

## CHAPTER 146

## MISCELLANEOUS HEALTH PROVISIONS

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**146.001 Definitions.** In this chapter unless the context otherwise requires:

(1) "Department" means the department of health and family services.

(2) "Secretary" means the secretary of health and family services.

**History:** 1973 c. 323; 1985 a. 120; 1995 a. 27 s. 9126 (19).

**146.0255 Testing infants for controlled substances or controlled substance analogs. (1) DEFINITIONS.** In this section:

(a) "Controlled substance" has the meaning given in s. 961.01 (4).

(b) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2) **TESTING.** Any hospital employee who provides health care, social worker or intake worker under ch. 48 may refer an infant or an expectant mother of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily fluids of the infant or expectant mother for controlled substances or controlled substance analogs if the hospital employee who provides health care, social worker or intake worker suspects that the infant or expectant mother has controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother because of the use of controlled substances or controlled substance analogs by the mother while she was pregnant with the infant or by the expectant mother while she is pregnant with the unborn child. The physician may test the infant or expectant mother to ascertain whether or not the infant or expectant mother has controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother, if the physician determines that there is a serious risk that there are controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother because of the use of controlled substances or controlled substance analogs by the mother while she was pregnant with the infant or by the expectant mother while she is pregnant with the unborn child and that the health of the infant, the unborn child or the child when born may be adversely affected

by the controlled substances or controlled substance analogs. If the results of the test indicate that the infant does have controlled substances or controlled substance analogs in the infant's bodily fluids, the physician shall make a report under s. 46.238. If the results of the test indicate that the expectant mother does have controlled substances or controlled substance analogs in the expectant mother's bodily fluids, the physician may make a report under s. 46.238. Under this subsection, no physician may test an expectant mother without first receiving her informed consent to the testing.

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

(a) A statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

(b) A statement of explanation that the test results of an infant must, and that the test results of an expectant mother may, be disclosed to a county department under s. 46.22 or 46.23 or, in a county having a population of 500,000 or more, to the county department under s. 51.42 or 51.437 in accordance with s. 46.238 if the test results are positive.

(4) **CONFIDENTIALITY.** The results of a test given under this section may be disclosed as provided in sub. (3).

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

**146.085 Pay toilets prohibited. (1) PROHIBITION.** The owner or manager of any public building shall not permit an admission fee to be charged for the use of any toilet compartment.

(2) **PENALTY.** Any person who violates this section shall be fined not less than \$10 nor more than \$50.

(3) **ENFORCEMENT.** The department, the department of commerce and the public service commission shall enforce this section within their respective jurisdictions.

**History:** 1971 c. 228 s. 44; 1973 c. 12 s. 37; 1975 c. 298; 1995 a. 27 ss. 4361, 9116 (5).

**146.15 Information.** State officials, physicians of mining, manufacturing and other companies or associations, officers and agents of a company incorporated by or transacting business

under the laws of this state, shall when requested furnish, so far as practicable, the department any information required touching the public health; and for refusal shall forfeit \$10.

**146.16 Expenses.** Expenses incurred under this chapter, not made otherwise chargeable, shall be paid by the town, city or village.

**History:** 1983 a. 27 s. 2202 (20); 1993 a. 27; 1995 a. 227.

**146.17 Limitations.** Nothing in the statutes shall be construed to authorize interference with the individual's right to select his or her own physician or mode of treatment, nor as a limitation upon the municipality to enact measures in aid of health administration, consistent with statute and acts of the department.

**History:** 1993 a. 482.

**146.185 Minority health. (1)** In this section:

(a) "African American" means a person whose ancestors originated in any of the black racial groups of Africa.

(b) "American Indian" means a person who is enrolled as a member of a federally recognized American Indian tribe or band or who possesses documentation of at least one-fourth American Indian ancestry or documentation of tribal recognition as an American Indian.

(c) "Asian" means a person whose ancestors originated in Asia south and southeast of the Himalayas and west of Wallace's Line in the Malay Archipelago.

(d) "Economically disadvantaged" means having an income that is at or below 125% of the poverty line.

(e) "Hispanic" means a person of any race whose ancestors originated in Mexico, Puerto Rico, Cuba, Central America or South America or whose culture or origin is Spanish.

(f) "Minority group member" means any of the following:

1. An African American.
2. An American Indian.
3. A Hispanic.
4. An Asian.

(g) "Nonprofit corporation" means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(h) "Poverty line" means the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2).

(i) "State agency" has the meaning given in s. 16.70 (1e).

**(2)** The department shall do all of the following:

(a) Identify the barriers to health care that prevent economically disadvantaged minority group members in this state from participating fully and equally in all aspects of life.

(b) Conduct statewide hearings on issues of concern to the health interests of economically disadvantaged minority group members.

(c) Review, monitor and advise all state agencies with respect to the impact on the health of economically disadvantaged minority group members of current and emerging state policies, procedures, practices, statutes and rules.

