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# HOWARD MARKLEIN

STATE REPRESENTATIVE • 51<sup>ST</sup> ASSEMBLY DISTRICT

**February 12, 2014**

**Assembly Bill 728/ Senate Bill 560 Testimony**

Thank you to Chair Vukmir, Chairman Severson, and all the committee members on the Senate Health and Human Services Committee and the Assembly Health Committee for allowing me to testify in favor of Assembly Bill 728 and Senate Bill 560, which makes changes to the regulation of hospitals in Wisconsin. These particular regulations are outlined in DHS 124.

In Wisconsin, hospitals comply with the federal Medicare Conditions of Participation (CoP) and state licensure requirements. Many Wisconsin hospitals are accredited by a national accrediting organization and comply with those stringent standards as well. Those in the health care industry spend a great deal of time and resources complying with the federal, state, and accreditation standards.

The multiple sets of rules placed on hospitals are sometimes conflicting, particularly the federal Medicare CoP and DHS 124, making compliance inefficient and confusing. The number of conflicting standards continues to increase as the federal government periodically updates the Medicare CoP while the DHS 124 standards, for the most part, have been unchanged for years. The Medicare CoP also offers useful compliance guidance to hospitals, while DHS 124 does not.

AB 728/SB 560 would sunset significant portions of DHS 124 and, beginning on July 1, 2016, the Department of Health Services (DHS) would use and enforce the Medicare CoP as the minimum standards that apply to hospitals. The Department of Health Services would utilize the current rulemaking process to establish any needed additional rules for Wisconsin hospitals that are not addressed by the CoP. The outdated and unnecessary rules would sunset, removing red tape and inefficiencies. Adopting the Medicare CoP as the state standards will maintain the state regulatory oversight of hospitals but allow the state regulators to apply more up-to-date and efficient standards.

Hospitals, under current law, must comply with the building and construction standards established by the Department of Safety & Professional Services (DSPS). That requirement would continue unless the DSPS standards are incompatible with the CoP.

Having to comply with both state and federal regulations can cause unneeded increases in costs for hospitals, thereby increasing costs for patients. This bill would make compliance and oversight less confusing for hospitals and the state regulators, thereby reducing those costs associated with hospital regulatory compliance.

I would be happy to take any questions from committee members at this time.



TO: Senate Committee on Health and Human Services  
Senator Vukmir, Chair  
Assembly Committee on Health  
Representative Severson, Chair

FROM: Jeremy Levin, Director of Advocacy  
Rural Wisconsin Health Cooperative

DATE: February 12, 2014

RE: SUPPORT Senate Bill 560/Assembly Bill 728 – Relating to the regulation of hospitals.

The Rural Wisconsin Health Cooperative (RWHC), owned and operated by 40 rural community hospitals, thanks you for this opportunity to share our thoughts on Senate Bill 560 and Assembly Bill 728 which relates to changes in the regulation of hospitals. RWHC thanks the authors, Representative Marklein and Senator Vukmir, for introducing legislation that wisely reduces the additional burdens that the state places above and beyond federal Medicare Conditions of Participation (CoP) and state licensure requirements.

RWHC has long believed that having multiple sets of rules placed on hospitals is inefficient, confusing and overly burdensome. The number of conflicting standards often found between federal Medicare CoP and Department of Health Services code, making full compliance incredibly difficult, only continues to increase as the federal government periodically updates the Medicare CoP. Conversely, the Department's standards, for the most part, have been unchanged for years. Additionally, most Wisconsin hospitals are accredited by a deemed status organization and must comply with those stringent standards as well.

These companion bills would utilize the current rulemaking process to establish any needed additional rules for Wisconsin hospitals that are not addressed by the CoP. The outdated and unnecessary rules would sunset, removing excessive burden and inefficiencies. Adopting the Medicare CoP as the state standards will maintain the state regulatory oversight of hospitals and allow state regulators to apply only needed, non-conflicting, additional standards.

