

2013 DRAFTING REQUEST

Bill

Received: **8/28/2013** Received By: **gmalaise**
Wanted: **As time permits** Same as LRB:
For: **Children and Families 261-6588** By/Representing: **Sara Buschman**
May Contact: Drafter: **gmalaise**
Subject: **Children - abuse and neglect** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **sara.buschman@wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Reporting of fetal alcohol spectrum disorder to child protective services

Instructions:

See attached--require physicians to report cases of fetal alcohol spectrum disorder to child protective services

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>
/?	gmalaise 8/29/2013	scalvin 9/9/2013	rschluet 9/9/2013	_____			
/1	gmalaise 10/16/2013			_____	sbasford 9/9/2013		State S&L
/2	gmalaise 1/10/2014	scalvin 10/29/2013	rschluet 10/29/2013	_____	mbarman 10/29/2013		State S&L
/3		scalvin	jfrantze	_____	srose	sbasford	State

Vers. Drafted

Reviewed
1/10/2014

Typed
1/13/2014

Proofed

Submitted
1/13/2014

Jacketed
1/17/2014

Required
S&L

FE Sent For:

<END>

→ At
Intro.

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/1	gmalaise 10/16/2013			_____	sbasford 9/9/2013		State S&L
/2		scalvin 10/29/2013	rschluet 10/29/2013	_____	mbarman 10/29/2013		State S&L
		<i>/3 sac 01/10/2014</i>	<i>/3 sac 01/10/2014</i>		<i>Jb 1/13</i>		

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/1		1/2 sac 10/29/2013	1/2 sac 10/29/2013		sbasford 9/9/2013	_____	State S&L

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/?	gmalaise	1 sac 09/09/2013		_____	_____		

FE Sent For:

<END>

Malaise, Gordon

From: Buschman, Sara - DCF <Sara.Buschman@wisconsin.gov>
Sent: Thursday, August 22, 2013 7:16 PM
To: Malaise, Gordon
Subject: Two DCF drafting requests re: confidentiality of unsubstantiated reports and false records and reporting of Fetal Alcohol Spectrum Disorder

Gordon,

I thought I sent these drafting requests over already but can't confirm that via my sent emails so in the event I did not already submit this here are two additional drafting requests. Since they both pertain to some federal requirements I don't know if it makes sense to draft them into one bill or into 2 separate bills. If possible, could I have them drafted both separately and then together as a combined bill? If you have any questions, let me know. Thanks.

Sara

Sara L. Buschman
Assistant Deputy Secretary
Department of Children and Families

201 East Washington Avenue, Madison, WI 53703

Phone: 608.261.6588 • Fax: 608.261.6972

Email: sara.buschman@wisconsin.gov

1. Reporting of Fetal Alcohol Spectrum Disorder - 2010 Child Abuse Prevention and Treatment Act (CAPTA) Requirements

Statute: s.146.0255 (2)

Issue:

Current law authorizes physicians to test infants for the presence of controlled substances or controlled substance analogs. If the test results indicate the presence of such substances, the physician is required to report that finding to agencies in the child protective services system.



State of Wisconsin
2013 - 2014 LEGISLATURE

GMM
LRB-30287
...f...
SAC

IN 8/29

LPS: make changes
marked in Topic
on request sheet

- 1 AN ACT ^{gen cut} relating to: testing of infants for fetal alcohol spectrum disorder and
- 2 referral of infants who have that condition for services and treatment.

Analysis by the Legislative Reference Bureau

Under current law, if a hospital employee who provides health care, social worker, or intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court intake worker) suspects that an infant has controlled substances in the infant's bodily fluids because of the use of those substances by the infant's mother while she was pregnant with the infant, the hospital employee, social worker, or juvenile court intake worker may refer the infant to a physician for testing of the infant's bodily fluids for those substances. If the physician determines that there is a serious risk that there are controlled substances in the infant's bodily fluids because of the use of those substances by the mother and that the health of the infant may be adversely affected by those substances, the physician may test the infant to ascertain whether the infant has those substances in the infant's bodily fluids. If the test indicates that the infant does have controlled substances in the infant's bodily fluids, the physician must report that condition to the agency that is responsible for conducting child abuse and neglect investigations under the Children's Code and that agency must offer services and treatment for the infant and mother.

