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TO: **Members of the Wisconsin State Legislature**

FROM: **Eric Borgerding, President/CEO**
Kyle O'Brien, Senior Vice President Government Relations

DATE: **April 7, 2020**

RE: **Wisconsin Hospital Association Reaction to the Governor's COVID 19 Proposals**

When lawmakers talk about needing to support those on the front lines, they must mean our state's hospitals, physicians, nurses, support staff and other health care providers. In any legislation taken up by the Assembly and the Senate in response to the COVID 19 pandemic, ensuring Wisconsin hospitals have the resources to continue operation should be the state's top priority. As WHA has reviewed legislation proposed by Governor Evers, we wanted to communicate our support of several provisions and offer modifications to others.

Resources for Personal Protective Equipment, Testing Supplies & Other Hospital Related Costs: As hospitals are experiencing significant shortages in Personal Protective Equipment (PPE) and testing supplies, $100 million in GPR funding included in Governor Evers' proposal will directly help hospitals acquire needed resources to test and treat patients with COVID 19. Wisconsin hospitals are not only experiencing shortages in supplies, they are also experiencing increased prices on those same materials that are in demand.

In addition, hospitals are now being put in the difficult position of identifying staffing needs necessary to respond to the coming emergency while also ensuring that financial resources exist to meet payroll into the future. This funding pool can be used to stabilize current staffing, support staff overtime costs and, when possible, hire additional staff, helping to alleviate this burden.

In addition, it is important for policymakers to realize that the biggest financial stress on hospitals right now are lost revenues from following US Surgeon General and CMS directives to halt elective and certain other scheduled procedures. WHA requests that lawmakers ensure that provisions providing financial support for hospitals allow the use of state funding to make-up for revenue losses.

It is important to note that even after halting certain scheduled and elective procedures, hospitals still do not have enough PPE to meet current demand. Shortages of PPE will directly impact when hospitals can restart elective and scheduled procedures and begin to recover on their own from the staggering financial losses now mounting every day.

Hospital Funding and Stability: Hospitals large and small are facing significant cash flow problems as a result of cancelling elective procedures under government directives to protect the public health, with estimated hospital revenue losses of $170 million per week in Wisconsin. When adding health system physician and clinic

services, the weekly revenue losses grow to $266 million. Cash flow problems for hospitals result in reductions in health care workforce and reductions in access to care, two consequences Wisconsin cannot afford right now.

We know that support from the federal government will not be enough to ensure our state's hospitals are protected from this crisis. As the Legislative Fiscal Bureau writes in their April 1 memo, "*it is unknown how much funding, if any, Wisconsin healthcare providers will receive"* from the federal CARES Act. From estimates based on AHA recommendations, it appears the proportion attributable to Wisconsin hospitals could be only $275 million – possibly less. At the hospital rate, estimated hospital funding from the CARES Act would cover only 11 days' worth of revenue losses during the public health emergency - which we are now already passed.

We are glad to see that the Governor has already recognized this need and has prioritized hospital funding in his COVID Response package, including another $75 million in supplemental payments to hospitals. Any and all financial resources the legislature can provide to hospitals are needed.

Our neighboring state legislatures and Governors have allocated hundreds of millions of dollars to support their hospitals and health care providers. We ask the legislature to do the same in Wisconsin and prioritize hospitals, the providers on the front lines of defense, during this crisis.

Hospital/Healthcare Data: WHA has consistently supported expanding the collection and reporting of COVID-19 data. This includes aggregated statewide and regional information related to COVID-19 positive patients in hospitals and should include other health care facilities with capacity used to treat COVID-19 patients. The WHA Information Center, operating as the entity under ch. 153 and charged with collecting and reporting hospital and ambulatory surgery center data, could synthesize and facilitate the dissemination of important information to assist with public and private emergency planning efforts. For 16 years, WHAIC has produced accurate and timely hospital datasets, analyses, and reports. Relying on WHAIC's expertise, the legislature could create a new report in ch. 153, that would require WHAIC to produce and publish daily updated public health emergency dashboards based on healthcare emergency preparedness program information the state collects from hospitals.

