



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

Date Transfer Requested: 12/29/2010 (Per: CMH)

Part 1 of 2

A ☞ The 2011 drafting file for  
LRB-0358

E ☞ The 2011 drafting file for  
LRB-0371

B ☞ The 2011 drafting file for  
LRB-0368

F ☞ The 2011 drafting file for  
LRB-0372

C ☞ The 2011 drafting file for  
LRB-0369

G ☞ The 2011 drafting file for  
LRB-0671

D ☞ The 2011 drafting file for  
LRB-0370

☞ **Compile Draft – Appendix A**

has been copied/added to the drafting file for

**2011 LRB-0388**

**(Jr1 Special Session Draft)**

**2011 Jr1 DRAFTING REQUEST**

**Bill**

Received: 11/08/2010

Received By: **tdodge**

Wanted: **As time permits**

Companion to LRB:

For: **Administration**

By/Representing: **Kevin Moore**

May Contact:

Drafter: **tdodge**

Subject: **Health - miscellaneous**

Addl. Drafters: **phurley**

Extra Copies:

Submit via email: **YES**

Requester's email: **jennifer.kraus@wisconsin.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**  
**david.schmiedicke@wisconsin.gov**  
**kevin.moore@wisconsin.gov**  
**michelle.gauger@wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Confidentiality of health care service reviews and use of records as evidence; criminal abuse of individuals at risk

---

**Instructions:**

Redraft 2007 LRB 3671/3 (2007 AB 863) with Assembly amendment LRB a1459/2.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge	kfollett		_____			
	11/09/2010	11/10/2010		_____			
	phurley			_____			
	11/09/2010			_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			mduchek 11/10/2010	_____	cduerst 11/10/2010		
/2	tdodge 12/21/2010	kfollett 12/21/2010	mduchek 12/21/2010	_____	sbasford 12/21/2010		
/3	tdodge 12/22/2010	kfollett 12/22/2010	mduchek 12/22/2010	_____	cduerst 12/22/2010		
/4	tdodge 12/23/2010	wjackson 12/23/2010	chanaman 12/23/2010	_____	chanaman 12/23/2010		

FE Sent For:

<END>

**2011 Jr1 DRAFTING REQUEST**

**Bill**

Received: 11/08/2010

Received By: **tdodge**

Wanted: **As time permits**

Companion to LRB:

For: **Administration**

By/Representing: **Kevin Moore**

May Contact:

Drafter: **tdodge**

Subject: **Health - miscellaneous**

Addl. Drafters: **phurley**

Extra Copies:

Submit via email: **YES**

Requester's email: **jennifer.kraus@wisconsin.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov  
tamara.dodge@legis.wisconsin.gov  
david.schmiedicke@wisconsin.gov  
kevin.moore@wisconsin.gov  
michelle.gauger@wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Confidentiality of health care service reviews and use of records as evidence; criminal abuse of individuals at risk

---

**Instructions:**

Redraft 2007 LRB 3671/3 (2007 AB 863) with Assembly amendment LRB a1459/2.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 11/09/2010	kfollett 11/10/2010		_____			
	phurley 11/09/2010	/4 Wlj 12/23		_____			
				_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			mduchek 11/10/2010	_____	cduerst 11/10/2010		
/2	tdodge 12/21/2010	kfollett 12/21/2010	mduchek 12/21/2010	_____	sbasford 12/21/2010		
/3	tdodge 12/22/2010	kfollett 12/22/2010	mduchek 12/22/2010	_____	cduerst 12/22/2010		

FE Sent For:

<END>

2011 Jr1 DRAFTING REQUEST

Bill

Received: 11/08/2010

Received By: tdodge

Wanted: As time permits

Companion to LRB:

For: Administration

By/Representing: Kevin Moore

May Contact:

Drafter: tdodge

Subject: Health - miscellaneous

Addl. Drafters: phurley

Extra Copies:

Submit via email: YES

Requester's email: jennifer.kraus@wisconsin.gov

Carbon copy (CC:) to: fern.knepp@legis.wisconsin.gov
tamara.dodge@legis.wisconsin.gov
david.schmiedicke@wisconsin.gov
kevin.moore@wisconsin.gov
michelle.gauger@wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Confidentiality of health care service reviews and use of records as evidence; criminal abuse of individuals at risk

Instructions:

Redraft 2007 LRB 3671/3 (2007 AB 863) with Assembly amendment LRB a1459/2.