(d) Work closely with all state agencies, including the board of regents of the University of Wisconsin System and the technical college system board, with the University of Wisconsin Hospitals and Clinics Authority, with the private sector and with groups concerned with issues of the health of economically disadvantaged minority group members to develop long-term solutions to health problems of minority group members.

(e) Disseminate information on the status of the health of economically disadvantaged minority group members in this state.

(f) Encourage economically disadvantaged minority group members who are students to enter career health care professions, by developing materials that are culturally sensitive and appropriate and that promote health care professions as careers, for use by

the University of Wisconsin System, the technical college system and the Medical College of Wisconsin in recruiting the students.

(g) Submit a biennial report on the activities of the department under this section that includes recommendations on program policies, procedures, practices and services affecting the health status of economically disadvantaged minority group members, to the appropriate standing committees under s. 13.172 (3) and to the governor.

**(3)** From the appropriation under s. 20.435 (5) (kb), the department shall annually award grants for activities to improve the health status of economically disadvantaged minority group members. A person may apply, in the manner specified by the department, for a grant of up to \$50,000 in each fiscal year to conduct these activities. An awardee of a grant under this subsection shall provide, for at least 50% of the grant amount, matching funds that may consist of funding or an in-kind contribution. An applicant that is not a federally qualified health center, as defined under 42 CFR 405.2401 (b) shall receive priority for grants awarded under this subsection.

**(4)** From the appropriation under s. 20.435 (5) (kb), the department shall award a grant of up to \$50,000 in each fiscal year to a private nonprofit corporation that applies, in the manner specified by the department, to conduct a public information campaign on minority health.

**History:** 1999 a. 9; 2001 a. 16; 2003 a. 33.

**146.19 Cooperative American Indian health projects.**

**(1) DEFINITIONS.** In this section:

(a) "Inter-tribal organization" means an organization or association of tribes or tribal agencies.

(b) "Other agencies and organizations" means agencies of local, state and federal governments and private organizations that are not inter-tribal organizations or tribal agencies.

(c) "Tribal agency" means an agency of the governing body of a tribe.

(d) "Tribe" means the governing body of a federally recognized American Indian tribe or band located in this state.

**(2) COOPERATIVE AMERICAN INDIAN HEALTH PROJECT GRANTS.** From the appropriation under s. 20.435 (5) (ke), the department shall award grants for cooperative American Indian health projects in order to promote cooperation among tribes, tribal agencies, inter-tribal organizations and other agencies and organizations in addressing specific problem areas in the field of American Indian health. A tribe, tribal agency or inter-tribal organization may apply, in the manner specified by the department, for a grant of up to \$10,000 to conduct a cooperative American Indian health project, which meets all of the following requirements:

(a) The project involves the cooperation of 2 or more tribes, tribal agencies, inter-tribal organizations or other agencies or organizations.

(b) The project is designed to do at least one of the following:

1. Develop, test or demonstrate solutions for specific American Indian health problems which, if proven effective, may be applied by other tribes, tribal agencies, inter-tribal organizations or other agencies or organizations.

2. Fund start-up costs of cooperative programs to deliver health care services to American Indians.

3. Conduct health care needs assessments and studies related to health care issues of concern to American Indians.

**(4) LIMITATION: MATCHING FUNDS.** A grant awarded under sub. (2) may not exceed 50% of the cost of the cooperative American Indian health project. Participants in a funded project, as specified in sub. (2) (a), may use in-kind contributions to provide part or all of the required match.

**History:** 1993 a. 16; 1997 a. 27; 1999 a. 9.

**146.22 Flushing devices for urinals.** The department shall not promulgate any rules which either directly or indirectly prohibit the use of manual flushing devices for urinals. The depart-

ment shall take steps to encourage the use of manual flushing devices for urinals.

**History:** 1977 c. 418.

**146.25 Required implanting of microchip prohibited.**

(1) No person may require an individual to undergo the implanting of a microchip.

(2) Any person who violates sub. (1) may be required to forfeit not more than \$10,000. Each day of continued violation constitutes a separate offense.

**History:** 2005 a. 482.

**146.301 Refusal or delay of emergency service. (1)** In this section “hospital providing emergency services” means a hospital which the department has identified as providing some category of emergency service.

(2) No hospital providing emergency services may refuse emergency treatment to any sick or injured person.

(3) No hospital providing emergency services may delay emergency treatment to a sick or injured person until credit checks, financial information forms or promissory notes have been initiated, completed or signed if, in the opinion of one of the following, who is an employee, agent or staff member of the hospital, the delay is likely to cause increased medical complications, permanent disability or death:

(a) A physician, registered nurse or emergency medical technician – paramedic.

(b) A licensed practical nurse under the specific direction of a physician or registered nurse.

(c) A physician assistant or any other person under the specific direction of a physician.

(3m) Hospitals shall establish written procedures to be followed by emergency services personnel in carrying out sub. (3).

(4) No hospital may be expected to provide emergency services beyond its capabilities as identified by the department.

(5) Each hospital providing emergency services shall create a plan for referrals of emergency patients when the hospital cannot provide treatment for such patients.

