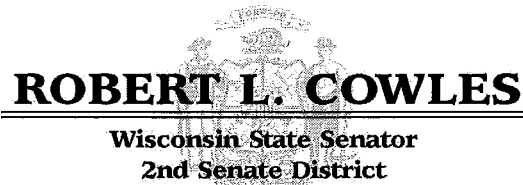


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**Senate Committee on Health and Human Services
February 6, 2018 Public Hearing
Senate Bill 445 Testimony**

Thank you Chairwoman Vukmir and Committee Members for allowing me to speak today on Senate Bill 445 (AB 445). This proposal responds to challenges that arise for health care providers and the State of Wisconsin's emergency detention statutes.

Currently, an individual with a mental illness that is a danger to themselves or others that person can be placed on a 72 hour emergency detention hold for an evaluation whether that person is in need of a commitment and de-escalate the chance for violence. Law enforcement can only place a person in crisis on an emergency detention hold upon the approval of the county mental health agency. Wisconsin law does not permit a health care provider to place a person in crisis on an emergency detention hold without a court order.

SB 445 will better align Wisconsin emergency detention laws with health care provider responsibilities and authorities under federal and state law. The bill clarifies in statutes the health care provider's liability to an individual or third party is clearly limited to the health care provider's authority to seek, but not impose, an emergency detention for a person in crisis. In some instances a health care provider or law enforcement officer may believe that a person in crisis is a danger to someone else, this information should be provided others, including law enforcement and county mental health crisis personnel, that the patient could seriously harm another individual. By allowing for this sharing of information in good faith could further prevent or lessen a serious threat to the health and safety of the community.

Finally, the bill addresses the regulatory concerns emergency department providers face trying to follow Wisconsin emergency detention laws and the conflict that they face in also following the Federal Emergency Medical Treatment and Labor Act (EMTLA) obligations on the transfer of a person in crisis seen in an emergency room and a referral for an emergency detention hold if the hospital does not have the capability to treat. This bill will align Wisconsin Statutes with the Federal EMTLA code.

SB 445 has been a collaborative effort of many groups present today with an overwhelming bi-partisan support. Thank you again for hearing my testimony today.

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MEMORANDUM

TO: Honorable Members of the Senate Committee on Health and Human Services

FROM: Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs

DATE: February 6, 2018

SUBJECT: Senate Bill 445/Assembly Bill 538

The Wisconsin Counties Association (WCA) would like to make the following comments on Senate Bill 445/Assembly Bill 538, relating to transfer for emergency detention and warning of dangerousness.

The Wisconsin Hospital Association (WHA) reached out to WCA several years ago to develop statutory language that would ensure hospitals across the state are meeting their federal EMTALA obligations, while at the same time recognizing the role county crisis units play in the emergency detention process.

There are many players involved in the emergency detention process, thus making any changes to Chapter 51, an already complicated section of the statutes, difficult. There was significant back and forth between WHA, WCA, representatives from the county corporation counsel association, and county human services departments to develop language that ensures the best interests of an individual in crisis are met, while also ensuring the valuable role each entity plays in the emergency detention process is respected. After several years of meetings, conference calls, etc., Assembly Bill 538 was introduced that WCA believes protects the county role in the emergency detention process, while ensuring our partners are in compliance with federal law.

WCA is comfortable with the language contained in Senate Bill 445/Assembly Bill 538 and looks forward to continuing work with our partners in the emergency detention process to ensure the best interests of our citizens are met.

Thank you for considering our comments.

WISCONSIN HOSPITAL ASSOCIATION, INC.



Date: February 6, 2018

To: Members of the Senate Committee on Health and Human Services

From: Matthew Stanford, General Counsel

Re: WHA Supports SB 445 / AB 538 – Providing Regulatory Clarification and Aligning State Law with Federal Law Requirements during Mental Health Crisis

The Wisconsin Hospital Association (WHA) strongly supports Assembly Bill 538 - bipartisan legislation introduced by Rep. John Jagler and Rep. Eric Genrich and Sen. Rob Cowles and Ren. Janis Ringhand, along with twenty-five other sponsors, that will align Wisconsin's emergency detention statutes with the obligations that currently exist for hospitals and health care providers under federal law. In addition, this legislation provides necessary clarification and liability protection to health care providers when they feel an obligation to warn about someone they believe is a harm to themselves or others.

The legislation is a product of nearly three years of conversations between the Wisconsin Hospital Association and the Wisconsin Counties Association to find a compromise policy that helps remedy a regulatory conflict between Wisconsin law and federal law. The public policy concern addressed in this bill was raised by Wisconsin hospitals during the 2013 bipartisan Speaker's Task Force on Mental Health. This legislation does not change the process to initiate an emergency detention, but necessarily and correctly leans on the medical judgment of health care professionals in hospital emergency departments to ensure a patient transfer is medically appropriate.

Under Wisconsin law, if an individual with mental illness is a danger to his or herself (suicide) or others (violence against others), that individual may be placed under a 72 hour "emergency detention" to immediately prevent the dangerousness and evaluate the need for commitment. Generally, only law enforcement, with the approval of the county mental health crisis agency, may place an individual on an emergency detention without a court order. Wisconsin's law does not permit health care providers to place an individual on an emergency detention without a court order. Thus, if law enforcement or a county crisis agency drops or will not initiate an emergency detention, a health care provider may not place an individual under an emergency detention, even if the health care provider reasonably believes the person is a danger to his/herself or others.

Wisconsin law provides immunity to any individual who acts in accordance with Wisconsin's emergency detention statute. However, in situations in which a treating health care provider believes that an emergency detention is medically necessary but law enforcement and/or the county crisis agency drops or will not initiate an emergency detention, the Attorney General has opined that the statutory immunity as written may not extend to the treating health care provider.

As a result, health care providers are concerned that they may be liable to a patient or third party for letting the patient leave a health care facility against medical advice following a law enforcement officer or county crisis agency's determination to not proceed with an emergency detention, even though the health care provider is not permitted under statute to personally place the individual under an emergency detention.

To address those concerns and reduce the likelihood of conflicts between medical staff, law enforcement, and county crisis staff, this bill provides better clarity in statute so that a health care provider's liability to an individual or third party more is more clearly limited to the health care provider's authority to seek, but not impose, an emergency detention on the individual. The bill further clarifies that a health care provider may fulfill a duty to warn by contacting law enforcement or the county crisis agency.

The bill also addresses a 2010 Court of Appeals case that concluded that an individual may be prohibited under Wisconsin law from disclosing information in good faith to a person in order to warn the person about a patient's substantial probability of serious physical harm to the person. The bill clarifies that a health care provider or law enforcement officer may disclose health care information in a good faith attempt to warn others of a patient's substantial probability of serious physical harm to the person. Federal restrictions on the sharing of patient health information (HIPAA) still apply.

Finally, the bill also addresses a concern by emergency department providers that Wisconsin's emergency detention law can come into conflict with federal EMTALA (Emergency Medical Treatment and Active Labor Act) duties on hospitals, providers and hospital emergency departments. The bill better aligns Wisconsin law with federal EMTALA duties by explicitly establishing a role in Wisconsin's emergency detention statute for emergency department staff. Under the bill, law enforcement may not transport an individual in custody of law enforcement from an emergency department until a hospital employee or medical staff have communicated to law enforcement that the transfer of the individual to the detention facility is medically appropriate.

WHA asks for your support of SB 445 / AB 538 in order to reconcile Wisconsin law with the federal requirements established by EMTALA and provided necessary liability protections to health care providers who are concerned about a patient in need of mental health crisis services.