



# THE VALUED VOICE

February 24, 2022

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## EDUCATIONAL EVENTS

### March 23

WHA Advocacy Day 2022  
Virtual

### April 6

Patient Financial Engagement Solutions that Drive the Revenue Cycle  
Webinar

### April 6

The CMS Hospital Conditions of Participation (CoPs) 2022 - Session 1  
Webinar Series

## WHA February Board Meeting Lays Groundwork for Strategy Development

*Long-term planning will build upon pandemic lessons and perennial health care challenges*

Taking place amidst a dramatic downturn in COVID-19 hospitalizations, WHA's virtual February board meeting included equal parts reflection and future planning. The three-month period since the last board meeting in December included the most intense period of the pandemic to date, with COVID-19 hospitalizations reaching an all-time high at a time when the state's health care workforce was both exhausted and depleted from repeated virus surges and pent-up demand for health care services.

### Wisconsin's Health Care Workforce Reaches a Tipping Point

WHA Senior Vice President of Workforce and Clinical Practice Ann Zenk provided a preview of the 2022 Wisconsin Health Care Workforce Report scheduled for publication in March. The report will reaffirm demographic trends that pose challenges for the state's health care employers—namely, increased retirements among health care workers as well as rising demand for age-related health care services. Overlaid upon these long-term trends linked to an aging population, according to Zenk, was a "sudden and acute" workforce shortage caused by recurring surges of COVID-19 and worker retirements and departures fueled by pandemic fatigue in 2021.

*(continued on page 4)*

## Court Rules Certain Payment Portions of CMS Regulation on No Surprises Act Must Be Set Aside

*Reliance on insurer-determined payment amount found in conflict with statutory requirements*

While maintaining key protections for patients, a federal judge on Feb. 23 ruled that a Centers for Medicare & Medicaid (CMS) regulation favoring insurance companies for payment of out-of-network services is unlawful and must be set aside.

Over the last three years as Congress deliberated how to address instances when patients were surprised by a health care bill due to an out-of-network provider, WHA strongly supported the idea that patients should not be caught in the middle, but that to resolve any payment disputes the parties should use an independent arbiter to work out differences.

Although Congress had considered establishing a benchmark rate to help resolve such disputes, instead the No Surprises Act that was enacted in December 2020 outlined several criteria an independent arbiter should use to determine the appropriate payment rate. These factors include not just what CMS calls the "qualifying payment amount" (QPA), which is the median in-network rate, but also the level of training, experience, quality and outcomes of the provider; the market share held by the provider and/or the plan; patient acuity; and teaching status, case mix, and scope of services of the provider.

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## **(Court Rules Certain Payment Portions of CMS Regulation on No Surprises Act Must Be Set Aside . . . from page 1)**

However, CMS in its rulemaking process determined that the single most important factor to be used by an arbiter in determining the proper payment was the QPA. Thus, under the rule, the arbiter would have had to presume that the median in-network rate was the appropriate out-of-network rate and would have had to select the offer closest to the QPA.

The federal judge for the Eastern District of Texas ruled that CMS's rule was clearly a departure from the statute. Throughout the written opinion, the judge notes that the QPA is an insurer determined amount, and that "because insurers had ultimate say on what in-network rates they accepted in 2019, insurers now hold ultimate power..." Moreover, the judge ruled that the No Surprises Act itself is unambiguous, writing that, "If Congress wanted to restrict arbitrator's discretion and limit how they could consider other factors, it would have said so—especially here, where Congress described the arbitration process in meticulous detail."

"CMS's interpretation upends the careful compromise Congress deliberately chose for resolving billing disputes," said WHA President and CEO Eric Borgerding. "The skewed process unfairly benefits commercial health insurance companies, all but ensuring that hospitals, physicians and other providers will routinely be undercompensated by commercial insurers and patients will have fewer choices for access to in-network services."

The lawsuit was brought by the Texas Medical Association, which is one of several doctor and hospital groups that have sued over the regulations. Health care providers, including WHA, have long been concerned that overreliance on the QPA or any benchmark rate would effectively deter insurers from developing a robust network and negotiating in good faith with health care providers.