(6) The department shall identify the emergency services capabilities of all hospitals in this state and shall prepare a list of such services. The list shall be updated annually.

(7) A hospital which violates this section may be fined not more than \$1,000 for each offense.

**History:** 1977 c. 361; 1983 a. 273 s. 8; 1989 a. 102; 1993 a. 105.

**146.31 Blood or tissue transfer services. (1)** It is unlawful to operate a blood bank for commercial profit.

(2) The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes except as provided under s. 146.345, the rendition of a service by every person participating therein and, whether or not any remuneration is paid therefor, not to be a sale of the whole blood, plasma, blood products, blood derivatives or other tissues. No person involved in the procurement, processing, distribution or use of whole blood, plasma, blood products or blood derivatives for the purpose of injecting or transfusing any of them into the human body shall be liable for damages resulting from these activities except for his or her own negligence or willful misconduct.

(3) No hospital, nonprofit tissue bank, physician, nurse or other medical personnel acting under the supervision and direction of a physician involved in the procurement, processing, distribution or use of human tissues such as corneas, bones or organs for the purpose of transplanting any of them into the human body shall be liable for damages resulting from those activities except for negligence or willful misconduct by that hospital, nonprofit tissue bank, physician, nurse or other medical personnel.

**History:** 1975 c. 75, 76; 1987 a. 97.

Sub. (1) is unconstitutional. It violates the commerce clause, Art. I, s. 8, and the supremacy clause, art. VI, of the U.S. Constitution. *State v. Interstate Blood Bank, Inc.* 65 Wis. 2d 482, 222 N.W.2d 912 (1974).

**146.33 Blood donors.** Any person 17 years old or older may donate blood in any voluntary and noncompensatory blood program.

**History:** 1971 c. 228; 1983 a. 21.

**146.34 Donation of bone marrow by a minor. (1)** DEFINITIONS. In this section:

(a) “Bone marrow” means the soft material that fills human bone cavities.

(b) “Bone marrow transplant” means the medical procedure by which transfer of bone marrow is made from the body of a person to the body of another person.

(c) “Donor” means a minor whose bone marrow is transplanted from his or her body to the body of the minor’s brother or sister.

(d) “Guardian” means the person named by the court under ch. 48 or 54 or ch. 880, 2003 stats., having the duty and authority of guardianship.

(e) “Legal custodian” means a person other than a parent or guardian or an agency to whom the legal custody of a minor has been transferred by a court under ch. 48 or 938, but does not include a person who has only physical custody of a minor.

(f) “Parent” means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40 or a parent by adoption. If the minor is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, “parent” includes a person adjudged in a judicial proceeding under ch. 48 to be the biological father of the minor. “Parent” does not include any person whose parental rights have been terminated.

(g) “Physician” means a person licensed to practice medicine and surgery under ch. 448.

(h) “Psychiatrist” means a physician specializing in psychiatry.

(i) “Psychologist” means a person licensed to practice psychology under ch. 455.

(j) “Relative” means a parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(2) PROHIBITION ON DONATION OF BONE MARROW BY A MINOR. Unless the conditions under sub. (3) or (4) have been met, no minor may be a bone marrow donor in this state.

(3) CONSENT TO DONATION OF BONE MARROW BY A MINOR UNDER 12 YEARS OF AGE. If the medical condition of a brother or a sister of a minor who is under 12 years of age requires that the brother or sister receive a bone marrow transplant, the minor is deemed to have given consent to be a donor if all of the following conditions are met:

(a) The physician who will remove the bone marrow from the minor has informed the parent, guardian or legal custodian of the minor of all of the following:

1. The nature of the bone marrow transplant.
2. The benefits and risks to the prospective donor and prospective recipient of performance of the bone marrow transplant.
3. The availability of procedures alternative to performance of a bone marrow transplant.

(b) The physician of the brother or sister of the minor has determined all of the following, has confirmed those determinations through consultation with and under recommendation from a physician other than the physician under par. (a) and has provided the determinations to the parent, guardian or legal custodian under par. (e):

1. That the minor is the most acceptable donor who is available.

2. That no medically preferable alternatives to a bone marrow transplant exist for the brother or sister.

(c) A physician other than a physician under par. (a) or (b) has determined the following and has provided the determinations to the parent, guardian or legal custodian under par. (e):

1. The minor is physically able to withstand removal of bone marrow.

2. The medical risks of removing the bone marrow from the minor and the long-term medical risks for the minor are minimal.

(d) A psychiatrist or psychologist has evaluated the psychological status of the minor, has determined that no significant psychological risks to the minor exist if bone marrow is removed from the minor and has provided that determination to the parent, guardian or legal custodian under par. (e).

(e) The parent, guardian or legal custodian, upon receipt of the information and the determinations under pars. (a) to (d), has given written consent to donation by the minor of the bone marrow.

