



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3671/P2  
RLR&RPN:cs:wnw

Wanted thus

stays

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regen.

INS RC

1 **AN ACT to repeal** 146.38 (3) (e), 940.285 (2) (a) 3. and 940.295 (1) (km); **to amend**  
 2 146.38 (1m), 146.38 (2), 146.38 (3) (d), 940.08 (1), 940.08 (2), 940.24 (1), 940.24  
 3 (2), 940.285 (2) (b) 1g., 940.285 (2) (b) 1r., 940.285 (2) (b) 4., 940.285 (2) (b) 5. and  
 4 940.295 (3) (a) 3.; and **to create** 146.38 (1) (bm), 146.38 (2m), 904.16, 904.17,  
 5 940.08 (3) and 940.24 (3) of the statutes; **relating to:** disclosure of health care  
 6 review records; criminal liability of health care providers and employees of  
 7 health care providers; use as evidence of information regarding health care  
 8 providers; and admissibility of depositions and interrogatory answers.

**Analysis by the Legislative Reference Bureau**

INSERT Analysis

This is a preliminary draft. An analysis will be provided in a later version.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

9 **SECTION 1.** 146.38 (1) (bm) of the statutes is created to read:  
 10 146.38 (1) (bm) "Incident report" means a written or oral statement that is  
 11 made to notify a person, organization, or an evaluator who reviews or evaluates the

1 services of health care providers or facilities or charges for such services of an  
2 incident, practice, or other situation that becomes the subject of such a review or  
3 evaluation.

4 **SECTION 2.** 146.38 (1m) of the statutes is amended to read:

5 146.38 (1m) No person who participates in the review or evaluation of the  
6 services of health care providers or facilities or charges for such services may disclose  
7 an incident report or any information acquired in connection with such review or  
8 evaluation except as provided in sub. (3). or (3m)

9 **SECTION 3.** 146.38 (2) of the statutes is amended to read:

10 146.38 (2) All persons, organizations, or evaluators reviewing or evaluating,  
11 whether from one or more entities, who review or evaluate the services of health care  
12 providers or facilities in order to help improve the quality of health care, to avoid  
13 improper utilization of the services of health care providers or facilities, to determine  
14 the reasonable charges for such services, or to obtain health care information under  
15 ch. 153 shall keep a record of their investigations, inquiries, proceedings and  
16 conclusions. No such record may be released to any person under s. 804.10 (4) or  
17 otherwise except as provided in sub. (3). No such record may be used in any civil or  
18 criminal action for personal injuries against the health care provider or facility or  
19 any other health care provider or facility; however, information, documents or  
20 records presented during the review or evaluation may not be construed as immune  
21 from discovery under s. 804.10 (4) or use in any civil or criminal action merely  
22 because they were so presented. Any person who testifies during or participates in  
23 the review or evaluation may testify in any civil action as to matters within his or  
24 her knowledge, but may not testify as to information obtained through his or her

or (3m)

1 participation in the review or evaluation, nor as to any conclusion of such review or  
2 evaluation.

\*\*\*\*NOTE: Adding "obtaining health care information under ch. 153" as a purpose in this subsection appears to create a conflict. This subsection, as amended, says a reviewer or evaluator cannot disclose records of a review done for the purpose of obtaining health care information under ch. 153. Doesn't the reviewer or evaluator have to disclose those records in order to comply with ch. 153?

3 **SECTION 4.** 146.38 (2m) of the statutes is created to read:

4 146.38 (2m) An incident report may not be used in any civil or criminal action  
5 against a health care provider or facility.

6 **SECTION 5.** 146.38 (3) (d) of the statutes is amended to read:

7 146.38 (3) (d) In a report in statistical form that is filed with a regulatory  
8 agency, accrediting agency, or person that publicly reports quality and patient safety  
9 information. The report may identify any provider or facility to which the statistics  
10 relate;

11 **SECTION 6.** 146.38 (3) (e) of the statutes is repealed.

12 **SECTION 7.** 904.16 of the statutes is created to read:

13 **904.16 Health care reports. (1)** In this section:

14 (a) "Health care provider" has the meaning given in s. 146.81 (1).

15 (b) "Regulatory agency" means the department of regulation and licensing or  
16 the division within the department of health and family services that conducts  
17 quality assurance activities related to health care providers.

18 (2) Except as provided in sub. (3), the following may not be used as evidence  
19 in a civil or criminal action brought against a health care provider.

20 (a) Reports that a regulatory agency requires a health care provider to give or  
21 disclose to that regulatory agency.

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1 (b) Statements of, or records of interviews with, employees of a health care  
2 provider related to the regulation of the health care provider obtained by a regulatory  
3 agency.

4 (3) This section does not prohibit the use of the reports, statements, and records  
5 described in sub. (2) in any administrative proceeding conducted by a regulatory  
6 agency. This section does not apply to reports protected under s. 146.997.

7 **SECTION 8.** 904.17 of the statutes is created to read:

8 **904.17 Depositions and answers to interrogatories.** (1) No deposition or  
9 answers to interrogatories obtained in a civil action brought against a health care  
10 provider, as defined in s. 146.81 (1), is admissible or subject to discovery or  
11 compulsory process in a criminal action in which the health care provider is the  
12 defendant.

13 **SECTION 9.** 940.08 (1) of the statutes is amended to read:

14 940.08 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
15 of another human being by the negligent operation or handling of a dangerous  
16 weapon, explosives or fire is guilty of a Class G felony.

17 **SECTION 10.** 940.08 (2) of the statutes is amended to read:

18 940.08 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
19 of an unborn child by the negligent operation or handling of a dangerous weapon,  
20 explosives or fire is guilty of a Class G felony.

21 **SECTION 11.** 940.08 (3) of the statutes is created to read:

22 940.08 (3) Subsections (1) and (2) do not apply to a health care provider acting  
23 within the scope of his or her practice or employment.

24 **SECTION 12.** 940.24 (1) of the statutes is amended to read:

1           940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
2 to another by the negligent operation or handling of a dangerous weapon, explosives  
3 or fire is guilty of a Class I felony.

