

September 5, 2018

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WHA Comments on CMS Physician Self-referral "Stark Law" RFI

Urges CMS to reform outdated regulations to improve care and value in Medicare

Last week, WHA submitted a [comment letter](#) in response to the Request for Information (RFI) from the Centers for Medicare & Medicaid Services (CMS) on the physician self-referral law, more commonly referred to as the Stark Law. As covered in previous *Valued Voice* articles, the Stark Law has its roots in a 1989 law named after its lead author, former California Congressman Pete Stark. In an era where Medicare paid health care providers based on the volume of services provided, its goal was to ensure physicians refer patients for services and tests based only on whether they are necessary by prohibiting physicians from receiving financial incentives.

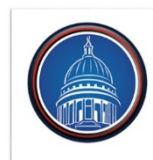
The RFI from CMS asked for feedback on how the law's numerous regulations impact integrated delivery models, alternative payment models, and arrangements designed to reward quality over volume. In its comment letter, WHA suggested CMS focus on clarifying confusing definitions, providing clearer exceptions, focus on routing out intentional rather than unintentional violations, and harmonizing the Stark Law with the antikickback statute which contains regulations that often overlap with Stark.

The comment letter also highlighted Wisconsin's reputation for high-quality, high-value health care, and suggested CMS' reform its payment structure to reward high-value states like Wisconsin and incentivize other states to make similar quality

improvements. WHA noted the Stark Law currently serves as an impediment to hospitals looking to form innovative payment arrangements that reward physicians for improving quality. WHA will continue to advocate for Stark Law reform with CMS and Congress in its federal lobbying efforts.

Wisconsin Hospitals State PAC & Conduit Update

Donate now to help reach the 2018 fundraising goal



With just two months to go until the November Elections, campaigns are ramping up and so is the Wisconsin Hospitals State PAC & Conduit. To date, \$230,878 has been contributed by almost 200 individuals, reaching 74% of the year-end goal of \$312,500. Thank you to all who have contributed and stepped up to support candidates who value Wisconsin hospitals!

To ensure your name is on future contributor lists, make your personal contribution today at www.whconduit.com or by contacting WHA's [Kari Hofer](#) at 608-268-1816 or [Nora Statsick](#) at 608-239-4535.

[See 2018 Contributor List](#)

Public Policy Council Discusses Federal Rules Impacting Hospitals, Medicaid Opportunities

On August 23, WHA's [Public Policy Council](#) (PPC) met with a full agenda as the federal government continues to propose regulations that will impact hospital finances and operations. for such referrals.



L to R: Public Policy Council members Elizabeth Cliffe, Scott Tyre, WHA President Eric Borgerding, and Council Chair Seth Teigen

In addition, the Council received a briefing on several items being discussed on WHA's proposed agenda for the 2019-

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2020 state legislative session, particularly related to Medicaid payment, telemedicine, and behavioral health.

WHA's Jon Hoelter, alongside WHA's federal lobbying team at Health Policy Source, provided the Council with insight regarding recent regulations proposed at a federal level impacting hospital outpatient departments, the 340B drug discount program and recently enacted rules related to transparency. The presentation recapped WHA efforts to protect the 340B program from future harm and lessons going forward that can be applied to the upcoming fight against CMS' proposed cuts to offsite hospital outpatient departments (site-neutral payments).

WHA has been working on scheduling roundtables with key members of Wisconsin's Congressional delegation to educate them on the issue and is planning on hosting a fly-in to D.C. in late September. WHA will also submit a comment letter asking CMS to reverse the cuts which would amount to an estimated \$30 million hit on Wisconsin hospitals in 2019.

Medicaid Workgroup Concludes Work, Reports out to PPC

In addition, the Council discussed recent recommendations from WHA's Medicaid Policy Workgroup, which has now concluded its work in preparation for the next legislative session. The Council received a briefing from WHA Vice President, Public Policy Lisa Ellinger, who reminded the Council of Wisconsin's poor payment in Medicaid resulting in underfunding hospital services by \$1.2 billion in 2017 – particularly in our state's high Medicaid payer-mix safety net and behavioral health hospitals, other hospitals that treat the sickest or highest acuity patients, and for hospital outpatient services where more care is increasingly delivered.



Lisa Ellinger, WHA Vice President of Public Policy, discusses Medicaid Policy Workgroup recommendations

The Council also discussed WHA staff research regarding the differences between payment policies for telemedicine in Medicare and Medicaid. For example, Medicare



L to R: Council Chair Seth Teigen and Kyle O'Brien, WHA Senior Vice President of Government Relations

covers 55 more procedure codes than Medicaid, and Medicaid has created unnecessary regulation to pay for telemedicine services differently than when those services are provided in a non-telehealth setting. Increasing utilization of telemedicine, rather than in-person visits, may reduce the costs Wisconsin Medicaid pays to transport some

Medicaid beneficiaries, which currently amounts to \$75 million per year.