**(4) CONSENT TO DONATION OF BONE MARROW BY A MINOR 12 YEARS OF AGE OR OVER.** (a) A minor who has attained the age of 12 years may, if the medical condition of a brother or sister of the minor requires that the brother or sister receive a bone marrow transplant, give written consent to be a donor if:

1. A psychiatrist or psychologist has evaluated the intellect and psychological status of the minor and has determined that the minor is capable of consenting.

2. The physician who will remove the bone marrow from the minor has first informed the minor of all of the following:

- a. The nature of the bone marrow transplant.
- b. The benefits and risks to the prospective donor and prospective recipient of performance of the bone marrow transplant.
- c. The availability of procedures alternative to performance of a bone marrow transplant.

(b) If the psychiatrist or psychologist has determined under par. (a) that the minor is incapable of consenting, consent to donation of bone marrow must be obtained under the procedures under sub. (3).

**(5) HEARING ON PROHIBITION OF CONSENT OR PERFORMANCE.** (a) A relative of the prospective donor or the district attorney or corporation counsel of the county of residence of the prospective donor may file a petition with the court assigned to exercise jurisdiction under chs. 48 and 938 for an order to prohibit either of the following:

1. The giving of consent under sub. (3) or (4) to donation of bone marrow.

2. If consent under sub. (3) or (4) has been given, the performance of the bone marrow transplant for which consent to donate bone marrow has been given.

(am) Any party filing a petition for an order to prohibit performance under par. (a) 2. shall file and serve the petition within 3 days after consent has been given under sub. (3) or (4).

(b) Any party filing a petition under par. (a) shall at the same time file with the court a statement of a physician or psychologist who has recently examined the prospective donor and which avers, if made by a physician, to a reasonable degree of medical certainty or, if made by a psychologist, to a reasonable degree of professional certainty, that the removal of bone marrow presents medical or psychological risks to the prospective donor or to the prospective recipient which outweigh all benefits to the prospective donor or to the prospective recipient.

(c) Any party filing a petition under par. (a) and a statement under par. (b) shall, at the time of filing, provide personal service of notice of the filing and a copy of the statement to the parent, guardian or legal custodian of the prospective donor and, if the prospective donor is a minor who has attained 12 years of age, to the minor.

(d) Following the filing of a petition under par. (a) and a statement under par. (b), the judge shall appoint a guardian ad litem under s. 48.235 for the prospective donor.

(e) If a request for hearing is filed by the prospective donor under sub. (4) or by the parent, guardian or legal custodian within 7 days following the personal service of notice under par. (c), the court shall conduct a hearing to determine whether the giving of consent under par. (a) 1. or performance under par. (a) 2. shall be prohibited and providing the prospective donor under sub. (4) and the parent, guardian or legal custodian opportunity to rebut the statement under par. (b).

(f) If no request for hearing is filed by the prospective donor under sub. (4) or by the parent, guardian or legal custodian within the time limit specified under par. (e), the court may do one of the following:

1. Order prohibition of consent under par. (a) 1. or performance under par. (a) 2.

2. On its own motion conduct a hearing to determine whether the giving of consent under par. (a) 1. or performance under par. (a) 2. shall be prohibited.

(g) If the court on its own motion conducts a hearing under par. (f) 2., the court shall provide personal service of notice of the hearing to all parties and may request submission of relevant evidence.

(h) Any person aggrieved by a final judgment or final order of the court under par. (e) or (f) may appeal within the time period specified in s. 808.04 (3) or (4).

**History:** 1985 a. 50; 1995 a. 77; 1997 a. 188; 1999 a. 32, 162; 2001 a. 38; 2005 a. 387; 2005 a. 443 s. 265.

#### **146.343 Donation of newborn umbilical cord blood.**

**(1)** In this section:

- (a) “Hospital” has the meaning given in s. 50.33 (2).
- (b) “Nurse” means a registered nurse who is licensed under s. 441.06 or permitted under s. 441.08.
- (c) “Nurse–midwife” means an individual who is licensed to engage in the practice of nurse–midwifery under s. 441.15 (3) (a).
- (d) “Physician” has the meaning given in s. 448.01 (5).

**(2)** Notwithstanding s. 146.33, the principal prenatal health care provider of a woman who is known to be pregnant shall, before the woman’s 35th week of pregnancy, offer her information on options to donate, to an accepting and accredited cord blood bank, blood bank, blood center, or plasma center, blood extracted from the umbilical cord of her newborn child, if the donation may be made without monetary expense for the collection or storage to the woman, to any 3rd-party payor of health care coverage for the woman, or to the hospital in which delivery occurs.

**(4)** No person may be held civilly liable for failure to comply, or for complying, with sub. (2).

**History:** 2005 a. 56.

#### **146.345 Sale of human organs prohibited. (1)** In this section:

(a) “Human organ” means a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department by rule. “Human organ” does not mean human whole blood, blood plasma, a blood product or a blood derivative or human semen.

(b) “Human organ transplantation” means the medical procedure by which transfer of a human organ is made from the body of a person to the body of another person.

(c) “Valuable consideration” does not include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or an expense of travel, housing or lost wages incurred by a human organ donor in connection with donation of the human organ.