The ruling only addresses provisions related to the payment between insurers and health care providers. Other key provisions of the act which protect patients from being caught in the middle for payment of out-of-network services are not impacted by the ruling.

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## **One Month Out, Advocacy Day Registrations Top 500**

**Resources available to help attendees prepare for Advocacy Day**



Attendance for WHA's Advocacy Day on March 23 has topped 500, with one month to go until the highly anticipated event. The virtual event platform being used for the event, LeaderPass, opened to all registered attendees on Feb. 23. Attendees are encouraged to log into the site prior to the live Advocacy Day event to familiarize themselves with the platform.

"Resources and content have been added to the event site for attendees to explore, providing an opportunity for participants to familiarize themselves with the platform early," said WHA Vice President of Advocacy Kari Hofer. "We plan to roll out more resources as we get closer to March 23 to help prepare advocates for the day," Hofer added.

An email is sent to all registered attendees with instructions for creating a LeaderPass account. For questions about Advocacy Day or for instructions to create a LeaderPass account, contact WHA staff at 608-274-1820.

There is no cost to attend WHA's Advocacy Day, but pre-registration is required. Learn more and [register here](#).

### **Pre-Advocacy Day Webinar: March 16**

To prepare advocates for Advocacy Day and the legislative visits, attendees are encouraged to join WHA's Pre-Advocacy Day Webinar on March 16 at 1:00 p.m. An online registration form for the session is available [here](#).

This webinar will provide valuable information on the following topics:

- Why legislative visits are important;
- How legislative visits work;
- Logistics of the virtual format and Zoom best practices; and
- Overview of the issue topics WHA will ask participants to discuss during their legislative appointments.



The webinar will include an opportunity for registrants to ask questions of WHA staff. It will be recorded and available in the LeaderPass virtual event platform for all registered attendees.

Questions about Advocacy Day can be directed to WHA Vice President of Advocacy [Kari Hofer](#).

## Join Us for the Wisconsin Hospitals State PAC & Conduit 2022 Kick-Off

Join WHA for the Wisconsin Hospitals (WH) State PAC & Conduit 2022 Contributor (virtual) Kick-Off Reception on March 23 at 8:00 a.m. (immediately prior to Advocacy Day). Individuals who contribute \$250 or more before March 23 are invited to attend.



Last year, the WH State PAC & Conduit raised a record-breaking \$339,930 from 300 individuals, meeting 2021 goals. For 2022, a fundraising goal of \$340,000 has been set, including an aggressive goal of recruiting 315 individual contributors. With election season in full swing, participation in health care advocacy and support for candidates who value hospitals and health systems will be crucial. Contributions to the Wisconsin Hospitals State PAC & Conduit can be made [here](#). Don't miss your chance to join the WH PAC Kick-Off event.

### WH State PAC & Conduit Contributor Kick-Off

March 23, 2022 (Virtual)

8:00 - 8:30 a.m. (Immediately prior to WHA's Advocacy Day)

Contact WHA Vice President of Advocacy [Kari Hofer](#) at 608-274-1820 with questions or to make a contribution over the phone. Those who have already made their 2022 contributions can RSVP for the Kick-Off to [Nora Statsick](#).

## Assembly Passes Legislation Making Threats of Violence to Health Care Workers a Felony

In a voice vote on Feb. 23, members of the State Assembly voted in favor of legislation that would make threats of violence against a health care worker a felony in Wisconsin, similar to laws that already exist for threats made against law enforcement officers, judges, guardians ad litem and even some state employees.



From Left to Right, UW Health's Rudy Jackson, WHA's Ann Zenk and Gundersen Health System's Clark Draxler testify in a Senate Committee on Feb. 17, 2022.

The legislation received additional action in the Wisconsin State Senate last week, with a public hearing in the Senate Committee on Judiciary and Public Safety. WHA Senior Vice President of Workforce and Clinical Practice Ann Zenk testified alongside Clark Draxler, clinical manager at Gundersen Health System, and Rudy Jackson, chief nurse executive at UW Health, in support of the proposal.