Drafting History:

Table with 8 columns: Vers., Drafted, Reviewed, Typed, Proofed, Submitted, Jacketed, Required. Includes handwritten notes and dates.

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			mduchek _____ 11/10/2010 _____		cduerst 11/10/2010		
/2	tdodge 12/21/2010	kfollett 12/21/2010	mduchek _____ 12/21/2010 _____		sbasford 12/21/2010		

FE Sent For:

<END>

**2011 DRAFTING REQUEST**

**Bill**

Received: 11/08/2010

Received By: **tdodge**

Wanted: **As time permits**

Companion to LRB:

For: **Administration**

By/Representing: **Kevin Moore**

May Contact:

Drafter: **tdodge**

Subject: **Health - miscellaneous**

Addl. Drafters: **phurley**

Extra Copies:

Submit via email: **YES**

Requester's email: **jennifer.kraus@wisconsin.gov**

Carbon copy (CC:) to: **fern.knepp@legis.wisconsin.gov**  
**tamara.dodge@legis.wisconsin.gov**  
**david.schmiedicke@wisconsin.gov**  
**kevin.moore@wisconsin.gov**  
**michelle.gauger@wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Confidentiality of health care service reviews and use of records as evidence; criminal abuse of individuals at risk

---

**Instructions:**

Redraft 2007 LRB 3671/3 (2007 AB 863) with Assembly amendment LRB a1459/2.

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 11/09/2010 phurley 11/09/2010	kfollett 11/10/2010 12kf 12/21			_____	_____	_____

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	tdodge		mduchek 11/10/2010	_____	cduerst 11/10/2010		

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 11/08/2010

Received By: tdodge

Wanted: As time permits

Companion to LRB:

For: Governor-elect

By/Representing: Kevin Moore

May Contact:

Drafter: tdodge

Subject: Health - miscellaneous

Addl. Drafters: phurley

Extra Copies:

Submit via email: YES

Requester's email: kevin.moore@wisconsin.gov

Carbon copy (CC:) to: fern.knepp@legis.wisconsin.gov

tamara.dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Confidentiality of health care service reviews and use of records as evidence; criminal abuse of individuals at risk

Instructions:

Redraft 2007 LRB 3671/3 (2007 AB 863) with Assembly amendment LRB a1459/2.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 11/09/2010 phurley 11/09/2010	kfollett 11/10/2010					
/1			mduchek 11/10/2010		cduerst 11/10/2010		

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: 11/08/2010

Received By: tdodge

Wanted: As time permits

Companion to LRB:

For: Governor-elect

By/Representing: Kevin Moore

May Contact:

Drafter: tdodge

Subject: Health - miscellaneous

Addl. Drafters: phurley

Extra Copies:

Submit via email: YES

Requester's email: kevin.moore@wisconsin.gov

Carbon copy (CC:) to: fern.knepp@legis.wisconsin.gov

tamara.dodge@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Confidentiality of health care service reviews and use of records as evidence; criminal abuse of individuals at risk

Instructions:

Redraft 2007 LRB 3671/3 (2007 AB 863) with Assembly amendment LRB a1459/2.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge	1/15 F 1/10	MD 11/10	ST			

FE Sent For:

<END>

2011-12

2007 - 2008 LEGISLATURE

2011 Bill

**2007 ASSEMBLY BILL 863**

PAW

0358/1  
LRB-8671/3  
RLR&RPN:csrs  
LPSH:lg  
TSD  
RMINR

D-note

February 21, 2008 - Introduced by Representatives NEWCOMER, MOULTON, VUKMIR, SOLETSKI, VRUWINK, ALBERS, GUNDERSON, HAHN, LEMAHIEU, M. WILLIAMS, MONTGOMERY, MUSSER, NYGREN, A. OTT, STRACHOTA, SUDER and VOS, cosponsored by Senators COWLES, DARLING, KANAVAS, KAPANKE, KEDZIE and OLSEN. Referred to Committee on Health and Healthcare Reform.

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

***Analysis by the Legislative Reference Bureau***

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

X 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

**ASSEMBLY BILL 863**

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 such 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 <sup>states in</sup> ~~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 <sup>e</sup> 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

DRL

(DHS)

(DRL)

**ASSEMBLY BILL 863**

DHS

usc twice

ORL

X 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, an individual 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 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.

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.