This bill similarly permits an infant who is suspected of having fetal alcohol spectrum disorder to be referred to a physician for testing for that disorder, requires a physician to test an infant for that disorder if the physician determines that there is a serious risk that the infant has that disorder, requires a physician to report that condition to the agency responsible for conducting child abuse and neglect investigations, and requires that agency to offer services and treatment for the infant and mother.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 46.238 of the statutes is amended to read:

2 **46.238 Infants and unborn children whose mothers abuse controlled**
3 **substances ~~or~~, controlled substance analogs, or alcohol.** If an agency, as
4 defined in s. 48.981 (1) (ag), receives a report under s. 146.0255 (2) (a) 3. or (b) 3. and
5 that agency is a county department under s. 46.22 or 46.23 or a licensed child welfare
6 agency under contract with that county department, the agency shall offer to provide
7 appropriate services and treatment to the ~~child and the child's~~ infant and the infant's
8 mother or to the unborn child, as defined in s. 48.02 (19), and the expectant mother
9 of the unborn child or the agency shall make arrangements for the provision of
10 appropriate services and treatment. If an agency receives a report under s. 146.0255
11 (2) (a) 3. or (b) 3. and that agency is the department or a licensed child welfare agency
12 under contract with the department, the agency shall refer the report to the county
13 department under s. 51.42 or 51.437 and that county department shall offer to
14 provide, or make arrangements for the provision of, those services and that
15 treatment.

16 **History:** 1989 a. 122; 1993 a. 16; 1995 a. 386, 448; 1997 a. 27, 292; 2009 a. 79.

16 **SECTION 2.** 146.0255 (title) of the statutes is amended to read:

17 **146.0255 (title) Testing ~~infants~~ for controlled substances ~~or~~, controlled**
18 **substance analogs, or fetal alcohol spectrum disorder.**

19 **History:** 1989 a. 122, 359; 1993 a. 16, 446; 1995 a. 386, 448; 1997 a. 27, 35, 292; 2009 a. 79.

19 **SECTION 3.** 146.0255 (1) (a) of the statutes is renumbered 146.0255 (1) (ar).

20 **SECTION 4.** 146.0255 (1) (ag) of the statutes is created to read:

1 146.0255 (1) (ag) "Agency" has the meaning given in s. 48.981 (1) (ag).

2 SECTION 5. 146.0255 (1) (c) of the statutes is created to read:

3 146.0255 (1) (c) "Unborn child" has the meaning given in s. 48.02 (19).

4 SECTION 6. 146.0255 (2) of the statutes is renumbered 146.0255 (2) (a) 1. and
5 amended to read:

6 146.0255 (2) (a) 1. ~~Any~~ If a hospital employee who provides health care, social
7 worker, or intake worker under ch. 48 ~~may refer an infant or an expectant mother~~
8 ~~of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily~~
9 ~~fluids of the infant or expectant mother for controlled substances or controlled~~
10 ~~substance analogs if the hospital employee who provides health care, social worker,~~
11 ~~or intake worker suspects that the~~ an ~~infant or expectant mother~~ has controlled
12 substances or controlled substance analogs in the infant's bodily fluids ~~of the infant~~
13 ~~or expectant mother~~ because of the use of controlled substances or controlled
14 substance analogs by the mother while she was pregnant with the infant ~~or by the~~
15 ~~expectant mother while she is pregnant with the unborn child. The physician may~~
16 ~~test the infant or expectant mother to ascertain whether or not the infant or~~
17 ~~expectant mother has controlled substances or controlled substance analogs in the~~
18 ~~bodily fluids of the infant or expectant mother, if~~ or that the infant has fetal alcohol
19 spectrum disorder, the hospital employee, social worker, or intake worker may refer
20 the infant to a physician for testing of the bodily fluids of the infant for controlled
21 substances or controlled substance analogs or for testing of the infant for fetal alcohol
22 spectrum disorder.

23 2. If the physician determines that there is a serious risk that there are
24 controlled substances or controlled substance analogs in the bodily fluids of the an
25 ~~infant or expectant mother~~ referred under subd. 1. because of the use of controlled

1 substances or controlled substance analogs by the mother while she was pregnant
 2 with the infant ~~or by the expectant mother while she is pregnant with the unborn~~
 3 ~~child~~ and that the health of the infant, ~~the unborn child or the child when born~~ may
 4 be adversely affected by the controlled substances or controlled substance analogs
 5 or determines that there is a serious risk that the infant has fetal alcohol spectrum
 6 disorder, the physician may test the infant to ascertain whether or not the infant has
 7 controlled substances or controlled substance analogs in the infant's bodily fluids or
 8 has fetal alcohol spectrum disorder.

9 3. If the results of ~~the a~~ a test under subd. 2. indicate that the infant does have
 10 controlled substances or controlled substance analogs in the infant's bodily fluids or
 11 does have fetal alcohol spectrum disorder, the physician shall report the occurrence
 12 of that condition in the infant to the agency, ~~as defined in s. 48.981(1)(ag)~~, that is
 13 responsible for conducting child abuse and neglect investigations under s. 48.981,
 14 and that agency shall offer to provide, or arrange or refer for the provision of, services
 15 and treatment for the ~~child and the child's mother~~ infant and the infant's mother as
 16 provided under s. 46.238.