"I believe [Senate Bill 970](#) [companion to Assembly Bill 960] will have the intended effect and stem the tide of violence and threats of violence perpetrated against health care workers providing care in health care facilities," testified Jackson.

Draxler stressed the importance of this legislation to everyone who depends on hospital care in Wisconsin. "This isn't about just about the wellness of health care workers; this is also about everyone's ability to access high-quality care when they need it, without enduring abusive and violent behavior from others," he said.

The bill is now available for a vote in the Wisconsin State Senate. The Senate has already passed similar legislation this session making threats against parole agents and public officials, including state lawmakers and their staff, a felony in Wisconsin. A coalition of more than 22 statewide health care provider organizations [support](#) the proposal.

## Assembly Health Committee Holds Hearing on Bills Addressing Problematic Health Insurer Practices

On Feb. 16, the Assembly Committee on Health held a public hearing on proposed bills that would separately impact the ability of patients to use certain prescription drug discounts to meet cost-sharing requirements; prohibit step-therapy requirements for certain patients with breast cancer; create limits around the ability for insurance companies to deny physical therapy coverage; and require insurers to reimburse for clinician-administered drugs when a contract exists for this service.

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**(Assembly Health Committee Holds Hearing on Bills Addressing Problematic Health Insurer Practices . . . from page 3)**

The last of these bills, Assembly Bill 718, would also prohibit unilateral insurer-mandated white bagging, brown bagging and mandatory home infusion requirements for patients in need of clinician-administered drugs. Instead, the legislation would require that the insurer base decisions on the treating provider's determination of when medications needed to be clinician-administered and would prohibit an insurance company from steering patients away from options that are available in their network.

WHA Senior Vice President Public Policy Joanne Alig and Prairie Ridge Health President and CEO John Russell, WHA's board chair, testified in support of Assembly Bill 718, along with a host of other hospital and health system leaders and providers who provided first-hand witness to the problems these insurer policies cause for patients.

Due to the coming close of the legislative session, all bills heard in the Assembly Health Committee are likely to carry over into the legislative session that begins in January 2023.



*Ascension Vice President of Pharmacy and Lab Vanessa Freitag and Advocate Aurora Director of Pharmacy Oncology Mark Hamm testify in support of Assembly Bill 718.*

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## **Wisconsin Medical Society Names Beloit Health Care's Roger Kapoor Young Physician Leader of the Year**



*Roger Kapoor, MD*

The Wisconsin Medical Society has recognized Beloit Health Care's (BHC's) Roger Kapoor, MD, with its prestigious 2022 Kenneth M. Viste Young Physician Leader of the Year Award.

Dr. Kapoor is a board-certified dermatologist who completed his medical training at Stanford University in California and his Dermatology training at Harvard Medical School in Massachusetts. He also holds a Master's in Business Administration (MBA) from Oxford University, England. Dr. Kapoor lives in Beloit with his family.

In addition to his physician service, Dr. Kapoor is an active WHA member, serving on the association's Advocacy Committee; Council on Finance and Payment; Council on Public Policy; Council on Rural Health; Council on Workforce Development and Physician Leaders Council.

"We are honored to have a member of our team earn this significant recognition and could not be more proud of Dr. Kapoor's continuing contributions, applaudable accomplishments, and his unrelenting commitment to excellence," said BHS President and CEO, Tim McKevett. "He is well deserving of this award."

In expressing gratitude to the Wisconsin Medical Society for the award, Dr. Kapoor said, "Dr. Viste's indelible impact on health care and the medical field remains inspiring, and it is a great honor to receive this award." He continued, "I stand on the shoulders of a great team at Beloit Health System to whom I am profoundly indebted for their friendship, partnership and support."

The Kenneth M. Viste, Jr., MD, Young Physician Leadership Award was established in 2006 to recognize a young physician each year who demonstrates commitment to patients, community and the profession of medicine.