(2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human organ for use in human organ transplantation.

(3) Any person who violates this section is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than \$50,000.

**History:** 1987 a. 97; 1997 a. 283; 2001 a. 109.

**146.35 Female genital mutilation prohibited. (1)** In this section, “infibulate” means to clasp together with buckles or stitches.

(2) Except as provided in sub. (3), no person may circumcise, excise or infibulate the labia majora, labia minora or clitoris of a female minor.

(3) Subsection (2) does not apply if the circumcision, excision or infibulation is performed by a physician, as defined in s. 448.01 (5), and is necessary for the health of the female minor or is necessary to correct an anatomical abnormality.

(4) None of the following may be asserted as a defense to prosecution for a violation of sub. (2):

(a) Consent by the female minor or by a parent of the female minor to the circumcision, excision or infibulation.

(b) The circumcision, excision or infibulation is required as a matter of custom or ritual.

(5) Whoever violates sub. (2) is guilty of a Class H felony.

**History:** 1995 a. 365; 1997 a. 283; 2001 a. 109.

**146.37 Health care services review; civil immunity. (1)** In this section:

(a) “Health care provider” includes an ambulance service provider, as defined in s. 146.50 (1) (c), and an emergency medical technician, as defined in s. 146.50 (1) (e), and a first responder, as defined in s. 146.50 (1) (hm).

(b) “Medical director” has the meaning specified in s. 146.50 (1) (j).

(1g) Except as provided in s. 153.85, no person acting in good faith who participates in the review or evaluation of the services of health care providers or facilities or the charges for such services conducted in connection with any program organized and operated to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities or to determine the reasonable charges for such services, or who participates in the obtaining of health care information under ch. 153, is liable for any civil damages as a result of any act or omission by such person in the course of such review or evaluation. Acts and omissions to which this subsection applies include, but are not limited to, acts or omissions by peer review committees or hospital governing bodies in censuring, reprimanding, limiting or revoking hospital staff privileges or notifying the medical examining board or podiatrists affiliated credentialing board under s. 50.36 or taking any other disciplinary action against a health care provider or facility and acts or omissions by a medical director, as defined in s. 146.50 (1) (j), in reviewing the performance of emergency medical technicians or ambulance service providers.

(1m) The good faith of any person specified in subs. (1g) and (3) shall be presumed in any civil action. Any person who asserts that such a person has not acted in good faith has the burden of proving that assertion by clear and convincing evidence.

(2) In determining whether a member of the reviewing or evaluating organization or the medical director has acted in good faith under sub. (1g), the court shall consider whether the member or medical director has sought to prevent the health care provider or facility and its counsel from examining the documents and records used in the review or evaluation, from presenting witnesses, establishing pertinent facts and circumstances, questioning or refuting testimony and evidence, confronting and cross-examining

adverse witnesses or from receiving a copy of the final report or recommendation of the reviewing organization or medical director.

(3) This section applies to any person acting in good faith who participates in the review or evaluation of the services of a psychiatrist, or facilities or charges for services of a psychiatrist, conducted in connection with any organization, association or program organized or operated to help improve the quality of psychiatric services, avoid improper utilization of psychiatric services or determine reasonable charges for psychiatric services. This immunity includes, but is not limited to, acts such as censuring, reprimanding or taking other disciplinary action against a psychiatrist for unethical or improper conduct.

**History:** 1975 c. 187; 1979 c. 221; 1981 c. 323; 1983 a. 27; 1985 a. 29 s. 3202 (27); 1985 a. 340; 1987 a. 27, 399; 1989 a. 102; 1997 a. 175; 1999 a. 56.

Anyone who has the good faith belief that they are participating in a valid peer review procedure of a health care provider is entitled to the presumption of good faith under sub. (1g) and is immune from liability unless the presumption is overcome. *Limjoco v. Schenck*, 169 Wis. 2d 703, 486 N.W.2d 567 (Ct. App. 1992).

A person reviewing a peer can be found to have acted in bad faith even if procedural rights under sub. (2) were not denied, but whether procedural rights were denied is a factor that must be considered in a determination of “good faith.” *Qasem v. Koza-rek*, 716 F.2d 1172 (1983).

**146.38 Health care services review; confidentiality of information. (1)** In this section:

(a) “Evaluator” means a medical director or a registered nurse who coordinates review of an emergency medical services program of a health care provider.

(b) “Health care provider” includes an ambulance service provider, as defined in s. 146.50 (1) (c), an emergency medical technician, as defined in s. 146.50 (1) (e), and a first responder, as defined in s. 146.50 (1) (hm).

(c) “Medical director” has the meaning specified in s. 146.50 (1) (j).

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

(2) All organizations or evaluators reviewing or evaluating the services of health care providers shall keep a record of their investigations, inquiries, proceedings and conclusions. No such record may be released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3). No such record may be used in any civil action for personal injuries against the health care provider or facility; however, 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. Any person who testifies during or participates in the review or evaluation may testify in any civil action as to matters within his or her knowledge, but may not testify as to information obtained through his or her participation in the review or evaluation, nor as to any conclusion of such review or evaluation.