17 (b) 3. If the results of ~~the a~~ a test under subd. 2. test indicate that the expectant
 18 mother does have controlled substances or controlled substance analogs in the
 19 expectant mother's bodily fluids, the physician may report the occurrence of that
 20 condition in the expectant mother to the agency, ~~as defined in s. 48.981(1)(ag)~~, that
 21 is responsible for conducting unborn child abuse investigations under s. 48.981, and
 22 that agency shall offer to provide, or arrange or refer for the provision of, services and
 23 treatment for the unborn child and expectant mother as provided under s. 46.238.

1 Under this ~~subsection~~ paragraph, no physician may test an expectant mother
2 without first receiving her informed consent to the testing.

3 **History:** 1989 a. 122, 359; 1993 a. 16, 446; 1995 a. 386, 448; 1997 a. 27, 35, 292; 2009 a. 79.

3 **SECTION 7.** 146.0255 (2) (a) (title) of the statutes is created to read:

4 146.0255 (2) (a) (title) *Testing of infants.*

5 **SECTION 8.** 146.0255 (2) (b) of the statutes is created to read:

6 146.0255 (2) (b) *Testing of expectant mothers.* 1. If a hospital employee who
7 provides health care, social worker, or intake worker under ch. 48 suspects that an
8 expectant mother has controlled substances or controlled substance analogs in her
9 bodily fluids because of the use of controlled substances or controlled substance
10 analogs, the hospital employee, social worker, or intake worker may refer the
11 expectant mother to a physician for testing of the bodily fluids of the expectant
12 mother for controlled substances or controlled substance analogs.

13 2. If the physician determines that there is a serious risk that there are
14 controlled substances or controlled substance analogs in the bodily fluids of an
15 expectant mother referred under subd. 1. because of the use of controlled substances
16 or controlled substance analogs by the expectant mother and that the health of the
17 unborn child or the child when born may be adversely affected by the controlled
18 substances or controlled substance analogs, the physician may test the expectant
19 mother to ascertain whether or not the expectant mother has controlled substances
20 or controlled substance analogs in her bodily fluids.

21 **SECTION 9.** 146.0255 (3) (intro.) of the statutes is amended to read:

1 146.0255 (3) TEST RESULTS. (intro.) The physician who performs a test under
2 sub. (2) (a) 2. or (b) 2. shall provide the infant's parents or guardian or the expectant
3 mother with all of the following information:

4 History: 1989 a. 122, 359; 1993 a. 16, 446; 1995 a. 386, 448; 1997 a. 27, 35, 292; 2009 a. 79.

4 **SECTION 10.** 146.0255 (3) (b) of the statutes is amended to read:

5 146.0255 (3) (b) A statement of explanation that the test results of an infant
6 must, and that the test results of an expectant mother may, be disclosed to an agency
7 under sub. (2) (a) 3. or (b) 3. if the test results are positive.

8 History: 1989 a. 122, 359; 1993 a. 16, 446; 1995 a. 386, 448; 1997 a. 27, 35, 292; 2009 a. 79.

8 **(END)**

Malaise, Gordon

From: Liedl, Kimberly - DCF <Kimberly.Liedl@wisconsin.gov>
Sent: Wednesday, October 16, 2013 12:05 PM
To: Malaise, Gordon
Cc: Buschman, Sara - DCF
Subject: FW: Draft for Review: Reporting of fetal alcohol spectrum disorder to cps

Gordon, please see the department's comments on LRB 3028. Please let Sara or I know if you have any questions.
Thanks,
Kimber

Kimberly Liedl

Legislative Liaison

Department of Children and Families

201 East Washington Avenue
Madison, WI 53703
T: 608.261.8678
E: kimberly.liedl@wisconsin.gov

Drafter's Notes:

DCF recommends that a separate statutory provision be created to address the fetal alcohol spectrum disorder issue, rather than incorporating it in s. 146.0255(2) for the following reason. Unlike the controlled substances, there is no medical test, such as a blood test, for FASD. Rather it is a diagnosis by a health professional based on an evaluation of symptoms. We recognize that we suggested in our original drafting instructions that the FASD provision be added to s.146.0255(2); we now realize that is not an appropriate fit, given that controlled substances are identified via a test and FASD is identified via a diagnosis.

Assuming a separate statutory provision construction, to comply with the federal CAPTA requirements, the provision should require health care providers involved in the delivery or care of infants diagnosed with fetal alcohol spectrum disorder to notify the child protective services system of such infants.

The changes in s.46.238 in LRB-3028/1 would need to be revised to refer to the new statutory provision.