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## **(WHA February Board Meeting Lays Groundwork for Strategy Development . . . from page 1)**

Zenk outlined recent public policy initiatives WHA has pursued to help its members maximize their available workforce, including supporting the American Hospital Association's [appeal](#) to the Biden administration and Federal Trade Commission to take action against opportunistic staffing agency fees that have more than doubled in some areas. WHA has also shared [suggestions](#) with the Wisconsin Department of Health Services (DHS) to address health care worker poaching, such as adding language to temporary employee contracts stipulating that traveling staff hired must be non-residents of Wisconsin. And WHA asked members of Wisconsin's congressional delegation to sign onto a [letter](#) requesting the Biden administration investigate traveling nursing agency anticompetitive practices. Reps. Glenn Grothman and Ron Kind added their names to the request.

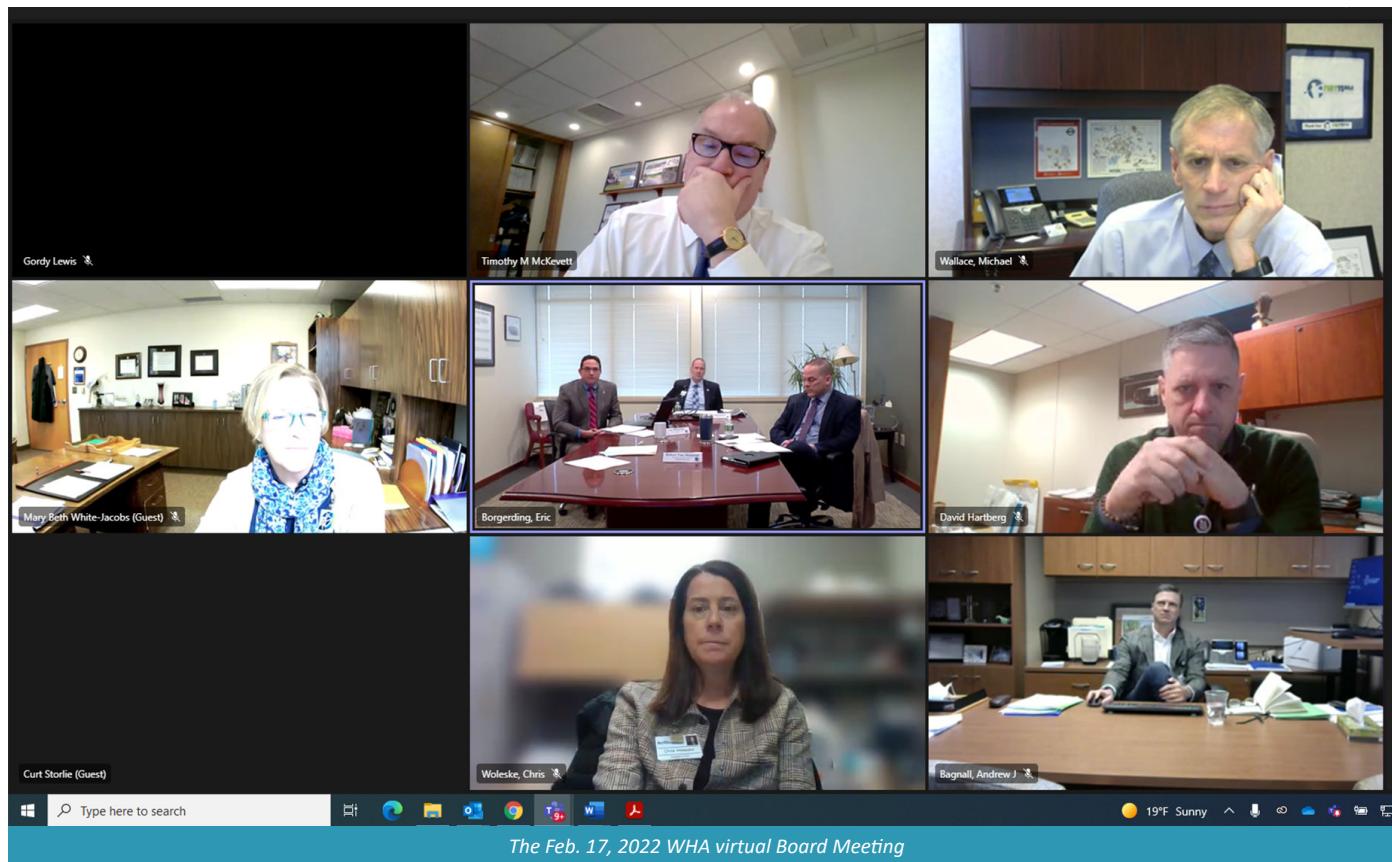
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## **(WHA February Board Meeting Lays Groundwork for Strategy Development . . . from page 4)**