4           **SECTION 13.** 940.24 (2) of the statutes is amended to read:

5           940.24 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
6 to an unborn child by the negligent operation or handling of a dangerous weapon,  
7 explosives or fire is guilty of a Class I felony.

8           **SECTION 14.** 940.24 (3) of the statutes is created to read:

9           940.24 (3) Subsections (1) and (2) do not apply to a health care provider acting  
10 within the scope of his or her practice or employment.

11           **SECTION 15.** 940.285 (2) (a) 3. of the statutes is repealed.

12           **SECTION 16.** 940.285 (2) (b) 1g. of the statutes is amended to read:

13           940.285 (2) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
14 that cause death is guilty of a Class C felony. ~~Any person violating par. (a) 3. under~~  
15 ~~circumstances that cause death is guilty of a Class D felony.~~

16           **SECTION 17.** 940.285 (2) (b) 1r. of the statutes is amended to read:

17           940.285 (2) (b) 1r. Any person violating par. (a) 1. under circumstances that are  
18 likely to cause great bodily harm is guilty of a Class G felony. Any person violating  
19 par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause great bodily harm is  
20 guilty of a Class I felony.

21           **SECTION 18.** 940.285 (2) (b) 4. of the statutes is amended to read:

22           940.285 (2) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
23 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

24           **SECTION 19.** 940.285 (2) (b) 5. of the statutes is amended to read:

1 940.285 (2) (b) 5. Any person violating par. (a) 1, ~~or 2. or 3.~~ under circumstances  
2 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

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3 SECTION 20. 940.295 (1) (km) of the statutes is repealed.

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4 SECTION 21. 940.295 (3) (a) 3. of the statutes is amended to read:

5 940.295 (3) (a) 3. ~~Abuses, with negligence, or neglects~~ Neglects a patient or a  
6 resident.

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7 SECTION 22. Initial applicability.

343.12(7)(c) 11.5

8 (1) CRIMES. The treatment of sections 940.08 (1), (2), and (3), 940.24 (1), (2), and  
9 (3), 940.285 (2) (a) 3. and (b) 1g., 1r., 4., and 5., and 940.295 (1) (km) and (3) (a) 3. of  
10 the statutes first applies to acts or omissions committed on the effective date of this  
11 subsection.

and (g) and (3m)

(title) and 5

(title), (d) and  
1. 2. and

12 (2) DISCLOSURE AND RELEASE OF RECORDS OR INFORMATION. The treatment of  
13 section 146.38 (1m), (2), and (3) (d) and (e) of the statutes first applies to disclosures  
14 or releases occurring on the effective date of this subsection.

and  
(b) 1g.  
and 3,  
4, and 5.

15 (3) USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and  
16 (2m) of the statutes first applies to use of records or information on the effective date  
17 of this subsection.

18 (4) EVIDENCE. The treatment of sections 904.16 and 904.17 of the statutes first  
19 applies to depositions and answers to interrogatories obtained, health care provider  
20 reports received, and statements of, or records of interviews with, employees of a  
21 health care provider obtained, on the effective date of this subsection.

22 (END)

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**Ins RC**

confidentiality of health care services reviews; use as evidence of information regarding health care providers; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; and criminal abuse and neglect of patients and residents.

**Ins Analysis:**

***Confidentiality of health care services reviews***

Current law provides that a person who participates in a review or evaluation of services provided by a health care provider or facility, or of charges for such services, (a review) generally may not disclose information acquired in connection with the review. Further, the records that a reviewer or evaluator creates of investigations, inquiries, proceedings, and conclusions conducted for the review (review records) generally may not be released. Under current law, review records may not be used in a civil action for personal injuries against the health care provider or health care facility.

Current law contains several exceptions to confidentiality of review records and information acquired in connection with a review, which require disclosure of such records and information under the following circumstances: to a health care provider or facility whose services are reviewed, or to any person with the consent of that provider or facility; to the person who requested the review, for use only for the purpose of improving the quality of health care, avoiding improper utilization of health care services, and determining reasonable charges for services; to a court upon issuance of a subpoena in a criminal action; to an examining or licensing board or agency; and in a report in statistical format.

This bill makes the following changes to confidentiality provisions for health care service reviews:

1. The bill repeals the exception to disclosure <sup>of confidentiality</sup> that requires release of review records and information acquired in connection with a review upon issuance of a subpoena in a criminal action.

2. The bill provides that review records may not be used in any civil or criminal action against any health care provider or health care facility.

3. The bill provides that a person who participates in a review may not disclose any incident report that is made to notify a reviewer of an incident, practice, or other situation that becomes the subject of a review. Further the bill prohibits using such

an incident report in any civil or criminal action against a health care provider or facility.

4. The bill specifies that the confidentiality provisions related to review records apply regardless of whether the review is conducted by representatives from one or more organizations.

5. The bill provides that the confidentiality provisions for review records apply only if the review for which the records were created was conducted for one of the following purposes: to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities, or to determine reasonable charges for such services.

6. Instead of requiring that review records and information acquired in connection with a review be disclosed in statistical form, the bill allows that such information and review records may be disclosed in statistical form.

7. The bill provides that review records and information acquired in connection with a review must be disclosed to a federal or state agency if disclosure is required by law.

***Use of health care reports or employee statements***

This bill prohibits the use as evidence in a civil or criminal action <sup>of</sup> any health care provider reports that are required by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews. The bill also prohibits the use as evidence in a civil or criminal action <sup>of</sup> any statements of, or records of interviews with, employees of a health care provider related to the regulation of a health care provider and obtained by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews. The bill makes an exception from these prohibitions for the use of the records, statements, or interviews in an administrative proceeding conducted by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews.

***Crimes***

Under current law, a person who causes the death of, or bodily harm to, another by negligent operation or handling of a dangerous weapon, explosives, or fire is guilty of a crime. A dangerous weapon includes any device or instrumentality, which in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The bill provides that a health care provider who is acting within the scope of his or her practice or employment is not guilty of causing death or bodily harm by negligent operation or handling of a dangerous weapon, explosives, or fire.