State of Wisconsin
2013 - 2014 LEGISLATURE

KN 10/16



LRB-3028/1
GMM:sac

2
P RWS

2013 BILL

evaluation

Regen-6

1 AN ACT *to renumber* 146.0255 (1) (a); *to renumber and amend* 146.0255 (2);
 2 *to amend* 46.238, 146.0255 (title), 146.0255 (3) (intro.) and 146.0255 (3) (b);
 3 and *to create* 146.0255 (1) (ag), 146.0255 (1) (c), 146.0255 (2) (a) (title) and
 4 146.0255 (2) (b) of the statutes; **relating to:** ~~testing~~ of infants for fetal alcohol
 5 spectrum disorder and referral of infants who have that condition for services
 6 and treatment.

Analysis by the Legislative Reference Bureau

Under current law, if a hospital employee who provides health care, social worker, or intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court intake worker) suspects that an infant has controlled substances in the infant's bodily fluids because of the use of those substances by the infant's mother while she was pregnant with the infant, the hospital employee, social worker, or juvenile court intake worker may refer the infant to a physician for testing of the infant's bodily fluids for those substances. If the physician determines that there is a serious risk that there are controlled substances in the infant's bodily fluids because of the use of those substances by the mother and that the health of the infant may be adversely affected by those substances, the physician may test the infant to ascertain whether the infant has those substances in the infant's bodily fluids. If the test indicates that the infant does have controlled substances in the infant's bodily fluids, the physician must report that condition to the agency that is responsible for

BILL

evaluate *requires* *an evaluation to determine whether the infant has*

conducting child abuse and neglect investigations under the Children's Code and that agency must offer services and treatment for the infant and mother.

~~This bill similarly provides an infant who is suspected of having fetal alcohol spectrum disorder to be referred to a physician for testing for that disorder, requires a physician to test an infant for that disorder if the physician determines that there is a serious risk that the infant has that disorder, requires a physician to report that condition to the agency responsible for conducting child abuse and neglect investigations, and requires that agency to offer services and treatment for the infant and mother.~~

Insert A

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

*146.0257(2)
or 146.0257(2)*

1 SECTION 1. 46.238 of the statutes is amended to read:

2 **46.238 Infants and unborn children whose mothers abuse controlled**
3 **substances or, controlled substance analogs, or alcohol.** If an agency, as
4 defined in s. 48.981 (1) (ag), receives a report under s. 146.0255 (2) (a) 3. or (b) 3. and
5 that agency is a county department under s. 46.22 or 46.23 or a licensed child welfare
6 agency under contract with that county department, the agency shall offer to provide
7 appropriate services and treatment to the child and the child's infant and the infant's
8 mother or to the unborn child, as defined in s. 48.02 (19), and the expectant mother
9 of the unborn child or the agency shall make arrangements for the provision of
10 appropriate services and treatment. If an agency receives a report under s. 146.0255
11 (2) (a) 3. or (b) 3. and that agency is the department or a licensed child welfare agency
12 under contract with the department, the agency shall refer the report to the county
13 department under s. 51.42 or 51.437 and that county department shall offer to
14 provide, or make arrangements for the provision of, those services and that
15 treatment.

x -

16 SECTION 2. 146.0255 (title) of the statutes is amended to read:

BILL

- 3 -

plain
plan

and expectant mothers

plain
(plan)

SECTION 2

1

146.0255 (title) **Testing infants for controlled substances or controlled**

2

substance analogs or fetal alcohol spectrum disorder

3

SECTION 3. 146.0255 (1) (a) of the statutes is renumbered 146.0255 (1) (ar).

4

SECTION 4. 146.0255 (1) (ag) of the statutes is created to read:

5

146.0255 (1) (ag) "Agency" has the meaning given in s. 48.981 (1) (ag).

6

SECTION 5. 146.0255 (1) (c) of the statutes is created to read:

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146.0255 (1) (c) "Unborn child" has the meaning given in s. 48.02 (19).

8

SECTION 6. 146.0255 (2) of the statutes is renumbered 146.0255 (2) (a) 1. and

9

amended to read:

10

146.0255 (2) (a) 1. ~~Any~~ If a hospital employee who provides health care, social

11

worker, or intake worker under ch. 48 ~~may refer an infant or an expectant mother~~

12

~~of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily~~

13

~~fluids of the infant or expectant mother for controlled substances or controlled~~

14

~~substance analogs if the hospital employee who provides health care, social worker,~~

15

~~or intake worker suspects that the an infant or expectant mother has controlled~~

16

substances or controlled substance analogs in the infant's bodily fluids ~~of the infant~~

17

~~or expectant mother because of the use of controlled substances or controlled~~