Insert RIM analysis

**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:

## ASSEMBLY BILL 863

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.

## ASSEMBLY BILL 863

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:

**ASSEMBLY BILL 863**

1           940.08 (1) ~~Whoever~~ <sup>✓</sup> 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 (3) of the statutes is created to read:

5           940.08 (3) Subsection (1) does not apply to a health care provider acting within  
6 the scope of his or her practice or employment.

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

8           940.24 (1) ~~Whoever~~ <sup>✓</sup> Except as provided in sub. (3), whoever causes bodily harm  
9 to another by the negligent operation or handling of a dangerous weapon, explosives  
10 or fire is guilty of a Class I felony.

11           **SECTION 12.** 940.24 (3) of the statutes is created to read:

12           940.24 (3) Subsection (1) does not apply to a health care provider acting within  
13 the scope of his or her practice or employment.

14           **SECTION 13.** 940.285 (2) (a) 3. of the statutes is repealed.

15           **SECTION 14.** 940.285 (2) (b) 1g. of the statutes is amended to read:

16           940.285 (2) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
17 that cause death is guilty of a Class C felony. ~~Any person violating par. (a) 3. under~~  
18 ~~circumstances that cause death is guilty of a Class D felony.~~

19           **SECTION 15.** 940.285 (2) (b) 1r. of the statutes is amended to read:

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

24           **SECTION 16.** 940.285 (2) (b) 4. of the statutes is amended to read:

1 940.285 (2) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
2 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

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

4 940.285 (2) (b) 5. Any person violating par. (a) 1. ~~or 2. or 3.~~ under circumstances  
5 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

6 SECTION 18. 940.295 (1) (km) of the statutes is repealed.

7 SECTION 19. 940.295 (3) (a) 3. of the statutes is repealed.

8 SECTION 20. 940.295 (3) (b) 1g. of the statutes is amended to read:

9 940.295 (3) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
10 that cause death to an individual at risk is guilty of a Class C felony. Any person  
11 violating par. (a) 3. under circumstances that cause death to an individual at risk is  
12 guilty of a Class D felony.

13 SECTION 21. 940.295 (3) (b) 3. of the statutes is amended to read:

14 940.295 (3) (b) 3. Except as provided in subd. 1m., any person violating par. (a)  
15 2. ~~or 3.~~ under circumstances that cause great bodily harm is guilty of a Class H felony.  
16 Any person violating par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause  
17 great bodily harm is guilty of a Class I felony.

18 SECTION 22. 940.295 (3) (b) 4. of the statutes is amended to read:

19 940.295 (3) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
20 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

21 SECTION 23. 940.295 (3) (b) 5. of the statutes is amended to read:

22 940.295 (3) (b) 5. Any person violating par. (a) 1. ~~or 2. or 3.~~ under circumstances  
23 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

24 SECTION 24. Initial applicability.

Insert 7.23

**ASSEMBLY BILL 863**

**SECTION 24**

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

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

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

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

15

(END)

and 940.295  
 (3)(a) 3. and (am)

D-note

**2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-03587ins

.....

INSERT PJH analysis:

*H* Also 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 a resident in one of those facilities or agencies is guilty of a crime. The penalties for the crime depend upon the degree of harm suffered by the patient or resident. Under the bill, a person who negligently abuses or neglects a patient or a resident is not guilty of a crime if the person is a health care provider acting in the scope of his or her practice or employment, and he or she commits an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith error in judgment or discretion.

**ASSEMBLY AMENDMENT 1,  
TO 2007 ASSEMBLY BILL 863**

March 4, 2008 - Offered by Representative NEWCOMER.

*Insert  
7.25*

- 1 At the locations indicated, amend the bill as follows:
- 2 **1.** Page 6, line 14: delete lines 14 to 24.
- 3 **2.** Page 7, line 1: delete lines 1 to 7.
- 4 **3.** Page 7, line 7: after that line insert: ✓
- 5 ~~SECTION 134.~~ 940.295 (3) (a) 3. of the statutes is amended to read: ✓
- 6 940.295 (3) (a) 3. Abuses Except as provided in par. (am), abuses, with ✓
- 7 negligence, or neglects a patient or a resident.
- 8 ~~SECTION 134.~~ 940.295 (3) (am) of the statutes is created to read: ✓
- 9 940.295 (3) (am) Paragraph (a) 3. does not apply to a health care provider ✓
- 10 acting in the scope of his or her practice or employment who commits an act or ✓
- 11 omission of mere inefficiency, unsatisfactory conduct, or failure in good performance ✓
- 12 as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith
- 13 error in judgment or discretion. |