Also under current law, a person who intentionally, recklessly, or negligently abuses an individual who is age 60 or older, or an individual who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs, and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (individual at risk), is guilty of a crime. This bill eliminates criminal liability for negligent abuse of an individual at risk.

Finally, under current law, a person who is in charge of or employed by a residential care facility, an inpatient health care facility, a treatment facility, or a home health agency, who intentionally, recklessly, or negligently abuses or neglects a patient or resident is guilty of a crime. This bill eliminates criminal liability for neglect and for negligent abuse of a patient or resident. ✓

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**Ins 3-10:**

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**SECTION 1.** 146.38 (3) (d) of the statutes is repealed. ✓ ✓

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**Ins 3-11:**

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**SECTION 2.** 146.38 (3) (g) of the statutes is created to read:

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146.38 (3) (g) To a federal or state agency, if required by law. ✓ ✓ ✓

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**SECTION 3.** 146.38 (3m) of the statutes is created to read: ✓ ✓ ✓

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146.38 (3m) Information acquired in connection with the review and

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evaluation of health care services may be disclosed, and records of such review and

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evaluation may be released, in statistical form with the consent of the person

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directing the review or evaluation. Information or records disclosed under this

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subsection shall not reveal the identity of any patient unless the patient has granted

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permission to disclose his or her identity.

released

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**SECTION 4.** 343.12 (7) (c) 11. of the statutes is amended to read: ✓

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343.12 (7) (c) 11. Abuse or neglect of a patient or resident under circumstances

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constituting a felony under s. 940.295.

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**History:** 1971 c. 213 s. 5; 1973 c. 174, 218; 1975 c. 19, 199; 1977 c. 29 s. 1654 (7) (a); 1977 c. 125; 1977 c. 193 s. 17; 1977 c. 273, 418, 447; 1981 c. 71; 1981 c. 334 s. 25 (1); 1983 a. 175, 459, 480; 1985 a. 337; 1987 a. 3; 1989 a. 105, 176, 359; 1991 a. 39, 277; 1993 a. 16; 1995 a. 113; 2003 a. 33, 280, 326, 327; 2005 a. 253, 277.

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**Ins 6-2:**

**SECTION 5.** 940.295 (title) of the statutes is amended to read:

**940.295 (title) Abuse and neglect of patients and residents.**

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

**SECTION 6.** 940.295 (1) (k) of the statutes is repealed.

**Ins 6-3:**

**SECTION 7.** 940.295 (3) (a) 1. of the statutes is amended to read:

940.295 (3) (a) 1. Intentionally abuses ~~or intentionally neglects~~ a patient or resident.

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

**SECTION 8.** 940.295 (3) (a) 2. of the statutes is amended to read:

940.295 (3) (a) 2. Recklessly abuses ~~or recklessly neglects~~ a patient or resident.

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

**Ins 6-6:**

**SECTION 9.** 940.295 (3) (title) of the statutes is amended to read:

940.295 (3) (title) ABUSE AND NEGLECT; PENALTIES.

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

**SECTION 10.** 940.295 (3) (a) 3. of the statutes is repealed.

**SECTION 11.** 940.295 (3) (b) 1g. of the statutes is amended to read:

940.295 (3) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances that cause death to an individual at risk is guilty of a Class C felony. ~~Any person violating par. (a) 3. under circumstances that cause death to an individual at risk is guilty of a Class D felony.~~

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

1           **SECTION 12.** 940.295 (3) (b) 3. of the statutes is amended to read: ✓  
2           940.295 (3) (b) 3. Except as provided in subd. 1m., any person violating par. (a)  
3           2. ~~or 3.~~ under circumstances that cause great bodily harm is guilty of a Class H  
4           felony. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that are likely to  
5           cause great bodily harm is guilty of a Class I felony.

6           **History:** 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

6           **SECTION 13.** 940.295 (3) (b) 4. of the statutes is amended to read: ✓  
7           940.295 (3) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
8           cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

9           **History:** 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

9           **SECTION 14.** 940.295 (3) (b) 5. of the statutes is amended to read:  
10           940.295 (3) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances ✓  
11           not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

**History:** 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3671/1dn

RLR:.....  
/

gjs

This bill eliminates all reference to neglect under s. 940.295. I was not sure whether I should have maintained intentional neglect or both intentional and reckless neglect.

As requested, the bill adds in s. 146.38 (2), the purposes specified in s. 146.37 (1g). The bill does not add the purposes in s. 146.38 (1m). Ok?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3671/1dn  
RLR:cjs:jf

January 31, 2008

This bill eliminates all reference to neglect under s. 940.295. I was not sure whether I should have maintained intentional neglect or both intentional and reckless neglect.

As requested, the bill adds in s. 146.38 (2) the purposes specified in s. 146.37 (1g). The bill does not add the purposes in s. 146.38 (1m). Ok?

Robin Ryan  
Legislative Attorney  
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E-mail: [robin.ryan@legis.wisconsin.gov](mailto:robin.ryan@legis.wisconsin.gov)



State of Wisconsin  
LEGISLATIVE REFERENCE BUREAU

**RESEARCH APPENDIX -  
PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 01/31/2008 (Per: RLR)

Appendix A

The 2007 drafting file for LRB-3671/1  
has been copied/added to the drafting file for  
**2007 LRB-3702**

☞ The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2007 drafting file. The drafting file was then retrieved, intact, to its folder and filed.

**Ryan, Robin**

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**From:** Moore, Kevin  
**Sent:** Thursday, January 31, 2008 4:23 PM  
**To:** Ryan, Robin  
**Subject:** LRB-3671  
**Importance:** High  
**Attachments:** QIA slash 1.doc

Here are some changes/modifications. I would like this to be a rush job.

Thank you.

Comments on LRB – 3671/1

Drafter's questions:

- ✓ 1. Please maintain both intentional and reckless neglect.
- ✓ 2. Okay not to include purposes in s. 146.38(1m).