18

substance analogs by the mother while she was pregnant with the infant ~~or by the~~

19

expectant mother while she is pregnant with the unborn child. The physician may

20

test ~~the infant or expectant mother to ascertain whether or not the infant or~~

21

expectant mother has controlled substances or controlled substance analogs in the

22

bodily fluids of the infant or expectant mother, ~~if~~ or that the infant has fetal alcohol

23

~~spectrum disorder~~, the hospital employee, social worker, or intake worker may refer

24

the infant to a physician for testing of the bodily fluids of the infant for controlled

stet

BILL

a

1) substances or controlled substance analogs ~~or for testing of the infant for fetal alcohol~~

2) ~~spectrum disorders~~ ← scored period

3 2. If ~~the~~ physician determines that there is a serious risk that there are
4 controlled substances or controlled substance analogs in the bodily fluids of the an
5 infant ~~or expectant mother~~ ~~referred under subd. 1.~~ because of the use of controlled
6 substances or controlled substance analogs by the mother while she was pregnant
7 with the infant ~~or by the expectant mother while she is pregnant with the unborn~~
8 child and that the health of the infant, ~~the unborn child or the child when born~~ may
9 be adversely affected by the controlled substances or controlled substance analogs

10) ~~or determines that there is a serious risk that the infant has fetal alcohol spectrum~~

11) ~~disorder,~~ ^{stet} the physician ^{shall} ~~may~~ test the infant to ascertain whether or not the infant has

12) controlled substances or controlled substance analogs in the infant's bodily fluids ~~or~~

13) ~~has fetal alcohol spectrum disorder,~~ ← scored period

14 3. If the results of the a test under subd. 2. indicate that the infant does have
15) controlled substances or controlled substance analogs in the infant's bodily fluids

16) ~~does have fetal alcohol spectrum disorder,~~ the physician shall report the occurrence

17 of that condition in the infant to the agency, as defined in s. 48.981 (1) (ag), that is

18 responsible for conducting child abuse and neglect investigations under s. 48.981,

19 and that agency shall offer to provide, or arrange or refer for the provision of, services

20 and treatment for the ~~child and the child's mother~~ infant and the infant's mother as

21 provided under s. 46.238.

22 (b) 3. If the results of the a test under subd. 2. test indicate that the expectant

23 mother does have controlled substances or controlled substance analogs in the

24 expectant mother's bodily fluids, the physician may report the occurrence of that

25 condition in the expectant mother to the agency, as defined in s. 48.981 (1) (ag), that

BILL

1 is responsible for conducting unborn child abuse investigations under s. 48.981, and
2 that agency shall offer to provide, or arrange or refer for the provision of, services and
3 treatment for the unborn child and expectant mother as provided under s. 46.238.
4 Under this ~~subsection~~ paragraph, no physician may test an expectant mother
5 without first receiving her informed consent to the testing.

6 SECTION 7. 146.0255 (2) (a) (title) of the statutes is created to read:

7 146.0255 (2) (a) (title) *Testing of infants.*

8 SECTION 8. 146.0255 (2) (b) of the statutes is created to read:

9 146.0255 (2) (b) *Testing of expectant mothers.* 1. If a hospital employee who
10 provides health care, social worker, or intake worker under ch. 48 suspects that an
11 expectant mother has controlled substances or controlled substance analogs in her
12 bodily fluids because of the use of controlled substances or controlled substance
13 analogs, the hospital employee, social worker, or intake worker ~~may~~ ^{shall} refer the
14 expectant mother to a physician for testing of the bodily fluids of the expectant
15 mother for controlled substances or controlled substance analogs.

16 2. If ^a ~~the~~ physician determines that there is a serious risk that there are
17 controlled substances or controlled substance analogs in the bodily fluids of an
18 expectant mother ~~referred under subd. 1.~~ because of the use of controlled substances
19 or controlled substance analogs by the expectant mother and that the health of the
20 unborn child or the child when born may be adversely affected by the controlled
21 substances or controlled substance analogs, the physician ~~may~~ ^{shall} test the expectant
22 mother to ascertain whether or not the expectant mother has controlled substances
23 or controlled substance analogs in her bodily fluids.

24 SECTION 9. 146.0255 (3) (intro.) of the statutes is amended to read:

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1 146.0255 (3) TEST RESULTS. (intro.) ~~The~~ physician who performs a test under
2 sub. (2) (a) 2. or (b) 2. shall provide the infant's parents or guardian or the expectant
3 mother with all of the following information:

4 SECTION 10. 146.0255 (3) (b) of the statutes is amended to read:

5 146.0255 (3) (b) A statement of explanation that the test results of an infant
6 must, and that the test results of an expectant mother may, be disclosed to an agency
7 under sub. (2) (a) 3. or (b) 3. if the test results are positive.

