

Advancing Free Market Healthcare is an employer-led coalition advocating for change in Wisconsin's healthcare marketplace. We stand for policies that promote choice, competition, consumerism, accountability, high value healthcare delivery and flexibility for employers to pursue the most affordable and quality healthcare alternatives on behalf of their Wisconsin employees and their families. This is our 2023-24 legislative agenda.

1. **Advance Transparency and Build Upon It:** We urge the legislature to pass SB 328¹ introduced by Senator Mary Felzkowski and others relating to hospital price transparency. While transparency on its own is not a silver bullet to fix high healthcare prices, it is a prerequisite to other efforts, including employer efforts, to lower the healthcare cost burden for Wisconsin employees and their families. It is imperative that we ensure transparency moves forward in a way that is most beneficial to healthcare consumers who deserve information about prices.
2. **Invest in WHIO:** We encourage lawmakers to take steps to strengthen the Wisconsin Health Information Organization² (WHIO) via increased financial support and by requiring payers to submit data. WHIO is a critical asset to promote transparency and free market healthcare. As Wisconsin's All-Payers Claim Database (APCDs)³, WHIO collects, aggregates, and de-identifies raw claims data from various purchasers providing stakeholders with a vital resource for identifying cost and quality variations. This is the fundamental basis upon which free markets exist. WHIO is the only dataset that enables payers and providers to evaluate resource use across the health care environment and episodes of care, a factor critical to measuring both quality and total costs.

Several states including Indiana, Georgia, Utah, and Texas are currently investing significant state resources to support and promote APCDs, but Wisconsin's APCD is a voluntary model and thus lacks certain data. The legislature should advance legislation to add additional data to WHIO including actual paid amounts, and then utilize the data to support the work of a Healthcare Cost Task Force (see below).

3. **Establish a Healthcare Cost Taskforce to Understand Cost Drivers and Solutions:** High healthcare costs have put many Wisconsin families in medical debt. The cost of healthcare is a deciding factor in attracting business to Wisconsin and a critical economic issue that merits honest and evidence-based discussions and policy ideas. To achieve this, we urge the legislature to establish an apolitical task force to objectively evaluate the cost of healthcare in Wisconsin and verify prices compared to other states. The task force should work to identify the reasons behind the high costs and recommend solutions to bring Wisconsin prices down to the national average. This would benefit consumers and employers paying for healthcare. Task force members should be limited to lawmakers and/or individuals who can objectively put the interests of consumers first, who are focused on lowering costs, and who should consult with non-political healthcare cost experts such as actuaries and economists and be informed by data (from state agencies WHIO and other sources). For models, see Indiana HB 1004⁴ and Minnesota SF 2002⁵.
4. **Improve Health System Merger and Antitrust Review to Preserve Access and Competition:** We urge the legislature to enact comprehensive legislation that will strengthen the authority of the Wisconsin Department of Justice to ensure healthcare mergers and acquisitions a) are structured to be in the best interests of patients and consumers, b) do not substantially lose competition or lead to healthcare provider regional monopolies, and c) scrutinize proposed out-of-state ownership for any teaching hospital or university that has received substantial state funding. At a minimum, healthcare mergers should be required to submit a form to the attorney general's office to notify them of the merger with established penalties for failure to do so. A position should be funded within the attorney general's office to oversee health mergers and antitrust concerns and require merging entities to fund a pre-merger economic analysis and post-merger price monitoring through the Healthcare Cost Task Force. See the recommendations included in Preventing Anticompetitive Healthcare Consolidation: Lessons from Five States⁶ (see page 28) and MN HF 402⁷.
5. **Hold Healthcare Entities Accountable for State Investments:** Studies show that Wisconsin has some of the highest healthcare prices in the nation, far exceeding the national average. And often, we hear that cost-shifting from public programs is to blame. Yet in the 2023-25 state budget, Wisconsin will invest billions of state and federal dollars to pay health systems and other providers more for Medicaid-related services. We recommend the Healthcare Cost Taskforce work to evaluate whether this investment has a relative impact on non-government prices for healthcare. If it does not, the Healthcare Cost Taskforce should consider ways to ensure the future investment of taxpayer dollars results in a positive impact on employees and individuals who are currently paying 3-4 times what Medicaid and Medicare are paying for the same health services. It should also ensure systems and providers that continue to charge well above the national average for procedures and services are not rewarded for this behavior.