Other comments:

- ✓ ● Page 2, first full paragraph (line 15). We ask that the description of current law state: “to an examining or licensing board or agency when the organization or evaluator conducting the review determines that such action is advisable; ...”
- ✓ ● Page 2, (line ~39), point 7: We ask for this provision to be deleted.
- ✓ ● Page 5, line 4: We ask for this provision to be deleted.
- ✓ ● Page 5, line 13: We ask for “neglect” not to be deleted.
- ✓ ● Page 7, line 21: We ask for “neglect” not to be deleted.
- ✓ ● Page 7, line 25: We ask for “neglect” not to be deleted.
- ✓ ● Page 8, line 2: We ask for “intentionally neglects” not to be deleted.
- ✓ ● Page 8, line 5: We ask for “recklessly neglects” not to be deleted.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3671/1  
RLR&RPN:cs:jf

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2007 BILL

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1 AN ACT *to repeal* 146.38 (3) (d), 146.38 (3) (e), 940.285 (2) (a) 3., 940.295 (1) (k),  
2 940.295 (1) (km) and 940.295 (3) (a) 3.; *to amend* 146.38 (1m), 146.38 (2),  
3 343.12 (7) (c) 11., 940.08 (1), 940.08 (2), 940.24 (1), 940.24 (2), 940.285 (2) (b) 1g.,  
4 940.285 (2) (b) 1r., 940.285 (2) (b) 4., 940.285 (2) (b) 5., 940.295 (title), 940.295  
5 (3) (title), 940.295 (3) (a) 1., 940.295 (3) (a) 2., 940.295 (3) (b) 1g., 940.295 (3) (b)  
6 3., 940.295 (3) (b) 4. and 940.295 (3) (b) 5.; and *to create* 146.38 (1) (bm), 146.38  
7 (2m), 146.38 (3) (g), 146.38 (3m), 904.16, 940.08 (3) and 940.24 (3) of the  
8 statutes; **relating to:** confidentiality of health care services reviews; use as  
9 evidence of information regarding health care providers; homicide or injury by  
10 negligent handling of a dangerous weapon, explosives, or fire; criminal abuse  
11 of individuals at risk; and criminal abuse and neglect of patients and residents.

*Analysis by the Legislative Reference Bureau*

*Confidentiality of health care services reviews*

Current law provides that a person who participates in a review or evaluation of services provided by a health care provider or facility, or of charges for such

**BILL**

services, (a review) generally may not disclose information acquired in connection with the review. Further, the records that a reviewer or evaluator creates of investigations, inquiries, proceedings, and conclusions conducted for the review (review records) generally may not be released. Under current law, review records may not be used in a civil action for personal injuries against the health care provider or health care facility.

Current law contains several exceptions to confidentiality of review records and information acquired in connection with a review, which require disclosure of such records and information under the following circumstances: to a health care provider or facility whose services are reviewed, or to any person with the consent of that provider or facility; to the person who requested the review, for use only for the purpose of improving the quality of health care, avoiding improper utilization of health care services, and determining reasonable charges for services; to a court upon issuance of a subpoena in a criminal action; to an examining or licensing board or agency; and in a report in statistical format.

This bill makes the following changes to confidentiality provisions for health care service reviews:

1. The bill repeals the exception to confidentiality that requires release of review records and information acquired in connection with a review upon issuance of a subpoena in a criminal action.
2. The bill provides that review records may not be used in any civil or criminal action against any health care provider or health care facility.
3. The bill provides that a person who participates in a review may not disclose any incident report that is made to notify a reviewer of an incident, practice, or other situation that becomes the subject of a review. Further the bill prohibits using such an incident report in any civil or criminal action against a health care provider or facility.
4. The bill specifies that the confidentiality provisions related to review records apply regardless of whether the review is conducted by representatives from one or more organizations.
5. The bill provides that the confidentiality provisions for review records apply only if the review for which the records were created was conducted for one of the following purposes: to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities, or to determine reasonable charges for such services.
6. Instead of requiring that review records and information acquired in connection with a review be disclosed in statistical form, the bill allows that such information and review records may be disclosed in statistical form.
7. The bill provides that review records and information acquired in connection with a review must be disclosed to a federal or state agency if disclosure is required by law.

***Use of health care reports or employee statements***

This bill prohibits the use as evidence in a civil or criminal action of any health care provider reports that are required by the department of regulation and licensing or by the division within the department of health and family services that conducts

When the organization or evaluator conducting the review determines that such action is advisable

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health care provider quality assurance reviews. The bill also prohibits the use as evidence in a civil or criminal action of any statements of, or records of interviews with, employees of a health care provider related to the regulation of a health care provider and obtained by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews. The bill makes an exception from these prohibitions for the use of the records, statements, or interviews in an administrative proceeding conducted by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews.

**Crimes**

Under current law, a person who causes the death of, or bodily harm to, another by negligent operation or handling of a dangerous weapon, explosives, or fire is guilty of a crime. A dangerous weapon includes any device or instrumentality, which in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The bill provides that a health care provider who is acting within the scope of his or her practice or employment is not guilty of causing death or bodily harm by negligent operation or handling of a dangerous weapon, explosives, or fire.

Also under current law, a person who intentionally, recklessly, or negligently abuses an individual who is age 60 or older, or an individual who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs, and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (individual at risk), is guilty of a crime. This bill eliminates criminal liability for negligent abuse of an individual at risk.

Finally, under current law, a person who is in charge of or employed by a residential care facility, an inpatient health care facility, a treatment facility, or a home health agency, who intentionally, recklessly, or negligently abuses or neglects a patient or resident is guilty of a crime. This bill eliminates criminal liability for neglect and for negligent abuse of a patient or resident.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 146.38 (1) (bm) of the statutes is created to read:

2           146.38 (1) (bm) "Incident report" means a written or oral statement that is  
3           made to notify a person, organization, or an evaluator who reviews or evaluates the  
4           services of health care providers or facilities or charges for such services of an  
5           incident, practice, or other situation that becomes the subject of such a review or  
6           evaluation.