(END)

8
Insert
6-7

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3028/2ins
GMM.....

(INSERT 6-7)

x

1 **SECTION 1.** 146.0257 of the statutes is created to read:

2 **146.0257 Evaluation of infants for fetal alcohol spectrum disorder. (1)**

3 **DEFINITION.** In this section, “agency” has the meaning given in s. 48.981 (1) (ag).[✓]

4 **(2) EVALUATION.** If a hospital employee who provides health care, social worker,
5 or intake worker under ch. 48[✓] suspects that an infant has fetal alcohol spectrum
6 disorder, the hospital employee, social worker, or intake worker shall refer the infant
7 to a physician for an evaluation to diagnose whether the infant has that disorder.
8 If a physician determines that there is a serious risk that an infant has fetal alcohol
9 spectrum disorder, the physician shall evaluate the infant to diagnose whether the
10 infant has that disorder. If a physician diagnoses that an infant has fetal alcohol
11 spectrum disorder, the physician shall report that diagnosis to the agency that is
12 responsible for conducting child abuse and neglect investigations under s. 48.981,[✓]
13 and that that agency shall offer to provide, or arrange or refer for the provision of,
14 services and treatment for the infant and the infant’s mother as provided under s.
15 46.238.[✓]

16 **(3) DIAGNOSIS.** A physician who performs an evaluation under sub. (2)[✓] shall
17 provide the infant’s parents or guardian with all of the following information:

18 (a) An explanation concerning the evaluation that was performed, the date of
19 that evaluation, and the diagnosis resulting from that evaluation.

20 (b) An explanation that the results of the evaluation must be disclosed to an
21 agency under sub. (2) if the evaluation indicates a diagnosis of fetal alcohol spectrum
22 disorder.

1 (4) CONFIDENTIALITY. The results of an evaluation performed under sub. (2) may
2 be disclosed as provided in sub. (3).

(END OF INSERT)

(INSERT A)

¶ This bill: 1) requires a hospital employee who provides health care, social worker, or juvenile court intake worker who suspects that an infant has fetal alcohol spectrum disorder to refer the infant to a physician for an evaluation to diagnose whether the infant has that disorder; 2) requires a physician who determines that there is a serious risk that an infant has fetal alcohol spectrum disorder to evaluate the infant to diagnose whether the infant has that disorder; 3) requires a physician who diagnoses that an infant has fetal alcohol spectrum disorder to report that diagnosis to the agency responsible for conducting child abuse and neglect investigations; and 4) requires that agency to offer services and treatment for the infant and the infant's mother.

(END OF INSERT)



State of Wisconsin
2013 - 2014 LEGISLATURE

Mon 1/13
(Analysis p 2 only)



LRB-3028/2
GMM:sac:3

3
6
DNR

2013 BILL

gen act

1 AN ACT *to renumber* 146.0255 (1) (a); *to renumber and amend* 146.0255 (2);
2 *to amend* 46.238, 146.0255 (title), 146.0255 (3) (intro.) and 146.0255 (3) (b);
3 and *to create* 146.0255 (1) (ag), 146.0255 (1) (c), 146.0255 (2) (a) (title),
4 146.0255 (2) (b) and 146.0257 of the statutes; **relating to:** evaluation of infants
5 for fetal alcohol spectrum disorder and referral of infants who have that
6 condition for services and treatment.

Analysis by the Legislative Reference Bureau

Under current law, if a hospital employee who provides health care, social worker, or intake worker of the court assigned to exercise jurisdiction under the Children's Code (juvenile court intake worker) suspects that an infant has controlled substances in the infant's bodily fluids because of the use of those substances by the infant's mother while she was pregnant with the infant, the hospital employee, social worker, or juvenile court intake worker may refer the infant to a physician for testing of the infant's bodily fluids for those substances. If the physician determines that there is a serious risk that there are controlled substances in the infant's bodily fluids because of the use of those substances by the mother and that the health of the infant may be adversely affected by those substances, the physician may test the infant to ascertain whether the infant has those substances in the infant's bodily fluids. If the test indicates that the infant does have controlled substances in the infant's bodily fluids, the physician must report that condition to the agency that is responsible for

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conducting child abuse and neglect investigations under the Children's Code and that agency must offer services and treatment for the infant and mother.

