WISCONSIN HOSPITAL ASSOCIATION, INC.

January 19, 2016

Kenneth Simons, MD
Chair, Medical Examining Board of Wisconsin
Department of Safety and Professional Services
1400 East Washington Avenue, Room 112
Madison, WI 53703

RE: Chapter Med 24, rule relating to telemedicine

Dear Dr. Simons and members of the Wisconsin Medical Examining Board,

The Wisconsin Hospital Association (WHA) appreciates the opportunity to provide comments on the Wisconsin Medical Examining Board's (MEB) proposed Med 24 telemedicine rule. Telemedicine plays an important role in the delivery of high quality, high value health care in many of Wisconsin's hospitals.

WHA members include 129 small, mid and large-sized hospitals. We have hospitals in every part of the state—from very rural locations to the larger urban centers such as Madison and Milwaukee. 58 of those hospitals are critical access hospitals (CAHs). In addition, we count close to two dozen psychiatric, long-term acute care, rehabilitation and veterans hospitals among our members. Many of our members are integrated delivery organizations and are working to innovatively improve health, increase value and better serve our communities and the role that telemedicine serves in these endeavors is an important matter for WHA and its member hospitals.

Many of our hospitals are actively engaged in the use of telemedicine as a part of their health care delivery models. Many others are considering offering telemedicine services in the near future. Examples of current telemedicine in Wisconsin hospitals includes:

- Store and forward consultation
- Live, interactive consultation
- Tele-psychiatry
- Tele-ICU
- Tele-radiology
- E-visits and other direct to consumer platforms
- Tele-neurology for treatment of possible acute stroke
- Urban to rural telemedicine networks

History of Telemedicine

These examples are from our smallest, rural hospitals to our large urban medical centers. These interventions supported by a telemedicine platform include everything from acute primary care to emergent medical needs. It should be noted that the use of telemedicine in Wisconsin is not new, and in fact has been in use for more than 25 years; especially noteworthy is the widespread use of

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teleradiology. As new technologies enable even greater and broader use of this tool, increased awareness of telemedicine has resulted, but the use of this tool is not new.

Although much of other early telemedicine applications arose out of concerns about the limited access of remote populations to a variety of health services, urban uses also appeared fairly early. And since Wisconsin is a state that has both large areas of the state classified as rural as well as urban and suburban centers, telemedicine is an important component in addressing challenges associated across populations. Evidence-based research suggests that the use of telemedicine is an important supplement to quality screening, diagnosis, and treatment of patients. Additionally, telemedicine adds value to the ever changing care payment and service delivery systems while at the same time not reducing the quality or safety of the care being delivered.

Concerns or Problems Associated with Telemedicine

Even though telemedicine has such a long standing history within the practice of medicine, WHA has found no significant areas of concern, or problems specific to telemedicine. Extensive feedback from WHA members, key stakeholders, and even the Wisconsin Medical Examining Board did not identify for WHA any issues with telemedicine that additional rules or regulatory oversight would address. Additionally, WHA members have not identified any areas of concern, lack of clarity, or confusion around telemedicine that could be interpreted as reason for new rules and/or regulations.

Is Telemedicine a Form of Medical Practice or a Delivery Tool?

Telemedicine is a tool used in the delivery of medicine and is not a separate clinical specialty; it is not a different type of medical practice, and does not broadly require a distinct and different set of regulatory guidelines or rules. Telemedicine is simply the provision of health care services to a patient from a health care provider who is at a site other than where the patient is located using telecommunications technology. When physicians use telemedicine in a clinical encounter, they are simply augmenting the sound clinical judgement that has been developed as a result of their clinical training and education. Performing a relevant patient assessment, obtaining medically necessary clinical histories, and providing culturally competent patient education are all components of the standard medical practice with or without telemedicine. In discussions with key stakeholders, WHA has surmised that potential practice issues that have been identified are issues of medical practice in general, and not specifically as a result of that medicine being delivered in a telemedicine platform. Therefore it would appear that existing medical practice rules and related statutes provide sufficient oversight of all medicine, including that which is delivered via a telemedicine platform.

WHA has areas of concern regarding most of Med 24 as it is at times duplicative and/or contradictory of existing rules (e.g., Med 10, 17, 21) and at other times creates a higher standard of practice for the use of telemedicine than traditional in-person medicine. For example, Med 24.03, Practice Guidelines state that a physician, "…shall utilize evidence-based telemedicine practice guidelines and standards of practice, to the degree they are available, to ensure patient safety, quality of care, and positive outcomes." When compared to existing rule, Med 10.03 (2) (b), a standard established as unprofessional conduct includes "departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person…" This language in Med 10 is similar language to the proposed Med 24.03, but different. Med 10 appears to cover the same concerns of Med 24.03, and is at best, redundant, and at worse confusing. This additional complexity that it places on our physician providers in Wisconsin is a relevant concern.