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1           **SECTION 2.** 146.38 (1m) of the statutes is amended to read:

2           146.38 **(1m)** No person who participates in the review or evaluation of the  
3 services of health care providers or facilities or charges for such services may disclose  
4 an incident report or any information acquired in connection with such review or  
5 evaluation except as provided in sub. (3) or (3m).

6           **SECTION 3.** 146.38 (2) of the statutes is amended to read:

7           146.38 **(2)** All persons, organizations, or evaluators reviewing or evaluating,  
8 whether from one or more entities, who review or evaluate the services of health care  
9 providers or facilities in order to help improve the quality of health care, to avoid  
10 improper utilization of the services of health care providers or facilities, or to  
11 determine the reasonable charges for such services shall keep a record of their  
12 investigations, inquiries, proceedings and conclusions. No such record may be  
13 released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3)  
14 or (3m). No such record may be used in any civil or criminal action for personal  
15 injuries against the health care provider or facility or any other health care provider  
16 or facility; however, information, documents or records presented during the review  
17 or evaluation may not be construed as immune from discovery under s. 804.10 (4) or  
18 use in any civil or criminal action merely because they were so presented. Any person  
19 who testifies during or participates in the review or evaluation may testify in any  
20 civil action as to matters within his or her knowledge, but may not testify as to  
21 information obtained through his or her participation in the review or evaluation,  
22 nor as to any conclusion of such review or evaluation.

23           **SECTION 4.** 146.38 (2m) of the statutes is created to read:

24           146.38 **(2m)** An incident report may not be used in any civil or criminal action  
25 against a health care provider or facility.

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1           **SECTION 5.** 146.38 (3) (d) of the statutes is repealed.

2           **SECTION 6.** 146.38 (3) (e) of the statutes is repealed.

3           **SECTION 7.** 146.38 (3) (g) of the statutes is created to read:

4           146.38 (3) (g) To a federal or state agency, if required by law.

5           **SECTION 8.** 146.38 (3m) of the statutes is created to read:

6           146.38 (3m) Information acquired in connection with the review and  
7 evaluation of health care services may be disclosed, and records of such review and  
8 evaluation may be released, in statistical form with the consent of the person  
9 directing the review or evaluation. Information disclosed or records released under  
10 this subsection shall not reveal the identity of any patient unless the patient has  
11 granted permission to disclose his or her identity.

12           **SECTION 9.** 343.12 (7) (c) 11. of the statutes is amended to read:

13           343.12 (7) (c) 11. Abuse ~~or neglect~~ of a patient or resident under circumstances  
14 constituting a felony under s. 940.295.

15           **SECTION 10.** 904.16 of the statutes is created to read:

16           **904.16 Health care reports. (1)** In this section:

17           (a) "Health care provider" has the meaning given in s. 146.81 (1).

18           (b) "Regulatory agency" means the department of regulation and licensing or  
19 the division within the department of health and family services that conducts  
20 quality assurance activities related to health care providers.

21           **(2)** Except as provided in sub. (3), the following may not be used as evidence  
22 in a civil or criminal action brought against a health care provider.

23           (a) Reports that a regulatory agency requires a health care provider to give or  
24 disclose to that regulatory agency.

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1 (b) Statements of, or records of interviews with, employees of a health care  
2 provider related to the regulation of the health care provider obtained by a regulatory  
3 agency.

4 (3) This section does not prohibit the use of the reports, statements, and records  
5 described in sub. (2) in any administrative proceeding conducted by a regulatory  
6 agency. This section does not apply to reports protected under s. 146.997.

7 **SECTION 11.** 940.08 (1) of the statutes is amended to read:

8 940.08 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
9 of another human being by the negligent operation or handling of a dangerous  
10 weapon, explosives or fire is guilty of a Class G felony.

11 **SECTION 12.** 940.08 (2) of the statutes is amended to read:

12 940.08 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
13 of an unborn child by the negligent operation or handling of a dangerous weapon,  
14 explosives or fire is guilty of a Class G felony.

15 **SECTION 13.** 940.08 (3) of the statutes is created to read:

16 940.08 (3) Subsections (1) and (2) do not apply to a health care provider acting  
17 within the scope of his or her practice or employment.

18 **SECTION 14.** 940.24 (1) of the statutes is amended to read:

19 940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
20 to another by the negligent operation or handling of a dangerous weapon, explosives  
21 or fire is guilty of a Class I felony.

22 **SECTION 15.** 940.24 (2) of the statutes is amended to read:

23 940.24 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
24 to an unborn child by the negligent operation or handling of a dangerous weapon,  
25 explosives or fire is guilty of a Class I felony.

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1           **SECTION 16.** 940.24 (3) of the statutes is created to read:

2           940.24 (3) Subsections (1) and (2) do not apply to a health care provider acting  
3 within the scope of his or her practice or employment.

4           **SECTION 17.** 940.285 (2) (a) 3. of the statutes is repealed.

5           **SECTION 18.** 940.285 (2) (b) 1g. of the statutes is amended to read:

6           940.285 (2) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
7 that cause death is guilty of a Class C felony. ~~Any person violating par. (a) 3. under~~  
8 ~~circumstances that cause death is guilty of a Class D felony.~~

9           **SECTION 19.** 940.285 (2) (b) 1r. of the statutes is amended to read:

10           940.285 (2) (b) 1r. Any person violating par. (a) 1. under circumstances that are  
11 likely to cause great bodily harm is guilty of a Class G felony. Any person violating  
12 par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause great bodily harm is  
13 guilty of a Class I felony.

14           **SECTION 20.** 940.285 (2) (b) 4. of the statutes is amended to read:

15           940.285 (2) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
16 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

17           **SECTION 21.** 940.285 (2) (b) 5. of the statutes is amended to read:

18           940.285 (2) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances  
19 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

20           **SECTION 22.** 940.295 (title) of the statutes is amended to read:

21           **940.295 (title) Abuse and neglect of patients and residents.**

22           **SECTION 23.** 940.295 (1) (k) of the statutes is repealed.