(3) Information acquired in connection with the review and evaluation of health care services shall be disclosed and records of such review and evaluation shall be released, with the identity of any patient whose treatment is reviewed being withheld unless the patient has granted permission to disclose identity, in the following circumstances:

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

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

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

(d) In a report in statistical form. The report may identify any provider or facility to which the statistics relate;

(dm) With regard to an action under s. 895.441, to a court of record after issuance of a subpoena;

(e) With regard to any criminal matter, to a court of record, in accordance with chs. 885 to 895 and 995 and after issuance of a subpoena; and

(f) To the appropriate examining or licensing board or agency, when the organization or evaluator conducting the review or evaluation determines that such action is advisable.

(4) Any person who discloses information or releases a record in violation of this section, other than through a good faith mistake, is civilly liable therefor to any person harmed by the disclosure or release.

(5) This section does not apply to s. 146.56.

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

The conclusions of a hospital governing body, based on records and conclusions of peer review committees, were not privileged under this section. *Good Samaritan Hospital v. Moroney*, 123 Wis. 2d 89, 365 N.W.2d 887 (Ct. App. 1984).

The methodology for determining privileged records under sub. (2) is outlined. *Franzen v. Children's Hospital*, 169 Wis. 2d 366, 485 N.W.2d 603 (Ct. App. 1992).

The methodology for determining privileged communications under sub. (1m) is discussed. *Mallon v. Campbell*, 178 Wis. 2d 278, 504 N.W.2d 357 (Ct. App. 1993).

Because this section does not provide for the loss of confidentiality due to disclosure to third parties, no waiver exists under this section. *Ollman v. Health Care Liability Ins. Co.* 178 Wis. 2d 648, 505 N.W.2d 399 (Ct. App. 1993).

Statistical data regarding a hospital's rates of infection for postoperative patients qualifies as a report in statistical form under sub. (3) (d) and was subject to discovery. A court need not conduct an in camera inspection to determine if material sought may be released when there is a request for information that on its face is clearly protected by this section. *Braverman v. Columbia Hospital, Inc.* 2001 WI App 106, 244 Wis. 2d 98, 629 N.W.2d 66, 00–0901.

The department of health and family services is a person subject to restrictions under sub. (1m) regarding the release of information. *Braverman v. Columbia Hospital, Inc.* 2001 WI App 106, 244 Wis. 2d 98, 629 N.W.2d 66, 00–0901.

Site reviews by associations to which local hospitals voluntarily submit for review in order to improve the quality of health care services constitutes peer review, the discovery of which is barred by this section. *Hofflander v. St. Catherine's Hospital, Inc.* 2003 WI 77, 262 Wis. 2d 539, 664 N.W.2d 545, 00–2467.

#### 146.40 Instructional programs for nurse's aides; reporting client abuse. (1) In this section:

(ad) "Client" means a person who receives services from an entity.

(ag) "Credential" has the meaning given in s. 440.01 (2) (a).

(am) "Developmentally disabled person" has the meaning specified in s. 55.01 (2).

(as) "Entity" has the meaning given in s. 50.065 (1) (c).

(b) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(bm) "Home health aide" means an individual employed by or under contract with a home health agency to provide home health aide services under the supervision of a registered nurse. "Home health aide" does not mean an individual who is licensed, permitted, certified or registered under ch. 441, 448, 449, 450, 455 or 459.

(bo) "Hospice" means a hospice that is licensed under subch. IV of ch. 50 and that is certified as a provider of services under 42 USC 1395 to 1395ccc.

(bp) "Hospice aide" means an individual employed by or under contract with a hospice to provide hospice aide services under the supervision of a registered nurse. "Hospice aide" does not mean an individual who is licensed, permitted, certified or registered under ch. 441, 448, 449, 450, 455 or 459.

(br) "Hospital" has the meaning specified in s. 50.33 (2).

(bt) "Intermediate care facility for the mentally retarded" has the meaning under 42 USC 1396d (c) and (d).

(c) "Licensed practical nurse" means a nurse who is licensed or has a temporary permit under s. 441.10 or is licensed as a licensed practical/vocational nurse in a party state, as defined in s. 441.50 (2) (j).

(d) "Nurse's assistant" means an individual who performs routine patient care duties delegated by a registered nurse or licensed

practical nurse who supervises the individual, for the direct health care of a patient or resident. "Nurse's assistant" does not mean an individual who is licensed, permitted, certified, or registered under ch. 441, 448, 449, 450, 451, 455, 459, or 460 or an individual whose duties primarily involve skills that are different than those taught in instructional and competency evaluation programs for nurse's assistants certified under sub. (3) or evaluated by competency evaluation programs for nurse's assistants approved under sub. (3m).

(e) "Nursing home" has the meaning specified in s. 50.01 (3).

(f) "Registered nurse" means a nurse who has a certificate of registration under s. 441.06 or a temporary permit under s. 441.08 or who is licensed as a registered nurse in a party state, as defined in s. 441.50 (2) (j).