Recommendations for sustaining and strengthening Wisconsin's dedicated and talented health care workforce included in WHA's 2022 report will be refined based on feedback from board members.

### **Productive Political Engagement**

WHA Senior Vice President of Government Relations Kyle O'Brien updated the board on various pieces of legislation impacting hospitals and health systems in the Legislature, including a recent proposal WHA opposes that would circumvent medical staff credentialing processes. O'Brien also discussed the introduction of [legislation](#) now being considered in the state Legislature that would make threats of violence against health care workers a felony in Wisconsin. O'Brien stated that the bill was receiving a hearing in Senate committee later that morning and was expected to pass the full Assembly on Feb. 23.



On the federal front, WHA Vice President of State and Federal Relations Jon Hoelter explained that Congress' attention has turned to funding the government, now that the Build Back Better plan is ostensibly dead. Through briefings to Wisconsin's congressional delegation from WHA leadership and member CEOs, WHA continues to stress the need for federal support for hospitals and health systems operating under extreme strain from a pandemic now entering its third year. The Senate Health, Education, Labor & Pensions (HELP) Committee recently unveiled a discussion draft related to pandemic preparedness, and WHA encouraged the committee in a recent comment letter to put a greater emphasis on how federal preparedness efforts impact hospitals and health systems, which have been the backbone of the COVID-19 response. Hoelter also encouraged WHA board members to join WHA for the annual American Hospital Association member meeting in Washington, D.C., on April 25 and 26, which will once again be in-person this year.

### **Rising to the Moment**

Responding to an urgent call for crisis messaging and action by member leaders in WHA's December board meeting, WHA President and CEO Eric Borgerding provided a recap of WHA's recent concentrated efforts to address capacity challenges brought on by the Omicron-fueled winter COVID-19 surge. In addition to providing a playbook to its members for enlisting the business community's help in combatting virus spread and stepping up its own paid and earned media messaging efforts, WHA leveraged its government relationships to effect rapid short-term staffing solutions to address workforce shortages and bottlenecks in the continuum of care.

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## **(WHA February Board Meeting Lays Groundwork for Strategy Development . . . from page 5)**

WHA worked closely with DHS Deputy Secretary Deb Standridge to support Wisconsin's request for regional federal health care team deployment. Ultimately, the Biden administration supplied one team of military health care personnel to a single Wisconsin location—Bellin Health—short of the five teams requested. WHA's coordination with DHS on a second state staffing contract and with the University of Wisconsin System on a \$500 tuition credit for UW students working in certain health care facilities are additional examples of quick-response workforce initiatives WHA pursued on behalf of members. A "decompression" strategy implemented by DHS that provided expedited nurse aide training to members of the Wisconsin National Guard and deployment of those service members to a number of skilled nursing homes throughout the state to help increase the capacity of those facilities to accept patients ready for discharge from hospitals is another strategy that benefited from WHA's involvement and direction.

Looking ahead, Borgerding summarized WHA's goals for 2022, which are drafted by WHA staff based in response to ongoing and emerging challenges and rely heavily upon member input. Major themes running through WHA's goals, Borgerding noted, revolve around the need for long-term care reform, health care workforce development and public health improvements. Board members approved the goals document on a unanimous vote. Borgerding concluded by outlining the process that will be used for creating the association's next three-year strategic plan.

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