6. **Strengthen Independent Primary Care:** We urge the legislature to join the state of Indiana in leading efforts to strengthen independent primary care through tax credits, provisional credentialing, and addressing non-competes for physicians. (See Indiana SB 7⁸). Proposed legislation in Wisconsin should also proactively work to foster a healthy, competitive environment by 1) ensuring that physician employment contracts and policies do not restrict competitive healthcare practices, 2) that hospitals cannot force patients who choose independent primary care physicians to establish patient relationships with “in-system” primary care doctors in order to receive specialist and behavioral healthcare, and 3) that hospital systems accept referrals, labs, and quality imaging from independent providers.
7. **Ban Anticompetitive Contracting Terms Between Payers and Providers:** We urge the legislature to prohibit health-care providers and health plans from offering, entering, or renewing a provider network contract that includes an anti-steering, anti-tiering, gag, or most favored nation clause, without any exceptions (see Texas HB 711⁹).
8. **Promote Transparency in Billing for Hospital vs. Non-Hospital Care:** We urge the legislature to require bills for health-care services be submitted on individual provider forms with the appropriate providers’ National Provider Identifiers (NPIs). Ensure hospitals and systems are only charging site-specific facility fees for services that are delivered on a hospital campus. Any clinic location that is more than 250 yards from the campus of a hospital should not be associated with facility fees which inflate and hide the true prices for health services for patients. (See Texas HB 1692¹⁰ and Indiana SB 6¹¹).
9. **Ensure Employer Access to Their Own Data:** Many smaller fully insured employers (50-200 employees) are seeing health insurance renewal increases of 30% or more. These employers do not meet the definition of small employers in Wisconsin, and thus are not protected by the guaranteed issue provisions of state or federal law. Often, they find themselves with no good options when they receive an unaffordable premium increase, and other insurers decline to bid on their health plan.

Independent consultants and brokers tell us the situation is made worse by insurers refusing to share data with employers citing Health Insurance Portability and Accountability Act (HIPAA) concerns. However, we interpret that both HIPAA and the Consolidated Appropriations Act (CAA) include provisions to permit employers to receive comprehensive and detailed data. Data is critical in allowing employers to understand if proposed increases are justified, pursue creative ideas such as carve outs to address their own cost drivers, and to potentially negotiate a lower rate or second offer. It is also critical if employers wish to explore self-funding. Refusal to share identifiable data keeps employers’ HIPAA-bound consultants from arranging the stop loss and reinsurance necessary to limit risk in a self-funded plan.

State legislation should require health insurers and Pharmacy Benefit Managers (PBMs) to provide claims data to employers and their businesses to associates who are bound by HIPAA including Medical Loss Ratio (MLR) and identifiable data to enable employers to better understand the issues their plan is facing and seek alternative coverage options. (See 2007 Texas HB2015¹²).

10. **Increase Accountability and Transparency Around Drug Prices:** We urge legislature to enact comprehensive transparency measures for PBMs and establish as a default that all rebates and concessions received from drug manufacturers be passed to health plans unless the plan knowingly opts out. PBMs should be required to disclose all cost, price, and reimbursement information and all fees, markups, and discounts charged to health plans and pharmacies. (See employer reporting requirements in Federal S. 1339¹³). PBMs should be required to act in the best interest of group health plans and their beneficiaries by holding them to a fiduciary standard (see fiduciary language in 21 Hawaii HB 24¹⁴). Require not-for-profit hospital pharmacies to disclose prescription drug markups to payers (see Maine SP 562¹⁵).

Links

- 1 <https://docs.legis.wisconsin.gov/2023/proposals/sb328>
- 2 <https://whio.org/>
- 3 For more information about APCDs and their potential, please visit this website: www.apcdcouncil.org
- 4 <https://iga.in.gov/legislative/2023/bills/house/1004/details>
- 5 <https://www.revisor.mn.gov/bills/bill.php?f=SF2002&b=senate&y=2021&ssn=0>
- 6 <https://sourceonhealth.wpenginepowered.com/wp-content/uploads/2020/06/PreventingAnticompetitiveHealthcareConsolidation.pdf>
- 7 <https://www.revisor.mn.gov/bills/bill.php?f=HF402&y=2023&ssn=0&b=house>
- 8 <https://trackbill.com/bill/indiana-senate-bill-7-physician-noncompete-agreements/2298810/>
- 9 <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB007111.pdf>
- 10 <https://capitol.texas.gov/tlodocs/88R/billtext/html/HB016921.htm>
- 11 <https://trackbill.com/bill/indiana-senate-bill-6-health-care-billing-forms/2298809/>
- 12 <https://capitol.texas.gov/tlodocs/80R/billtext/html/HB02015F.HTM>
- 13 <https://www.congress.gov/118/bills/s1339/BILLS-118s1339is.pdf>
- 14 https://www.capitol.hawaii.gov/sessions/session2021/bills/HB24_.HTM
- 15 <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0562&item=1&snum=131>