(g) "Student nurse" means an individual who is currently enrolled in a school for professional nurses or a school for licensed practical nurses that meets standards established under s. 441.01 (4), or who has successfully completed the course work of a basic nursing course of the school but has not successfully completed the examination under s. 441.05 or 441.10 (2).

(2) A hospital, nursing home or intermediate care facility for the mentally retarded may not employ or contract for the services of an individual as a nurse's assistant, a home health agency may not employ or contract for the services of an individual as a home health aide and a hospice may not employ or contract for the services of an individual as a hospice aide, regardless of the title under which the individual is employed, unless one of the following is true:

(a) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, except as provided in par. (g), and intermediate care facilities for the mentally retarded that are certified providers of medical assistance, the individual has successfully completed instruction in an instructional and competency evaluation program for nurse's assistants, home health aides or hospice aides that is certified by the department under sub. (3).

(am) For hospitals, nursing homes, home health agencies, hospices and intermediate care facilities for the mentally retarded, if the individual was employed or under contract as a nurse's assistant, home health aide or hospice aide between October 1, 1985, and October 1, 1990, and if par. (b) or (c) does not apply, after the individual successfully completes, by December 31, 1991, a competency evaluation program that is approved by the department under sub. (3m).

(b) For hospitals, nursing homes or home health agencies and intermediate care facilities for the mentally retarded, the individual has been employed or under contract as a nurse's assistant or as a home health aide for at least 12 months on or prior to October 1, 1990, and, for hospices, the individual has been employed or under contract as a hospice aide for at least 12 months on or prior to August 15, 1991.

(bm) For nursing homes that are certified providers of medical assistance, the individual has been employed or under contract as a nurse's assistant for one or more such nursing homes of the same employer in this state for at least 24 consecutive months before December 19, 1989.

(c) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for the mentally retarded that are certified providers of medical assistance, the individual is employed or under contract as a nurse's assistant, home health aide or hospice aide fewer than 120 calendar days by the hospital, nursing home, home health agency, hospice or intermediate care facility for the mentally retarded.

(d) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for the mentally retarded that are certified providers of medical assistance, the individual has successfully completed instruction in an instructional and compe-

tency evaluation program or has successfully completed a competency evaluation program for nurse's assistants, for home health aides or for hospice aides that is certified in another state that meets criteria for acceptance in this state as specified by the department by rule, or the individual is certified as a nurse's assistant, home health aide or hospice aide in another state that meets criteria for acceptance in this state as specified by the department by rule, except that after December 31, 1991, par. (a) applies.

(e) For hospitals, home health agencies or hospices, whether or not certified providers of medical assistance, nursing homes that are not certified providers of medical assistance and intermediate care facilities for the mentally retarded that are certified providers of medical assistance, the individual is a student nurse who has successfully completed a basic nursing course from a school that is on the accredited list of schools specified under s. 441.01 (4) or who successfully completes a competency evaluation program for nurse's assistants, home health aides or hospice aides that is approved by the department under sub. (3m).

(em) For nursing homes that are certified providers of medical assistance, the individual is a student nurse who successfully completes a competency evaluation program for nurse's assistants that is approved by the department under sub. (3m).

(f) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for the mentally retarded that are certified providers of medical assistance, the individual has successfully completed, prior to October 1, 1990, an instructional and competency evaluation program that is substantially the same as an instructional and competency evaluation program certified by the department under sub. (3) and that the department determines generally meets the standards for certification promulgated under sub. (3).

(g) For nursing homes that are certified providers of medical assistance, the individual, if he or she has performed no nursing-related service for monetary compensation for 24 consecutive months after having satisfied the requirement under par. (a), again successfully completes instruction in an instructional and competency evaluation program for nurse's assistants that is certified by the department under sub. (3) or a competency evaluation program for nurse's assistants that is approved by the department under sub. (3m).

(3) Except as provided in sub. (4d), the department shall certify instructional and competency evaluation programs for nurse's assistants, for home health aides and for hospice aides that apply for certification and satisfy standards for certification promulgated by rule by the department. The department shall review the curriculum of each certified instructional and competency evaluation program at least once every 36 months following the date of certification to determine whether the program satisfies the standards for certification. Under this subsection, the department may, after providing notice, suspend or revoke the certification of an instructional and competency evaluation program or impose a plan of correction on the program if the program does not satisfy the standards for certification or operates under conditions that are other than those contained in the application approved by the department.

(3m) The department shall review competency evaluation programs for nurse's assistants, for home health aides and for hospice aides and, except as provided in sub. (4d), may approve those competency evaluation programs that satisfy standards for approval that are specified in rules of the department. Under this subsection, the department may, after providing notice, suspend or revoke approval of a competency evaluation program or impose a plan of correction if the competency evaluation program fails to satisfy the standards or operates under conditions that are other than those contained in the application approved by the department.

