirement Income Security Act (ERISA), and usually offered through large employers. This means that health insurance plans offered in the individual, small, or large group markets would not have these regulations unless the state applies such regulations separately through state law. Initial indications are that House and Senate leaders expect to move these proposals through Congress in the summer months.

Surprise billing and transparency were key topics WHA discussed with Wisconsin lawmakers last April in Washington, D.C. While we have been supportive of Congress' efforts to improve transparency and reduce the incidences of surprise billing, one area of concern is the unintended consequences that arbitration and government-set rates could have in eroding health networks and favoring insurers at the expense of provider-negotiated rates. WHA is reconvening its Transparency Taskforce in June to further analyze these topics and will continue to follow and actively engage in these issues at the federal level.

Contact WHA Vice President of Public Policy Lisa Ellinger or WHA Director of Federal and State Relations Jon Hoelter with any questions.

(WHA Urges CMS & ONC to Advance Interoperability, Reduce EHR-Related Burden on Providers . . . continued from page 1)

Highlights of the two WHA letters include the following recommendations to CMS and ONC:

- WHA urged CMS not to finalize its proposal to amend the hospital, psychiatric hospital, and critical access hospital Conditions of Participation to require such hospitals to send patient event notifications for admission, discharge, and transfer. The proposed mandate would create significant burden for hospitals without meaningfully improving health care quality, safety, and efficiency.
- While WHA supported CMS' intention to promote adequate pathways for sharing administrative data by health care insurers, the proposed 2020 effective date for CMS' proposals to require insurer data-sharing may be too aggressive to ensure payers have sufficient time to be able to share such data safely and securely.
- WHA urged ONC not to mandate that hospitals and other health care providers disclose price information and instead urged ONC to work together with insurers and providers to determine the best way to bring price information to consumers in a way that improves access to health care in a free market.

See WHA's comment letter to CMS, WHA's comment letter to ONC, and the CMS proposed rule.

For more information, contact WHA Assistant General Counsel Andrew Brenton at 608-274-1820.

Worker's Compensation Advisory Council Exchanges Proposals

On May 23, the Worker's Compensation Advisory Council (WCAC) took the first step toward the development of a worker's compensation package to send to the Legislature. Proposals were exchanged by the labor and management contingents of the WCAC. Labor also submitted a second proposal focused on opioid treatment.

WHA co-authored a joint letter from the coalition of Health Care Liaisons to the WCAC and was invited to discuss concerns with the WCAC at their May 30 meeting.

The most concerning proposal involves the worker's compensation fee dispute resolution process. The proposal not only has the potential to put downward pressure on reimbursement for worker's compensation services, but could also be a first step toward a government rate setting structure for worker's compensation. The proposed change would move from the current practice of comparing charges for worker's compensation services to a system that would compare worker's compensation services to general negotiated rates.

As stated in the coalition letter, this is an unnecessary change that would set up a false and unfavorable comparison for providers. WHA has successfully defeated previous attempts to move Wisconsin's successful worker's compensation program to a fee schedule structure. While the new proposal falls short of an outright fee schedule, it is an inadvisable threat to the solid worker's compensation system in place today.

The WCAC reconvenes June 25 and has stated its intent to finalize a joint (labor and management) proposal by the end of the month. WHA will continue to monitor and report on developments.

For more information about the WCAC, contact WHA Vice President of Public Policy Lisa Ellinger.

U.S. Supreme Court Sides with WHA, State Hospital Association Amicus Brief

HHS illegally changed a 2012 Medicare reimbursement formula

On June 3, the United States Supreme Court held in a 7-1 decision that the U.S. Department of Health & Human Services (HHS) illegally changed a 2012 Medicare reimbursement formula when it failed to utilize public notice and comment procedures prior to making the change.

In December, WHA joined several other state hospital associations in submitting a joint amicus brief to the Court. The brief argued that notice and comment procedures are an essential component of administration of the Medicare program and that the change was material, substantive, and had nationwide impact.

"Without notice-and-comment, [HHS] may fail to fully understand the range of consequences that a rule change will have on hospitals," wrote Attorney Chad Golder, Munger, Tolles & Olson LLP, in the joint hospital association brief.

Justice Gorsuch delivered the opinion of the Court and was highly critical of HHS' decision to substantively change Medicare payment policy through its website rather than utilizing the notice and comment procedures Congress had specified.

"In 2014, the government revealed a new policy on its website that dramatically—and retroactively—reduced payments to hospitals serving low-income patients," wrote Justice Gorsuch. "Because affected members of the public received no advance warning and no chance to comment first, and because the government has not identified a lawful excuse for neglecting its statutory notice-and-comment obligations, we agree with the court of appeals that the new policy cannot stand."

Justice Gorsuch was also critical of the Government's argument that notice-and-comment processes are onerous and would stymy administration of the Medicare program.

"The government warns that providing the public with notice and a chance to comment on all Medicare interpretive rules, like those in its roughly 6,000-page 'Provider Reimbursement Manual,' would take 'many years' to complete," wrote Justice Gorsuch. "Not only has the government failed to document any draconian costs associated with notice and comment, it also has neglected to acknowledge the potential countervailing benefits. Notice and comment gives affected parties fair warning of potential changes in the law and an opportunity to be heard on those changes—and it affords the agency a chance to avoid errors and make a more informed decision."

Contact WHA General Counsel Matthew Stanford at 608-274-1820 for more information about the decision.