This bill: 1) requires a hospital employee who provides health care, social worker, or juvenile court intake worker who suspects that an infant has fetal alcohol spectrum disorder to refer the infant to a physician for an evaluation to diagnose whether the infant has that disorder; 2) requires a physician who determines that there is a serious risk that an infant has fetal alcohol spectrum disorder to evaluate the infant to diagnose whether the infant has that disorder; 3) requires a physician who diagnoses that an infant has fetal alcohol spectrum disorder to report that diagnosis to the agency responsible for conducting child abuse and neglect investigations; and 4) requires that agency to offer services and treatment for the infant and the infant's mother.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 46.238^x of the statutes is amended to read:

2 **46.238 Infants and unborn children whose mothers abuse controlled**

3 **substances ~~or~~, controlled substance analogs, or alcohol.** If an agency, as

4 defined in s. 48.981 (1) (ag), receives a report under s. 146.0255 (2) (a) 3. or (b) 3. or

5 146.0257 (2) and that agency is a county department under s. 46.22 or 46.23 or a

6 licensed child welfare agency under contract with that county department, the

7 agency shall offer to provide appropriate services and treatment to the ~~child and the~~

8 ~~child's~~ infant and the infant's mother or to the unborn child, as defined in s. 48.02

9 (19), and the expectant mother of the unborn child or the agency shall make

10 arrangements for the provision of appropriate services and treatment. If an agency

11 receives a report under s. 146.0255 (2) (a) 3. or (b) 3. or 146.0257 (2) and that agency

12 is the department or a licensed child welfare agency under contract with the

13 department, the agency shall refer the report to the county department under s.

BILL

1 51.42 or 51.437 and that county department shall offer to provide, or make
2 arrangements for the provision of, those services and that treatment.

3 ^x
SECTION 2. 146.0255 (title) of the statutes is amended to read:

4 **146.0255 (title) Testing infants and expectant mothers for controlled**
5 **substances or controlled substance analogs.**

6 ^x
SECTION 3. 146.0255 (1) (a) of the statutes is renumbered 146.0255 (1) (ar).

7 [↙]
SECTION 4. 146.0255 (1) (ag) of the statutes is created to read:

8 146.0255 (1) (ag) “Agency” has the meaning given in s. 48.981 (1) (ag).

9 ^x
SECTION 5. 146.0255 (1) (c) of the statutes is created to read:

10 146.0255 (1) (c) “Unborn child” has the meaning given in s. 48.02 (19).

11 [↙]
SECTION 6. 146.0255 (2) of the statutes is renumbered 146.0255 (2) (a) 1. and
12 amended to read:

13 146.0255 (2) (a) 1. ~~Any If a hospital employee who provides health care, social~~
14 ~~worker, or intake worker under ch. 48 may refer an infant or an expectant mother~~
15 ~~of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily~~
16 ~~fluids of the infant or expectant mother for controlled substances or controlled~~
17 ~~substance analogs if the hospital employee who provides health care, social worker,~~
18 ~~or intake worker suspects that the an infant or expectant mother has controlled~~
19 ~~substances or controlled substance analogs in the infant's bodily fluids of the infant~~
20 ~~or expectant mother because of the use of controlled substances or controlled~~
21 ~~substance analogs by the mother while she was pregnant with the infant or by the~~
22 ~~expectant mother while she is pregnant with the unborn child. The physician may~~
23 ~~test the infant or expectant mother to ascertain whether or not the infant or~~
24 ~~expectant mother has controlled substances or controlled substance analogs in the~~
25 ~~bodily fluids of the infant or expectant mother, if the, the hospital employee, social~~

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SECTION 6

1 worker, or intake worker may refer the infant to a physician for testing of the bodily
2 fluids of the infant for controlled substances or controlled substance analogs.

3 2. If a physician determines that there is a serious risk that there are controlled
4 substances or controlled substance analogs in the bodily fluids of the ~~an~~ infant ~~or~~
5 ~~expectant mother~~ because of the use of controlled substances or controlled substance
6 analog~~s~~ by the mother while she was pregnant with the infant ~~or by the expectant~~
7 ~~mother while she is pregnant with the unborn child~~ and that the health of the infant,
8 ~~the unborn child or the child when born~~ may be adversely affected by the controlled
9 substances or controlled substance analogs, the physician may test the infant to
10 ascertain whether or not the infant has controlled substances or controlled substance
11 analog~~s~~ in the infant's bodily fluids.

12 3. If the results of ~~the a~~ test under subd. 2. indicate that the infant does have
13 controlled substances or controlled substance analogs in the infant's bodily fluids,
14 the physician shall report the occurrence of that condition in the infant to the agency,
15 as ~~defined in s. 48.981 (1) (ag),~~ that is responsible for conducting child abuse and
16 neglect investigations under s. 48.981, and that agency shall offer to provide, or
17 arrange or refer for the provision of, services and treatment for the ~~child and the~~
18 ~~child's mother~~ infant and the infant's mother as provided under s. 46.238.