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

LRB-0358/P1dn

TJD: *kjf*

*Date*

To Kevin Moore:

Since 2007 Assembly Bill 863 was drafted, s. 146.81 (1) changed to include ambulance service providers, emergency medical technicians, and first responders in the definition of "health care provider." Section 146.81 (1) is cross-referenced as the definition of "health care provider" in proposed s. 904.16, which is created in this draft. I did not change the cross-reference in proposed s. 904.16 so those provider types will be included in that section's provisions. Please note that ambulance service providers, emergency medical technicians, and first responders were already included in the provisions of s. 146.38.

Tamara J. Dodge  
Legislative Attorney  
Phone: (608) 267-7380  
E-mail: tamara.dodge@legis.wisconsin.gov

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

LRB-0358/P1dn  
TJD:kjf:md

November 10, 2010

To Kevin Moore:

Since 2007 Assembly Bill 863 was drafted, s. 146.81 (1) changed to include ambulance service providers, emergency medical technicians, and first responders in the definition of "health care provider." Section 146.81 (1) is cross-referenced as the definition of "health care provider" in proposed s. 904.16, which is created in this draft. I did not change the cross-reference in proposed s. 904.16 so those provider types will be included in that section's provisions. Please note that ambulance service providers, emergency medical technicians, and first responders were already included in the provisions of s. 146.38.

Tamara J. Dodge  
Legislative Attorney  
Phone: (608) 267-7380  
E-mail: [tamara.dodge@legis.wisconsin.gov](mailto:tamara.dodge@legis.wisconsin.gov)

**Dodge, Tamara**

---

**From:** Gauger, Michelle C - DOA [Michelle.Gauger@Wisconsin.gov]

**Sent:** Monday, December 20, 2010 12:56 PM

**To:** Dodge, Tamara; Hurley, Peggy

**Subject:** Edits to Confidentiality of Health Care Services LRB-0358

**Attachments:** HC Peer Review Changes Dec 20 2010.doc; image001.gif; image002.gif; image003.gif

Hi Tammy and Peggy,

Can you incorporate the attached amendments into the Confidentiality of Health Care Services provisions in the tort reform draft? Please let me know if you have any questions or concerns with the changes.

As always, thanks!

Michelle Gauger

12/20/2010

Proposed changes to 2011 LRB 0358/1

1. Add a definition of “health care provider.”
  - Cross-reference the definition of health care provider in s. 146.81(1).
  - Also include any person working under the supervision of or in collaboration with a person specified in s. 146.81(1) to provide health care services. For example, certified nursing assistants, anesthesiologist assistants, surgical technicians, and other technicians should be included.
  - Also include a parent, subsidiary, or affiliate organization of a health care provider specified in s. 146.81(1).
2. Add another permissive release (in addition to the new “statistical form” permissive release):
  - (3X) Information acquired in connection with the review or evaluation of health care services may be disclosed, and the records of such a review or evaluation released, to a health care provider’s employer, or to the parent, subsidiary, or affiliate organization of the health care provider or the health care provider’s employer with the consent of the person authorizing or with the authority to authorize the review or evaluation.
  - Add a reference to the new section in s. 146.38(1m) (page 3, line 11) and 146.38(2) (page 4, line 9).
3. The permissive release of statistical information should be with the consent of the person authorizing or with the authority to authorize the review or evaluation.
  - Amend Page 5, line 2, to read “authorizing or with the authority to authorize the review or evaluation” instead of “*directing* the review or evaluation.”
4. Information or reports from one reviewing person, organization, or evaluator presented during a review by another person, organization, or evaluator should continue to be protected:
  - No such record or incident report may be used in any civil or criminal action ~~for personal injuries~~ against the health care provider or facility; however, except for incident reports and records from other persons, organizations, or evaluators reviewing or evaluating health care providers or facilities, information, documents, or records presented during the review or evaluation may not be construed as immune from discovery under s. 804.10(4) or use in any civil action merely because they were so presented.

And then a new subsection:

Any record or incident report disclosed either under subsection (3), (3m), and (3X) or in violation of this section remains confidential and may not be used in any civil or criminal action against the health care provider or facility.