23           **SECTION 24.** 940.295 (1) (km) of the statutes is repealed.

24           **SECTION 25.** 940.295 (3) (title) of the statutes is amended to read:

25           940.295 (3) (title) ~~ABUSE AND NEGLECT, PENALTIES.~~

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**SECTION 26**

**SECTION 26.** 940.295 (3) (a) 1. of the statutes is amended to read:

940.295 (3) (a) 1. Intentionally abuses ~~or intentionally neglects~~ a patient or resident.

**SECTION 27.** 940.295 (3) (a) 2. of the statutes is amended to read:

940.295 (3) (a) 2. Recklessly abuses ~~or recklessly neglects~~ a patient or resident.

**SECTION 28.** 940.295 (3) (a) 3. of the statutes is repealed.

**SECTION 29.** 940.295 (3) (b) 1g. of the statutes is amended to read:

940.295 (3) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances that cause death to an individual at risk is guilty of a Class C felony. ~~Any person violating par. (a) 3. under circumstances that cause death to an individual at risk is guilty of a Class D felony.~~

**SECTION 30.** 940.295 (3) (b) 3. of the statutes is amended to read:

940.295 (3) (b) 3. Except as provided in subd. 1m., any person violating par. (a) 2. ~~or 3.~~ under circumstances that cause great bodily harm is guilty of a Class H felony. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause great bodily harm is guilty of a Class I felony.

**SECTION 31.** 940.295 (3) (b) 4. of the statutes is amended to read:

940.295 (3) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

**SECTION 32.** 940.295 (3) (b) 5. of the statutes is amended to read:

940.295 (3) (b) 5. Any person violating par. (a) 1., ~~or 2. or 3.~~ under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

**SECTION 33. Initial applicability.**

(1) CRIMES. The treatment of sections 343.12 (7) (c) 11., 940.08 (1), (2), and (3), 940.24 (1), (2), and (3), 940.285 (2) (a) 3. and (b) 1g., 1r., 4., and 5., and 940.295 (title),

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1 (1) (k) and (km) and (3) (title), (a) 1., 2., and 3., and (b) 1g. and 3., 4., and 5. of the  
 2 statutes first applies to acts or omissions committed on the effective date of this  
 3 subsection.

4 (2) DISCLOSURE AND RELEASE OF RECORDS OR INFORMATION. The treatment of  
 5 section 146.38 (1m), (2), and (3) (d), (e) and (g) and (3m) of the statutes first applies  
 6 to disclosures or releases occurring on the effective date of this subsection.

7 (3) USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and  
 8 (2m) of the statutes first applies to use of records or information on the effective date  
 9 of this subsection.

10 (4) EVIDENCE. The treatment of section 904.16 of the statutes first applies to  
 11 health care provider reports received, and statements of, or records of interviews  
 12 with, employees of a health care provider obtained, on the effective date of this  
 13 subsection.

14 (END)

**Ryan, Robin**

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**From:** Jensen, Jodi  
**Sent:** Monday, February 04, 2008 3:17 PM  
**To:** Ryan, Robin  
**Subject:** RE: LRB 3671/2

Robin - given the situation, it seems that the two exceptions do not need to be consistent. Please retain the language you've drafted in s. 940.08(3) and s. 940.24(3) as exceptions for s. 940.08(1) and s. 940.24(1). But, do not make any changes to current law s. 940.08(2) and s.940.24(2) -- i.e. delete sections 10 and 13.

Thanks for making this a priority today.

Jodi

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**From:** Ryan, Robin  
**Sent:** Mon 2/4/2008 1:33 PM  
**To:** Jensen, Jodi  
**Subject:** RE: LRB 3671/2

Jodi,

I don't argue against deleting the treatments of death/injury to an unborn child in the bill. The two considerations I have are:

1. Do you want the elements to be consistent between 940.08 (1) and (2), and also between 940.24 (1) and (2)?
2. The exemption from criminal liability in proposed s. 940.08 (3) and 940.24 (3) is a little broader than the exemption in 939.75 (2) (b) 2. Would the exemption in 939 cover the situation of a nurse who violates a hospital rule, such as the rule for obtaining drugs?

Robin

-----Original Message-----

**From:** Jensen, Jodi  
**Sent:** Monday, February 04, 2008 12:01 PM  
**To:** Ryan, Robin  
**Subject:** LRB 3671/2

Hi Robin - I'm taking over for Kevin Moore who is on a leave of absence. I asked the Hospital Association to review the draft and they came back with the following:

"It looks like sections 10 and 13 can be deleted because s. 939.75(2)(b)2. already accomplishes what we are seeking. If you have a different opinion, please let us know."

Let me know what you think.

Thanks.

Jodi



State of Wisconsin  
2007 - 2008 LEGISLATURE

3

LRB-3671/2

RLR&RPN:cs:jf

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RMR

2007 BILL

SA ✓

Repeal Cat

1 AN ACT *to repeal* 146.38 (3) (d), 146.38 (3) (e), 940.285 (2) (a) 3., 940.295 (1) (km)  
 2 and 940.295 (3) (a) 3.; *to amend* 146.38 (1m), 146.38 (2), 940.08 (1), 940.08 (2),  
 3 940.24 (1), 940.24 (2), 940.285 (2) (b) 1g., 940.285 (2) (b) 1r., 940.285 (2) (b) 4.,  
 4 940.285 (2) (b) 5., 940.295 (3) (b) 1g., 940.295 (3) (b) 3., 940.295 (3) (b) 4. and  
 5 940.295 (3) (b) 5.; and *to create* 146.38 (1) (bm), 146.38 (2m), 146.38 (3m),  
 6 904.16, 940.08 (3) and 940.24 (3) of the statutes; **relating to:** confidentiality of  
 7 health care services reviews; use as evidence of information regarding health  
 8 care providers; homicide or injury by negligent handling of a dangerous  
 9 weapon, explosives, or fire; criminal abuse of individuals at risk; and criminal  
 10 abuse and neglect of patients and residents.