Also, Governor Walker has been clear in his support of reducing and streamlining regulatory processes. Executive Order 50, the efficiencies experienced with physician licensing by joining the Interstate Medical Licensure Compact, and 2013 Act 236 are all examples of steps Governor Walker and the legislature have taken to reduce regulatory burden on Wisconsin physicians and other health care providers. Additionally, this increased regulatory complexity could decrease the provision of care via telemedicine and a similar reduction in patient's choosing telemedicine as an option in which to receive their care. All of this could have very direct impact on access, quality, and value of the medical care being delivered in Wisconsin.

Material Differences Between Traditional Medical Practice and That Which is Delivered via a Telemedicine Platform

In examining the Med 24 rule draft, WHA has identified two areas that have the potential for needing more clarification and direction. Both of these areas are associated with the telemedicine activity that occurs with an e-visit. Specifically, an e-visit is defined as an evaluation and management service provided by a physician or other qualified health professional to a patient using a web-based or similar electronic-based communication network for a single patient encounter. The patient may or may not have a medical home, an established primary care provider, or a referring physician. Med 24.12 and Med 24.13 bring to light certain areas of concern. WHA does not support the rule as written; specifically that the licensee is responsible for assuring that appropriate and adequate follow up care occur (24.13) and the coordination of that care (24.12), but rather, that providers of care via telemedicine should assure that all records associated with that care are easily and readily accessible by the patient at the completion of that care, as well as in the future when the details of that care might be needed by another care provider (and as authorized by the patient). These are issues of medical records sharing and information retrieval, that are perhaps best addressed elsewhere in existing statute (e.g. WI Statute, Ch. 146.83) and do not constitute an issue large enough to promulgate an entire new rule (Med 24).

Telemedicine versus Telehealth

WHA is concerned that the promulgation of rules by the MEB associated with telemedicine could cause confusion for other users of telehealth, such as advanced practice nurses, pharmacists, and dentists. All of these care providers utilize telehealth and if in the future direction is warranted regarding telehealth, the approach to more narrowly define it within medical practice could again add additional complexity to the already complex health care regulatory landscape.

Future Direction and Recommendations

WHA recommends that before Wisconsin embarks on any promulgation of rules or regulatory approaches to telehealth/telemedicine, significant discussions occur between governing boards, state agencies, policymakers and most importantly the actual providers utilizing the tool (and the hospitals and health care systems that support these providers). The Wisconsin MEB as well as other stakeholders might model this process on that which was used by the Iowa medical board. In their press release dated June 3, 2015, the Iowa Board of Medicine stated, "there are many stakeholders in the rule…the rule-making process started…after a Board subcommittee spent several months reviewing national policies, laws and rules and meeting with representatives of Iowa physician and hospital organizations, medical educators, and regulatory officials to identify precepts for a rule".

Whereas the regulatory and practice environment of Iowa is different from Wisconsin, the process of multi stakeholder involvement in first determining what need there might be for rules and regulations in Wisconsin is a process WHA strongly supports. And again, as mentioned earlier in this document, WHA has not heard from any member, legislator, or from the MEB that there are any pressing or urgent needs related to telemedicine that need to be addressed. Therefore, WHA recommends that this rule does not move forward and instead supports engaging in initial discussions with the MEB, legislators, and other key stakeholders to first determine if any need actually exists for additional or amended rules. This process would build upon the extensive interaction WHA has already had with our member stakeholders and providers.

Once again, thank you for the opportunity to comment on the MEB's proposed Med 24 rule. Please contact Steven Rush at 608-274-1820 or srush@wha.org with any questions.

Sincerely,

Eric Borgerding, President and CEO
Wisconsin Hospital Association

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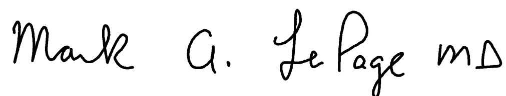

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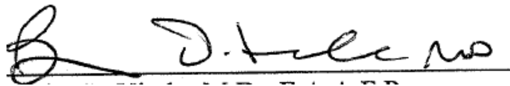

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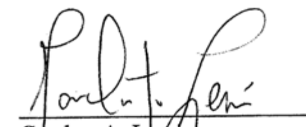

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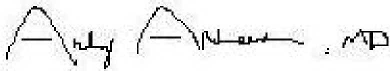

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