Safe Harbor Protections for Health Care Providers Throughout a Public Health Emergency: WHA, alongside several physician groups, support the extension of certain liability protections to health care providers during a public health emergency, which many states across the country already have done. Without action to address our liability standards during a public health crisis, physicians and hospital administrators are concerned that some providers will be hesitant to provide care during a very difficult time.

Healthcare Workforce Licensing: We request you incorporate the changes made in LRB 5957 (Sen. Kooyenga/Rep. Kurtz/Rep. Sanfelippo) as an amendment to LRB 5920/P2, which would create a more streamlined recognition of out-of-state licenses for those in good-standing and ensure that health care providers can practice to the top of their education, training and experience as delegated by a physician or established in a health care facility protocol.

The legislation does the latter by clarifying that no credentialing board can sanction a professional as long as the bill's criteria for physician delegation/licensed health care facility protocol are met. *In a time of crisis, providers should not have to fear credentialing sanction for something they are trained and capable of doing under a delegated act or in a licensed health care facility.*

Telehealth Parity - LRB 5920/P2, Section 65: This provision appears intended to require parity for telehealth services, which WHA fully supports especially during a time when the public is practicing social distancing and

staying home. We are concerned that the language in the bill may not allow *all* providers within the insurer's network to provide and be paid for telehealth services. That is, if a patient's usual in-network provider is available and able provide the service via telehealth, that physician should be allowed to do so, and the patient shouldn't have to be required to use a more limited telehealth network. Therefore, we recommend the language in Section 65 be modified. One suggestion for doing so is:

No disability insurance policy or self-insured health plan may deny coverage and payment for any covered health care treatment or service rendered via telehealth by an in-network provider to a patient if the same treatment or service is covered if rendered face-to-face by the in-network provider.

Worker's Compensation Coverage for COVID 19 Exposure: It is the opinion of some, including the state Department of Workforce Development, that health care workers exposed to COVID 19 are not eligible for worker's compensation claims unless they test positive for COVID 19 and can prove the disease was acquired at work. The details on this are important, since the limited amount of testing capacity in our state means some health care workers may not be able to receive a test. Therefore, health care workers *exposed to* COVID 19 and in isolation/quarantine as a result of that exposure should be eligible for worker's compensation benefits.

Although we have not reviewed the recommended statutory language included in the Governor's second proposal, we believe it will create a presumption standard that is appropriate. The legislation can go further by covering employer-required isolation and quarantine as a worker's compensation benefit during the public health emergency.

Out-of-Network (Surprise) Billing – LRB 5920/P2, Section 57: In the context of this emergency, we recognize that there may be unavoidable reasons why patients will be seeking out of network care. For ease of administration and for the time and purposes of this emergency only, we will not oppose the benchmark rate if it remains at 250% of Medicare or higher. However, we remain opposed to a benchmark rate as a long term solution to the issue of surprise billing.

With respect to the specific language in Section 57 of LRB-5920/P2: There seems to be a contradiction between 609.205 (1) (a) and 609.205 (2) (a) and (b). The bill would require that cost sharing be no greater than the enrollee would be pay if in-network; however the latter paragraph requires the health care facility to accept the insurer payment as payment in full, and not charge the enrollee an amount that exceeds the insurer payment.

We recommend that section 609.25 (a) and (b) be modified to allow the provider to collect cost sharing so long as that cost sharing does not exceed the amount the enrollee would pay in-network.

Insurer Payment of Premium - LRB 5920/P2, Section 75 (3): According to this provision, for the duration of the public health emergency, no insurer may cancel any policy of insurance for nonpayment of premiums until at least 90 days after the unpaid premium was due. We recommend clarifying that the policy may not be canceled retroactively, and that the insurer is responsible for payment of all claims for services provided during the 90-day "grace period".

Please contact Eric Borgerding at eborgerding@wha.org or Kyle O'Brien at kobrien@wha.org with any questions or comments.