



Date: October 16, 2014

To: Members of the Special Committee on State-Tribal Relations

From: Kyle O'Brien, Vice President Government Relations
Jodi Johnson, Vice President Clinical Practice and Workforce

Re: Hospital Concerns with Policy Options Impacting WI's Safe Haven Law

The Wisconsin Hospital Association (WHA) represents 140 hospitals and health systems that provide medical services to thousands of Wisconsin patients each and every day. Our members, most of which are not-for-profit organizations, employ over 100,000 people and delivered over 51,000 babies in 2013 alone. WHA has strongly supported Wisconsin's Safe Haven law, which currently grants a parent, in most instances, the right to anonymously relinquish custody of their newborn child within 72 hours of the child's birth.

The decision to relinquish custody of a newborn child is difficult for a parent. The Safe Haven Law creates important protections for a parent who believes that the safest place for that child is somewhere other than in the parent's direct care. As Legislative Council Attorney David Lovell points out in his memo to the Committee dated October 9, 2014:

“the right to anonymity that the safe haven law grants to a parent relinquishing a child is central to that law. It and the waiver of civil and criminal liability for the parent are designed to give the parent confidence that she or he will not suffer consequences as a result of the relinquishment. The more that the parent is pressed for identifying information, or otherwise delayed, the greater is the likelihood that the parent will leave with the child and subsequently abandon the child in an unsafe manner.”¹

Some have recommended amending Wisconsin's Safe Haven Law to mandate that anyone eligible to accept a baby under the law (essentially any person working in a hospital, among others) must ask every parent whether or not a baby has tribal heritage and subsequent, more detailed questions, including the names of the baby's parents. WHA believes that this mandate goes against the original intent of the Safe Haven Law, which was to protect the anonymity of a parent for the safe placement of an unwanted baby.

In 2013, there were 51,609 babies born in Wisconsin hospitals – with 579 (0.25%) of those babies identified as having Native American heritage by a mother during the admission process. In 2013, out of 66,330 total birth certificates filed at the Wisconsin Department of Health Services only 11 were from babies relinquished under the Safe Haven law. According to this data, there is an extremely low probability that a baby born in a hospital, with Native American heritage, will be relinquished under the Safe Haven law.

The statistical probability of that occurring is roughly 1 in 2.5 million.

¹ Memo No. 14-2 from David L. Lovell to the Members of the Special Committee on State-Tribal Relations, October 9, 2014.

It is also important to note that hospitals are required, by DCF 39, to make a reasonable effort to obtain certain information once a person relinquishing a newborn **voluntarily** provides identifying information. This includes information on the ethnicity of the child and, specifically, whether the newborn is of American Indian heritage and, if so, any tribal affiliations. We believe that the current regulation in DCF 39 already provides an opportunity to receive information and strikes a balance that is consistent with the laws of other states.

As Mr. Lovell analyzed Safe Haven laws in other states, he found that only four out of fifty states contain provisions that refer to the Indian Child Welfare Act. Of those, three out of the four contain permissive (not mandatory) language for the inquiry of information from a parent on Native American heritage. Some states place the burden on the state government to make a reasonable effort to determine if the child is an Indian child.

WHA believes it is important to keep current practice consistent moving forward, which ensures that parents are given the same protections that they are given today under the law. WHA believes that this is best for the parents' health, safety and welfare but even more importantly – it is critical for the safety of that newborn child.

WHA would oppose Options 2 and 3 under **Determining if a Child is Indian** and Option 2 under **Obtaining Other Information** from Mr. Lovell's October 9, 2014 memo to the committee. WHA believes that a mandatory inquiry of a parent goes against the original intent of the law.

Also, we encourage the Committee to consider the impact that this type of mandate would have on hospital staff, who may experience this issue once in a lifetime – if that. Expecting every staff member in a hospital (both clinical and non-clinical staff) to keep these questions top of mind at any moment is unrealistic. Hospital staff should have the ability to ask the parent for additional information, if the parent chooses to provide identifying information, but they should not be required to impose these questions onto any parent who correctly believes they have the right to stay anonymous.

WHA's members have a primary responsibility to ensure that a newborn relinquished at any of our member's facilities is medically stabilized. As Mr. Lovell points out, the committee should consider what role a hospital staff member plays in ascertaining certain information. To the greatest extent possible, WHA's members strongly believe that the options related to any disclosure of information should be directed to the state via a county social services department.

While some WHA members have raised overall concerns with Option 1 under **Determining if a Child is Indian** and Option 1 under **Obtaining Other Information**, there is one clarification that should be considered. Under Option 1 for **Determining if a Child is Indian**, WHA would recommend that the option be changed to "If the child is Indian, require a person relinquishing a child to disclose whether the child is Indian." We also would not want this requirement to impact the hospital's ability to accept a relinquished child, regardless of whether the parent disclosed that the child was Indian.

We would like to thank the Committee members for accepting our comments and we appreciate your thoughtful consideration of this very delicate policy area. We believe that the potential risk of any mother turning away from a hospital to drop off her newborn outweighs any other reward from gathering additional identifying information.