- 
5. Under the current statute and the proposed amendments, information disclosed and records released may not identify a patient unless the patient “has granted permission.” The language in s. 146.38(3) and (3m) should be consistent with Wisconsin’s medical record statute (and HIPAA):
    - “Information disclosed or records released under this subsection shall not reveal the identity of any patient except as permitted in s. 146.82 ~~unless the patient has granted permission.~~”
  6. Health care providers refer to what the draft bill defines an “incident report” as either an “incident report” or an “occurrence report.” In section 1, allow providers to call the reports by either name.
  7. In section 3, page 4, line 15, the bill should refer to both civil and criminal action.
  8. The Wisconsin Department of Health Services has requested information from the federal government that would allow DHS staff to conduct quality reviews and evaluations of health care providers. In order to receive the information from the federal government, DHS must be able to protect the confidentiality of the information. In order to ensure that the information obtained by DHS is not subject to an open records request and is protected under s. 146.38, add the following subsection:
    - “Health care provider specific information acquired by an administrative agencies in order to help improve the quality of health care, to avoid the improper utilization of the services of health care providers or facilities, or to determine the reasonable charges for such services is exempt from inspection, copying, or receipt under s. 19.35(1).”
  9. The Wisconsin Hospital Association would like to use additional data it collects under Ch. 153 for hospital specific quality reports (reported via WHA’s CheckPoint website):
    - Add a new provision in Ch. 153: “Notwithstanding the rules promulgated under ch. 153, 2001 stats., the entity may report quality indicators identifying individual hospitals based on data the entity collects under ch. 153.”

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0358/2ins  
TJD:.....

1 INSERT A-1

NOT  
X The bill also allows information acquired in connection with a review to be disclosed to a health care provider's employer or parent, subsidiary, or affiliated organization or to the parent, subsidiary, or affiliated organization of a health care provider's employer.

(END INSERT A-1)

2 INSERT A-2

7. The bill requires that any record or incident or occurrence report that is disclosed to another, properly or improperly, remains confidential and may not be used in a civil or criminal action against the health care provider.

8. The bill includes as health care providers, for purposes of the confidentiality provisions, all of the following: individual health care providers; facilities, organizations, and business entities that are health care providers; persons working under the supervision of or in collaboration with an individual health care provider; and parents, subsidiaries, or affiliate organizations of facilities, organizations, and business entities that are health care providers.

(END INSERT A-2)

3 INSERT A-3

***Reporting of hospital quality indicators***

Current law requires the Department of Administration to contract with a certain entity to collect health care information from hospitals and ambulatory surgery centers. This entity analyzes and disseminates that health care information in a language understandable to laypersons. Among other health care information, the entity must report hospital quality indicators, but the report cannot identify the individual hospital with the quality indicators. This bill allows the entity to report quality indicators identifying individual hospitals.

(END INSERT A-3)

4 INSERT 3-1

5 SECTION 1. 146.38 (1) (b) of the statutes is renumbered 146.38 (1) (b) (intro.)

6 and amended to read:

7 146.38 (1) (b) "Health care provider" ~~includes an ambulance service provider,~~  
8 ~~as defined in s. 256.01 (3), an emergency medical technician, as defined in s. 256.01~~  
9 ~~(5), and a first responder, as defined in s. 256.01 (9).~~ means any of the following:

1           **SECTION 2.** 146.38 (1) (b) 1. of the statutes is created to read:

2           146.38 (1) (b) 1. A person specified in s. 146.81 (1) (a) to (hp), (r), or (s).

3           **SECTION 3.** 146.38 (1) (b) 2. of the statutes is created to read:

4           146.38 (1) (b) 2. A facility, association, or business entity, as specified in s.  
5 146.81 (1) (i) to (q).

6           **SECTION 4.** 146.38 (1) (b) 3. of the statutes is created to read:

7           146.38 (1) (b) 3. A person working under the supervision of or in collaboration  
8 with a person specified in subd. 1.

9           **SECTION 5.** 146.38 (1) (b) 4. of the statutes is created to read:

10          146.38 (1) (b) 4. A parent, subsidiary, or affiliate organization of a facility,  
11 association, or business entity, as specified in subd. 2.