*Analysis by the Legislative Reference Bureau*

**Confidentiality of health care services reviews**

Current law provides that a person who participates in a review or evaluation of services provided by a health care provider or facility, or of charges for such services, (a review) generally may not disclose information acquired in connection with the review. Further, the records that a reviewer or evaluator creates of

**BILL**

investigations, inquiries, proceedings, and conclusions conducted for the review (review records) generally may not be released. Under current law, review records may not be used in a civil action for personal injuries against the health care provider or health care facility.

Current law contains several exceptions to confidentiality of review records and information acquired in connection with a review, which require disclosure of such records and information under the following circumstances: to a health care provider or facility whose services are reviewed, or to any person with the consent of that provider or facility; to the person who requested the review, for use only for the purpose of improving the quality of health care, avoiding improper utilization of health care services, and determining reasonable charges for services; to a court upon issuance of a subpoena in a criminal action; to an examining or licensing board or agency, when the organization or evaluator conducting the review determines that ~~each~~ <sup>Such</sup> action is advisable; and in a report in statistical format.

This bill makes the following changes to confidentiality provisions for health care service reviews:

1. The bill repeals the exception to confidentiality that requires release of review records and information acquired in connection with a review upon issuance of a subpoena in a criminal action.

2. The bill provides that review records may not be used in any civil or criminal action against any health care provider or health care facility.

3. The bill provides that a person who participates in a review may not disclose any incident report that is made to notify a reviewer of an incident, practice, or other situation that becomes the subject of a review. Further the bill prohibits using such an incident report in any civil or criminal action against a health care provider or facility.

4. The bill specifies that the confidentiality provisions related to review records apply regardless of whether the review is conducted by representatives from one or more organizations.

5. The bill provides that the confidentiality provisions for review records apply only if the review for which the records were created was conducted for one of the following purposes: to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities, or to determine reasonable charges for such services.

6. Instead of requiring that review records and information acquired in connection with a review be disclosed in statistical form, the bill allows that such information and review records may be disclosed in statistical form.

***Use of health care reports or employee statements***

This bill prohibits the use as evidence in a civil or criminal action of any health care provider reports that are required by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews. The bill also prohibits the use as evidence in a civil or criminal action of any statements of, or records of interviews with, employees of a health care provider related to the regulation of a health care provider and obtained by the department of regulation and licensing or by the

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division within the department of health and family services that conducts health care provider quality assurance reviews. The bill makes an exception from these prohibitions for the use of the records, statements, or interviews in an administrative proceeding conducted by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews.

**Crimes**

Under current law, a person who causes the death of, or bodily harm to, another by negligent operation or handling of a dangerous weapon, explosives, or fire is guilty of a crime. A dangerous weapon includes any device or instrumentality, which in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The bill provides that a health care provider who is acting within the scope of his or her practice or employment is not guilty of causing death or bodily harm by negligent operation or handling of a dangerous weapon, explosives, or fire.

Also under current law, a person who intentionally, recklessly, or negligently abuses an individual who is age 60 or older, or an individual who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs, and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (individual at risk), is guilty of a crime. This bill eliminates criminal liability for negligent abuse of an individual at risk.

Finally, under current law, a person who is in charge of or employed by a residential care facility, an inpatient health care facility, a treatment facility, or a home health agency, who intentionally, recklessly, or negligently abuses or neglects a patient or resident is guilty of a crime. This bill eliminates criminal liability for negligent abuse or neglect of a patient or resident.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 146.38 (1) (bm) of the statutes is created to read:

2           146.38 (1) (bm) "Incident report" means a written or oral statement that is  
3           made to notify a person, organization, or an evaluator who reviews or evaluates the  
4           services of health care providers or facilities or charges for such services of an  
5           incident, practice, or other situation that becomes the subject of such a review or  
6           evaluation.

7           **SECTION 2.** 146.38 (1m) of the statutes is amended to read:

an individual

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**BILL****SECTION 2**

1           146.38 (1m) No person who participates in the review or evaluation of the  
2 services of health care providers or facilities or charges for such services may disclose  
3 an incident report or any information acquired in connection with such review or  
4 evaluation except as provided in sub. (3) or (3m).

5           **SECTION 3.** 146.38 (2) of the statutes is amended to read:

6           146.38 (2) All persons, organizations, or evaluators reviewing or evaluating,  
7 whether from one or more entities, who review or evaluate the services of health care  
8 providers or facilities in order to help improve the quality of health care, to avoid  
9 improper utilization of the services of health care providers or facilities, or to  
10 determine the reasonable charges for such services shall keep a record of their  
11 investigations, inquiries, proceedings and conclusions. No such record may be  
12 released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3)  
13 or (3m). No such record may be used in any civil or criminal action for personal  
14 injuries against the health care provider or facility or any other health care provider  
15 or facility; however, information, documents or records presented during the review  
16 or evaluation may not be construed as immune from discovery under s. 804.10 (4) or  
17 use in any civil or criminal action merely because they were so presented. Any person  
18 who testifies during or participates in the review or evaluation may testify in any  
19 civil action as to matters within his or her knowledge, but may not testify as to  
20 information obtained through his or her participation in the review or evaluation,  
21 nor as to any conclusion of such review or evaluation.

22           **SECTION 4.** 146.38 (2m) of the statutes is created to read:

23           146.38 (2m) An incident report may not be used in any civil or criminal action  
24 against a health care provider or facility.

25           **SECTION 5.** 146.38 (3) (d) of the statutes is repealed.

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1           **SECTION 6.** 146.38 (3) (e) of the statutes is repealed.

2           **SECTION 7.** 146.38 (3m) of the statutes is created to read:

3           146.38 **(3m)** Information acquired in connection with the review and  
4 evaluation of health care services may be disclosed, and records of such review and  
5 evaluation may be released, in statistical form with the consent of the person  
6 directing the review or evaluation. Information disclosed or records released under  
7 this subsection shall not reveal the identity of any patient unless the patient has  
8 granted permission to disclose his or her identity.