WHA Members Participate in Council Discussion on Direct Primary Care

Council member Maureen McNally, Froedtert Health, and WHA staff briefed the Council regarding a legislative study committee to examine what is referred to as "direct primary care (DPC)." The Legislature created this study committee following introduction of legislation that would create a regulatory structure for DPC practices and direct the Medicaid program to pursue a pilot offering DPC services to Medicaid enrollees. For more information about this study committee or recent proposals on direct primary care, contact [Jon Hoelter](#), WHA Director, Federal & State Relations, or [Lisa Ellinger](#).

Still Time to Register for APC Practice Challenges & Opportunities Conference

There is still time to register for WHA's one-day conference, *WHA Advanced Practice Clinician Conference: A Comprehensive Look at APC Practice Challenges and Opportunities for Integrated Care Delivery in Wisconsin*, scheduled for September 13 in Wisconsin Dells. [Register today!](#)



This one-day conference is designed for hospital and clinic administrative leaders, physician leaders, nursing leaders, compliance officers, legal counsel, medical staff services, human resources and recruiting specialists, and others who need to understand and navigate nuances, limitations and opportunities to support and maximize the integration of APCs within their organizations. Consider sharing information about this multi-disciplinary conference with your team and encourage them to attend.

- Questions about conference content can be directed to [Ann Zenk](#) or [Matthew Stanford](#).
- Registration questions can be directed to [Kayla Chatterton](#) or call 608-274-1820.

[Visit us online](#) for more information and to register for this event.

Legislative Council Study Committee on Direct Primary Care Holds Second Meeting

The Legislative Council Study Committee on Direct Primary Care (DPC) held its second meeting August 29 ([see full agenda and presentations here](#)). DPC Committee members heard from State Representative Joe Sanfelippo (R-New Berlin) and State Senator Chris Kapenga (R-Delafield), who coauthored a proposal last session to define state law governing DPC agreements, as well as order the State to research a DPC Medicaid pilot. *(Continued on page 3)*

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Committee on Direct Primary Care Holds Second Meeting**

Maureen McNally of Froedtert Health asked the authors what led them to introduce this legislation last cycle and where they envisioned a Medicaid pilot operating. Sanfelippo and Kapenga said they want to make it clear that DPC is not insurance per Wisconsin state law, and they hope to prove its value with a Medicaid pilot, which they envision operating outside of Milwaukee due to the lack of DPC providers in the city.

Representative John Nygren (R-Marquette), who is the Committee Vice-chair, remarked that while he understands the appeal of this model of care, it does not seem to incentivize care coordination among hospitals and health systems, unlike the care coordination pilot legislation Sanfelippo authored and the Legislature passed last session. Sanfelippo acknowledged the two bills were different approaches but shared similar goals of decreasing costs and improving care.

The Committee also heard perspectives from the insurance industry and academia, including the UW Madison School of Business and the Wisconsin Association of Health Plans (WAHP). Justin Sydnor, who is an Associate Professor in Risk Management and Insurance at the UW School of Business noted that DPC usually requires an additional investment for consumers above and beyond insurance, which limits who can afford the added expense. The WAHP presentation relayed concerns that exempting DPC from insurance laws could unintentionally give them an advantage over insurance plans if DPC practices begin to offer services more closely resembling insurance.

Representatives from Waukesha County and the cities of La Crosse and Milwaukee, all of which offer onsite clinics with DPC contracts, also presented to the Committee. These local government representatives said they were pleased with how direct primary care contracts work for their employees and suggested any legislation should protect such current models without restricting future innovation.

The meeting concluded with a review of recommendation options. While some legislators on the panel expressed a desire to make it clear in state statute that this model is not insurance, Coreen Dicus-Johnson of Network Health suggested that recommendations should not unintentionally restrict market innovation, and that Wisconsin may be better off waiting to see how the practice develops. Senator Alberta Darling (R-River Hills), who is chairing the Committee, expressed her desire to allow the free market to work, and noted that, while the Committee could recommend statutory changes, one option would also be to decide legislation is not needed at this time. Due to the lack of time, Darling suggested members review such options to further discuss at the next hearing, which will be held September 18.

WHA will continue to closely follow this study committee and urges members with questions or concerns to contact [Jon Hoelter](#) or [Lisa Ellinger](#) for more information.



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