Thank you again for this opportunity to comment on and express our support for Senate Bill 560/Assembly Bill 728. We encourage the Committee to act on this bill, so that it might become law and end excessive regulation for hospitals providing health care services in Wisconsin's underserved rural areas.

## WISCONSIN HOSPITAL ASSOCIATION, INC.



Date: February 12, 2013

To: Assembly Committee on Health  
Senate Committee on Health and Human Services

From: Kelly Court, Chief Quality Officer  
Laura Leitch, General Counsel

Subject: Reforming Hospital Regulations: Support for AB 728 and SB 560

The Wisconsin Hospital Association has been a proponent of updating the Wisconsin hospital regulations for a very long time. We appreciate Representative Howard Marklein's and Senator Leah Vukmir's commitment to improving Wisconsin's regulatory environment by updating decades old statutes and regulations, like those that establish the state standards for hospitals, with more efficient and effective standards. WHA strongly supports AB 728 and SB 560.

In Wisconsin, hospitals comply with the federal Medicare Conditions of Participation (CoP) and state licensure requirements. Many Wisconsin hospitals are accredited by a national accrediting organization and comply with those stringent standards as well. These sometimes-conflicting standards make compliance inefficient and confusing. Governor Walker's *2013 Wisconsin Regulatory Review Report* noted the need for an update to the state regulations for hospitals, DHS 124, noting that the rule is "outdated, duplicative, and confusing for health care operators."

Some of the important features of AB 728 and SB 560 include the following:

- Beginning July 1, 2016, the federal Medicare Conditions of Participation would become the base state regulation for hospitals in Wisconsin. A number of states in our region also rely on the Medicare Conditions of Participation, including Minnesota, Iowa, Michigan, and Ohio.
- Also beginning July 1, 2016, Subchapters II, III, and IV of DHS 124, the current state hospital regulation would sunset. This provision would eliminate many of the provisions in the current code that duplicate or are inconsistent with the Medicare Conditions of Participation.
- Under the bill, the Department of Health Services would retain its current administrative rule authority and could promulgate additional rules to fill gaps it identifies in the Medicare Conditions of Participation. With the sections of the current rule the bill retains, even if DHS does not promulgate additional rules, Wisconsin would have a fully functional and thorough regulatory scheme for hospitals.
- The bill clarifies that a hospital may grant any practitioner the opportunity to be a member of the hospital's staff and obtain hospital staff privileges if it is consistent with the practitioner's scope of practice and is not prohibited by the Conditions of Participation or administrative rule.

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- For hospitals that are accredited by a national accrediting organization recognized by the Centers for Medicare and Medicaid Services, the Division of Quality Assurance, like CMS, currently relies on the accrediting organization for routine inspections of hospitals. DQA would continue to be responsible for investigating complaints against hospitals and other inspections required by CMS.
- The bill amends the current statutory variance authority to make it align with the DHS's longstanding waiver and variance authority in existing DHS 124.

This bill makes sensible changes to the current state regulatory scheme for hospitals. Because it, in important ways, syncs the state hospital regulations with the federal regulations, the hospital regulators and administrators can focus their efforts on issues beyond parsing regulatory language and technical compliance.

Wisconsin hospitals are the hub of a health care system that provides among the best health care in the country. Wisconsin is ranked consistently among the top five states for providing excellent, high value health care to its patients. Like roads and schools, our health care is one of the many reasons to locate and grow a business in Wisconsin.

Hospital and health system quality officers and teams focus on studying and then establishing best practices through innovative projects that go well beyond the minimum standards in the hospital regulations. In Wisconsin, we are fortunate to have committed leaders and staff working to improve patient outcomes.

Compliance with regulatory standards is important and a significant commitment of hospital resources. We believe current and regularly updated regulatory standards are an important part of ensuring quality care:

- Having multiple sets of standards means hospitals are subject to either redundant or inconsistent standards. This causes confusion and is inefficient, pulling resources away from other priorities.
- Antiquated and confusing standards do not encourage the adoption of the best or most up to date practices.
- CMS regularly updates the Conditions of Participation. Before updating the Conditions, CMS consults with providers and others to ensure their standards are current.
- Unlike DHS 124, CMS also publishes compliance and survey guidance for the Conditions of Participation. These help both the regulators and the regulated apply the standards.