9           **SECTION 8.** 904.16 of the statutes is created to read:

10          **904.16 Health care reports.** (1) In this section:

11          (a) "Health care provider" has the meaning given in s. 146.81 (1).

12          (b) "Regulatory agency" means the department of regulation and licensing or  
13 the division within the department of health and family services that conducts  
14 quality assurance activities related to health care providers.

15          (2) Except as provided in sub. (3), the following may not be used as evidence  
16 in a civil or criminal action brought against a health care provider.

17          (a) Reports that a regulatory agency requires a health care provider to give or  
18 disclose to that regulatory agency.

19          (b) Statements of, or records of interviews with, employees of a health care  
20 provider related to the regulation of the health care provider obtained by a regulatory  
21 agency.

22          (3) This section does not prohibit the use of the reports, statements, and records  
23 described in sub. (2) in any administrative proceeding conducted by a regulatory  
24 agency. This section does not apply to reports protected under s. 146.997.

25          **SECTION 9.** 940.08 (1) of the statutes is amended to read:

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**SECTION 9**

1           940.08 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
2 of another human being by the negligent operation or handling of a dangerous  
3 weapon, explosives or fire is guilty of a Class G felony.

4           **SECTION 10.** 940.08 (2) of the statutes is amended to read:

5           940.08 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
6 of an unborn child by the negligent operation or handling of a dangerous weapon,  
7 explosives or fire is guilty of a Class G felony.

8           **SECTION 11.** 940.08 (3) of the statutes is created to read:

9           940.08 (3) Subsections (1) and (2) <sup>does</sup> do not apply to a health care provider acting  
10 within the scope of his or her practice or employment.

11           **SECTION 12.** 940.24 (1) of the statutes is amended to read:

12           940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
13 to another by the negligent operation or handling of a dangerous weapon, explosives  
14 or fire is guilty of a Class I felony.

15           **SECTION 13.** 940.24 (2) of the statutes is amended to read:

16           940.24 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
17 to an unborn child by the negligent operation or handling of a dangerous weapon,  
18 explosives or fire is guilty of a Class I felony.

19           **SECTION 14.** 940.24 (3) of the statutes is created to read:

20           940.24 (3) Subsections (1) and (2) <sup>does</sup> do not apply to a health care provider acting  
21 within the scope of his or her practice or employment.

22           **SECTION 15.** 940.285 (2) (a) 3. of the statutes is repealed.

23           **SECTION 16.** 940.285 (2) (b) 1g. of the statutes is amended to read:

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1           940.285 (2) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
2 that cause death is guilty of a Class C felony. ~~Any person violating par. (a) 3. under~~  
3 ~~circumstances that cause death is guilty of a Class D felony.~~

4           **SECTION 17.** 940.285 (2) (b) 1r. of the statutes is amended to read:

5           940.285 (2) (b) 1r. Any person violating par. (a) 1. under circumstances that are  
6 likely to cause great bodily harm is guilty of a Class G felony. Any person violating  
7 par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause great bodily harm is  
8 guilty of a Class I felony.

9           **SECTION 18.** 940.285 (2) (b) 4. of the statutes is amended to read:

10           940.285 (2) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
11 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

12           **SECTION 19.** 940.285 (2) (b) 5. of the statutes is amended to read:

13           940.285 (2) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances  
14 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

15           **SECTION 20.** 940.295 (1) (km) of the statutes is repealed.

16           **SECTION 21.** 940.295 (3) (a) 3. of the statutes is repealed.

17           **SECTION 22.** 940.295 (3) (b) 1g. of the statutes is amended to read:

18           940.295 (3) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
19 that cause death to an individual at risk is guilty of a Class C felony. ~~Any person~~  
20 ~~violating par. (a) 3. under circumstances that cause death to an individual at risk is~~  
21 ~~guilty of a Class D felony.~~

22           **SECTION 23.** 940.295 (3) (b) 3. of the statutes is amended to read:

23           940.295 (3) (b) 3. Except as provided in subd. 1m., any person violating par. (a)  
24 2. ~~or 3.~~ under circumstances that cause great bodily harm is guilty of a Class H felony.

**BILL**

1 Any person violating par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause  
2 great bodily harm is guilty of a Class I felony.

3 **SECTION 24.** 940.295 (3) (b) 4. of the statutes is amended to read:

4 940.295 (3) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
5 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

6 **SECTION 25.** 940.295 (3) (b) 5. of the statutes is amended to read:

7 940.295 (3) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances  
8 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

9 **SECTION 26. Initial applicability.**

10 (1) CRIMES. The treatment of sections 940.08 (1), (2), and (3), 940.24 (1), (2), and  
11 (3), 940.285 (2) (a) 3. and (b) 1g., 1r., 4., and 5., and 940.295 (1) (km) and (3) (a) 3. and  
12 (b) 1g., 3., 4., and 5. of the statutes first applies to acts or omissions committed on the  
13 effective date of this subsection.

14 (2) DISCLOSURE AND RELEASE OF RECORDS OR INFORMATION. The treatment of  
15 section 146.38 (1m), (2), (3) (d) and (e), and (3m) of the statutes first applies to  
16 disclosures or releases occurring on the effective date of this subsection.

17 (3) USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and  
18 (2m) of the statutes first applies to use of records or information on the effective date  
19 of this subsection.

20 (4) EVIDENCE. The treatment of section 904.16 of the statutes first applies to  
21 health care provider reports received, and statements of, or records of interviews  
22 with, employees of a health care provider obtained, on the effective date of this  
23 subsection.

24 (END)

**2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3671/3ins  
RLR:.....

WR

INS

The bill provides that a health care provider is not guilty of the crimes of causing the death of, or bodily harm to, an individual by negligent operation or handling of a dangerous weapon, explosives, or fire, if the health care provider is acting within the scope of his or her practice or employment.

**Barman, Mike**

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**From:** Jensen, Jodi

**Sent:** Tuesday, February 05, 2008 2:42 PM

**To:** LRB.Legal

**Subject:** Draft Review: LRB 07-3671/3 Topic: Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

Please Jacket LRB 07-3671/3 for the ASSEMBLY.