19 (b) 3. If the results of ~~the a~~ test under subd. 2. test indicate that the expectant
20 mother does have controlled substances or controlled substance analogs in the
21 expectant mother's bodily fluids, the physician may report the occurrence of that
22 condition in the expectant mother to the agency, as ~~defined in s. 48.981 (1) (ag),~~ that
23 is responsible for conducting unborn child abuse investigations under s. 48.981, and
24 that agency shall offer to provide, or arrange or refer for the provision of, services and
25 treatment for the unborn child and expectant mother as provided under s. 46.238.

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1 Under this ~~subsection~~ paragraph, no physician may test an expectant mother
2 without first receiving her informed consent to the testing.

3 **SECTION 7.** 146.0255 (2) (a) (title) of the statutes is created to read:

4 146.0255 (2) (a) (title) *Testing of infants.*

5 **SECTION 8.** 146.0255 (2) (b) of the statutes is created to read:

6 146.0255 (2) (b) *Testing of expectant mothers.* 1. If a hospital employee who
7 provides health care, social worker, or intake worker under ch. 48 suspects that an
8 expectant mother has controlled substances or controlled substance analogs in her
9 bodily fluids because of the use of controlled substances or controlled substance
10 analogs, the hospital employee, social worker, or intake worker may refer the
11 expectant mother to a physician for testing of the bodily fluids of the expectant
12 mother for controlled substances or controlled substance analogs.

13 2. If a physician determines that there is a serious risk that there are controlled
14 substances or controlled substance analogs in the bodily fluids of an expectant
15 mother because of the use of controlled substances or controlled substance analogs
16 by the expectant mother and that the health of the unborn child or the child when
17 born may be adversely affected by the controlled substances or controlled substance
18 analogs, the physician may test the expectant mother to ascertain whether or not the
19 expectant mother has controlled substances or controlled substance analogs in her
20 bodily fluids.

21 **SECTION 9.** 146.0255 (3) (intro.) of the statutes is amended to read:

22 146.0255 (3) **TEST RESULTS.** (intro.) The A physician who performs a test under
23 sub. (2) (a) 2. or (b) 2. shall provide the infant's parents or guardian or the expectant
24 mother with all of the following information:

25 **SECTION 10.** 146.0255 (3) (b) of the statutes is amended to read:

BILL

1 146.0255 (3) (b) A statement of explanation that the test results of an infant
2 must, and that the test results of an expectant mother may, be disclosed to an agency
3 under sub. (2) (a) 3. or (b) 3. if the test results are positive.

4 **SECTION 11.** 146.0257 of the statutes is created to read:

5 **146.0257 Evaluation of infants for fetal alcohol spectrum disorder. (1)**

6 DEFINITION. In this section, “agency” has the meaning given in s. 48.981 (1) (ag).

7 (2) EVALUATION. If a hospital employee who provides health care, social worker,
8 or intake worker under ch. 48 suspects that an infant has fetal alcohol spectrum
9 disorder, the hospital employee, social worker, or intake worker shall refer the infant
10 to a physician for an evaluation to diagnose whether the infant has that disorder.
11 If a physician determines that there is a serious risk that an infant has fetal alcohol
12 spectrum disorder, the physician shall evaluate the infant to diagnose whether the
13 infant has that disorder. If a physician diagnoses that an infant has fetal alcohol
14 spectrum disorder, the physician shall report that diagnosis to the agency that is
15 responsible for conducting child abuse and neglect investigations under s. 48.981,
16 and that that agency shall offer to provide, or arrange or refer for the provision of,
17 services and treatment for the infant and the infant’s mother as provided under s.
18 46.238.

19 (3) DIAGNOSIS. A physician who performs an evaluation under sub. (2) shall
20 provide the infant’s parents or guardian with all of the following information:

21 (a) An explanation concerning the evaluation that was performed, the date of
22 that evaluation, and the diagnosis resulting from that evaluation.

23 (b) An explanation that the results of the evaluation must be disclosed to an
24 agency under sub. (2) if the evaluation indicates a diagnosis of fetal alcohol spectrum
25 disorder.

Basford, Sarah

From: Buschman, Sara - DCF <Sara.Buschman@wisconsin.gov>
Sent: Thursday, January 16, 2014 5:45 PM
To: LRB.Legal
Subject: Draft Review: LRB -3028/3 Topic: Reporting of fetal alcohol spectrum disorder to child protective services

Sorry - hit the wrong button - we need /3 jacketed - not /1 - disregard previous email. Thanks.

Sara L. Buschman
Assistant Deputy Secretary
Department of Children and Families

201 East Washington Avenue, Madison, WI 53703

Phone: 608.261.6588 • Fax: 608.261.6972

Email: sara.buschman@wisconsin.gov

Please Jacket LRB -3028/3 for the ASSEMBLY.