(END OF INSERT 3-1)

12

13           INSERT 4-11

14 *no P* except for incident or occurrence reports or records from other persons,  
15 organizations, or evaluators reviewing or evaluating health care providers,

(END OF INSERT 4-11)

16           INSERT 4-21

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

18           146.38 (3) (intro.) Information acquired in connection with the review and  
19 evaluation of health care services shall be disclosed and records of such review and  
20 evaluation shall be released, with the identity of any patient whose treatment is  
21 reviewed being withheld ~~unless the patient has granted permission to disclose~~  
22 identity except as permitted under s. 146.82, in the following circumstances:

1           **SECTION 7.** 146.38 (3) (a), (b) and (c) of the statutes are amended to read:

2           146.38 (3) (a) To the health care provider ~~or facility~~ whose services are being  
3 reviewed or evaluated, upon the request of such provider ~~or facility~~;

4 History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315; 2007 a. 130.

4           (b) To any person with the consent of the health care provider ~~or facility~~ whose  
5 services are being reviewed or evaluated;

6 History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315; 2007 a. 130.

6           (c) To the person requesting the review or evaluation, for use solely for the  
7 purpose of improving the quality of health care, avoiding the improper utilization of  
8 the services of health care providers ~~and facilities~~, and determining the reasonable  
9 charges for such services;

History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315; 2007 a. 130.

(END OF INSERT 4-21)

10           INSERT 5-5

11           (b) Information acquired in connection with the review or evaluation of health  
12 care services may be disclosed, and the records of such a review or evaluation  
13 released, to any of the following persons, with the consent of the person authorizing  
14 or with the authority to authorize the review or evaluation:

15           1. The employer of a health care provider, as defined in sub. (1) (b) 1. and 3.

16           2. The parent, subsidiary, or affiliate organization of a health care provider, as  
17 defined in sub. (1) (b) 2.

18           3. The parent, subsidiary, or affiliate organization of the employer of a health  
19 care provider, as defined in sub. (1) (b) 1. and 3.

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

21           146.38 (3t) A record described under sub. (2) or an incident or occurrence  
22 report disclosed either under sub. (3) or (3m) or in violation of this section remains

1 confidential and may not be used in any civil or criminal action against the health  
2 care provider.

3 **SECTION 9.** 146.38 (6) of the statutes<sup>✓</sup> is created to read:

4 146.38 (6) Health care provider specific information acquired by an  
5 administrative agency in order to help improve the quality of health care, to avoid  
6 the improper utilization of services of health care providers, or to determine the  
7 reasonable charges for health care services is exempt from inspection, copying, or  
8 receipt under s. 19.35 (1).

9 **SECTION 10.** 153.05 (3m) of the statutes<sup>✓</sup> is created to read:

10 153.05 (3m) The department<sup>✓</sup> or the department of administration may not  
11 prohibit the entity under contract under sub. (2m)<sup>✓</sup> (a) from reporting quality  
12 indicators identifying individual hospitals based on data the entity collects under  
13 this subchapter.

(END OF INSERT 5-5)

14 (END)

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

LRB-0358/2dn

TJD:...

ef

Date

Please review this draft to ensure it complies with your intent. Please note that I changed the format of the definition of health care provider in s. 146.38. Also, because of the new definition of health care provider, the use of "facility" in the text no longer works so I eliminated the term. I also did not expand the definition of health care provider under new s. 904.16(1)(a) to match the newly expanded definition of health care provider in s. 146.38(1)(b). Please advise if you want the s. 904.16(1)(a) definition expanded.

X The request for the provision to be<sup>s</sup> added to ch. 153<sup>✓</sup> allowing the entity to report quality indicators by individual hospital<sup>s</sup> appears not to be connected to the other provisions in the draft. Is that correct?

Please note that this draft is only being sent to Michelle Gauger and Kevin Moore. The changes in this draft are incorporated into the compiled draft, LRB-0388, which is being sent to all of the parties.

Tamara J. Dodge  
Legislative Attorney  
Phone: (608) 267-7380  
E-mail: tamara.dodge@legis.wisconsin.gov



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0358/1  
TJD&PJH:kjf:td

In: 12/21/10 TODAY

2  
RMR

2011 BILL

ct-note

reporting of quality indicators  
identifying individual hospitals;

Regen

1 AN ACT to repeal 146.38 (3) (d) and 146.38 (3) (e); to amend 146.38 (1m), 146.38  
2 (2), 940.08 (1), 940.24 (1) and 940.295 (3) (a) 3.; and to create 146.38 (1) (bm),  
3 146.38 (2m), 146.38 (3m), 904.16, 940.08 (3), 940.24 (3) and 940.295 (3) (am) of  
4 the statutes; relating to: confidentiality of health care services reviews; use as  
5 evidence of information regarding health care providers; homicide or injury by  
6 negligent handling of a dangerous weapon, explosives, or fire; criminal abuse  
7 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 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

**BILL**

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 such 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 or occurrence (use 2)

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 (DRL) or by the division within the Department of Health Services (DHS) 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 DRL or by the division within DHS 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 DRL or by the division within DHS that conducts health care provider quality assurance reviews.