We appreciate the Assembly and Senate committees considering this bill. We again thank Representative Marklein and Senator Vukmir for their hard work on this bill and thank the Department of Health Services for their good work on this issue over the years.



State of Wisconsin  
Department of Health Services

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Scott Walker, Governor  
Kitty Rhoades, Secretary

**Department of Health Services Testimony on AB 728 and SB 560  
Related to the Regulation of Wisconsin Hospitals  
February 12, 2014**

Thank you Chair Vukmir and Chair Severson for the opportunity to testify today on Assembly Bill 728 and Senate Bill 560 related to updating the state's regulation of hospitals. My name is Kevin Moore, and I am the Deputy Secretary for the Department of Health Services. DHS, through the Division of Quality Assurance, is the state's regulator of health care facilities which include nursing homes, assisted living facilities and hospitals.

Currently, Wisconsin hospitals are regulated under the federal Medicare conditions of participation (COP) as well as Wisconsin administrative code as outlined by DHS 124. While this regulatory structure was originally an efficient and effective means of regulating Wisconsin hospitals, changes in the COPs, and a lack of changes to the state's DHS 124 rules have created two sets of regulations, causing confusion for both hospitals and surveyors in the interpretation and enforcement of these standards.

As you know, in 2012, Governor Walker signed Executive Order #61 which requires state agencies to work with the Small Business Regulatory Review Board to identify rules that hinder economic growth. Under this directive from the Governor, the Department recommended the modification and updating of DHS 124 which was included in the Governor's 2013 *Wisconsin Regulatory Review Report*.

As the report highlights, over 1 million Wisconsin residents receive benefits through the Medical Assistance program, and the program spends over \$1.67 billion annually on Wisconsin hospitals.

AB 728 and SB 560 would update the state's regulation of hospitals by establishing one set of criteria, the federal conditions of participation, as the federal and state regulatory standards. In addition, the bill would grant the Department the authority to promulgate additional rules to address any issues that may not be directly covered by the COPs and would create a timeline for the Department to review and update all current DHS 124 rules which are not directly addressed under the COPS.

While Wisconsin's regulation of hospitals would be governed by one set of standards, the authority to use these standards would not change from current practice. DHS surveyors would continue to conduct surveys under the federal Medicare rules using the conditions of participation. In addition, the bill would retain the state's authority to investigate any

complaint in the event that federal authorities do not authorize an investigation under its purview.

The Department has reviewed this legislation to determine the financial impact of these changes, and believes that there may be a change in the federal matching rate. While it is estimated that there could be a loss of federal funding up to \$330,000, the Department is uncertain if this mix in federal/state funding will occur and will work to address this budget issue internally.

Finally, the legislation updates the Department's ability to modify the fee structure that supports the Department plan review process. Under current law, the schedule for fees was statutorily locked-in at rates from September of 1995. Since then, the increase in health care construction has placed an increased demand on engineering and review services within the Department. This has led to some instances of where projects were delayed due to an overall lack of staffing resources to appropriately review project plans. This change will grant the Department, through the rules process, more flexibility in staffing the plan review section to meet the needs of our customers.

The Department believes that the bill addresses a number of issues that have caused confusion and inconsistency for both our external partners as well as DHS staff. As the vehicle to address the regulation of Wisconsin hospitals, the Department would recommend that the language in the bill be amended to improve the state's oversight of psychiatric hospitals in Wisconsin. Adopting the federal COPs for psychiatric hospitals now will improve the Department's ability to protect the men, women and children who are receiving mental health services in Wisconsin psychiatric hospitals. For example, the federal COPs require additional information/evaluation for admission of the individual and require more extensive assessment and documentation of the patient's progress in accordance with their treatment plan.

Thank you again for the opportunity to testify on these proposals. Should you have any questions, the Department will be happy to address them.