Insert A-2

Insert A-1

Insert A-3

**BILL****Crimes**

Under current law, a person who causes the death of, or bodily harm to, an individual 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 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.

Also 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 a resident in one of those facilities or agencies is guilty of a crime. The penalties for the crime depend upon the degree of harm suffered by the patient or resident. Under the bill, a person who negligently abuses or neglects a patient or a resident is not guilty of a crime if the person is a health care provider acting in the scope of his or her practice or employment, and he or she commits an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith error in judgment or discretion.

*Ins 3-1* **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:

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

OR OCCURRENCE

**BILL**

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

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

Ins  
4-11

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

19          146.38 (2m) An incident <sup>or occurrence</sup> report may not be used in any civil or criminal action  
20          against a health care provider (or facility)

Ins  
4-21

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

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

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

24          146.38 (3m) <sup>(a)</sup> Information acquired in connection with the review and  
25          evaluation of health care services may be disclosed, and records of such review and

authorizing

**BILL**  
or with the  
authority to authorize

except as permitted under s. 146.82

1 evaluation may be released, in statistical form with the consent of the person  
2 directing the review or evaluation. Information disclosed or records released under  
3 this subsection shall not reveal the identity of any patient unless the patient has  
4 granted permission to disclose his or her identity.

Ins  
5-5

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

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

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

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

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

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

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

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

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

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

**SECTION 10.** 940.08 (3) of the statutes is created to read:

**BILL****SECTION 10**

1           940.08 (3) Subsection (1) does not apply to a health care provider acting within  
2 the scope of his or her practice or employment.

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

4           940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
5 to another by the negligent operation or handling of a dangerous weapon, explosives  
6 or fire is guilty of a Class I felony.

7           **SECTION 12.** 940.24 (3) of the statutes is created to read:

8           940.24 (3) Subsection (1) does not apply to a health care provider acting within  
9 the scope of his or her practice or employment.

10          **SECTION 13.** 940.295 (3) (a) 3. of the statutes is amended to read:

11          940.295 (3) (a) 3. ~~Abuses~~ Except as provided in par. (am), abuses, with  
12 negligence, or neglects a patient or a resident.

13          **SECTION 14.** 940.295 (3) (am) of the statutes is created to read:

14          940.295 (3) (am) Paragraph (a) 3. does not apply to a health care provider  
15 acting in the scope of his or her practice or employment who commits an act or  
16 omission of mere inefficiency, unsatisfactory conduct, or failure in good performance  
17 as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith  
18 error in judgment or discretion.

19          **SECTION 15. Initial applicability.**

20          (1) **CRIMES.** The treatment of sections 940.08 (1) and (3), 940.24 (1) and (3), and  
21 940.295 (3) (a) 3. and (am) of the statutes first applies to acts or omissions committed  
22 on the effective date of this subsection.

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

**BILL**

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

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

8

(END)

*D-note*

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

LRB-0358/2dn  
TJD:kjf:md

December 21, 2010

Please review this draft to ensure it complies with your intent. Please note that I changed the format of the definition of health care provider in s. 146.38. Also, because of the new definition of health care provider, the use of "facility" in the text no longer works so I eliminated the term. I also did not expand the definition of health care provider under new s. 904.16 (1) (a) to match the newly expanded definition of health care provider in s. 146.38 (1) (b). Please advise if you want the s. 904.16 (1) (a) definition expanded.

The request for the provision to be added to ch. 153 allowing the entity to report quality indicators by individual hospitals appears not to be connected to the other provisions in the draft. Is that correct?

The changes in this draft are incorporated into the compiled draft, LRB-0388.

Tamara J. Dodge  
Legislative Attorney  
Phone: (608) 267-7380  
E-mail: [tamara.dodge@legis.wisconsin.gov](mailto:tamara.dodge@legis.wisconsin.gov)