(4) An instructional and competency evaluation program certified under sub. (3) or a competency evaluation program approved under sub. (3m) shall notify the department, on a form

provided by the department, within 30 days after an individual has successfully completed the program.

(4d) (a) Except as provided in par. (am), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing a certification under sub. (3) or an approval under sub. (3m).

(am) If an individual who applies for a certification or approval under par. (a) does not have a social security number, the individual, as a condition of obtaining certification or approval, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A certification or approval issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department may not disclose any information received under par. (a) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(c) Except as provided in par. (am), the department shall deny an application for the issuance of a certification or approval specified in par. (a) if the applicant does not provide the information specified in par. (a).

(d) The department shall deny an application for the issuance of a certification or approval specified in par. (a) or shall revoke a certification or approval if the department of revenue certifies under s. 73.0301 that the applicant for or holder of a certification or approval is liable for delinquent taxes.

(e) An action taken under par. (c) or (d) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

(4g) (a) The department shall establish and maintain a registry that contains all of the following:

1. A listing of all individuals about whom the department is notified under sub. (4).

2. A listing of all individuals about whom the department is notified under sub. (4r) (a) or (am), for whom the department makes findings under sub. (4r) (b) and to whom any of the following applies:

a. The individual waives a hearing or fails to notify the department under sub. (4r) (c).

b. A hearing officer finds reasonable cause to believe that the individual performed an action alleged under sub. (4r) (a) or (am).

3. Findings of the department under sub. (4r) (b) or of the hearing officer under sub. (4r) (d) concerning the misappropriation of property or the neglect or abuse of a client by an individual listed under subd. 2.

4. A brief statement, if any, of an individual about whom the department is notified under sub. (4) and who disputes the department's findings under sub. (4r) (b) or the hearing officer's findings under sub. (4r) (d).

(b) The department shall provide, upon receipt of a specific, written request, information requested that is contained in the registry under par. (a).

(c) Section 46.90 does not apply to this subsection.

(4m) An instructional and competency evaluation program under sub. (3) for which the department has suspended or revoked certification or imposed a plan of correction or a competency evaluation program under sub. (3m) for which the department has suspended or revoked approval or imposed a plan of correction may contest the department's action by sending, within 10 days after receipt of notice of the contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days

after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent. This subsection does not apply to a revocation of certification under sub. (4d) (d).

**(4r)** (a) Any individual may report to the department that he or she believes that any person employed by or under contract with an entity has neglected or abused a client or misappropriated the client's property.

(am) 1. Except as provided in subd. 2., an entity shall report to the department any allegation of misappropriation of the property of a client or of neglect or abuse of a client by any person employed by or under contract with the entity if the person is under the control of the entity.

2. An entity shall report to the department of regulation and licensing any allegation of misappropriation of the property of a client or of neglect or abuse of a client by any person employed by or under contract with the entity if that person holds a credential that is related to the person's employment at, or contract with, the entity if the person is under the control of the entity.

3. An entity that intentionally fails to report an allegation of misappropriation of the property of a client or of neglect or abuse of a client may be required to forfeit not more than \$1,000 and may be subject to other sanctions specified by the department by rule.

(b) Except as provided in pars. (em) and (er), the department shall review and investigate any report received under par. (a) or (am) and, if the allegation is substantiated, make specific, documented findings concerning the misappropriation of property or the neglect or abuse. The department shall in writing by certified mail notify the person specified in the report that the person's name and the department's findings about the person shall be listed in the registry under sub. (4g) (a) 2. and 3. unless the person contests the listings in a hearing before the division of hearings and appeals created under s. 15.103 (1). The written notification shall describe the investigation conducted by the department, enumerate the findings alleging misappropriation of property or neglect or abuse of a client and explain the consequence to the person specified in the report of waiving a hearing to contest the findings. The person specified in the report shall have 30 days after receipt of the notification to indicate to the department in writing whether he or she intends to contest the listing or to waive the hearing.

(c) If the nurse's assistant or home health aide under par. (b) notifies the department that he or she waives a hearing to contest the listings in the registry under par. (b), or fails to notify the department within 30 days after receipt of a notice under par. (b), the department shall enter the name of the individual under sub. (4g) (a) 2. and the department's findings about the individual under sub. (4g) (a) 3.

(d) If the person specified in the report received under par. (a) or (am) timely notifies the division of hearings and appeals created under s. 15.103 (1) that he or she contests the listings in the registry under par. (b), the division of hearings and appeals shall hold a hearing under the requirements of ch. 227. If after presentation of evidence a hearing officer finds that there is no reasonable cause to believe that the person specified in the report received under par. (a) or (am) performed an action alleged under par. (a) or (am), the hearing officer shall dismiss the proceeding. If after presentation of evidence a hearing officer finds that there is reasonable cause to believe that the person specified in the report received under par. (a) or (am) performed an action alleged under par. (a) or (am), the hearing officer shall so find and shall cause the name of the person specified in the report received under par. (a) or (am) to be entered under sub. (4g) (a) 2. and the hearing officer's findings about the person specified in the report received under par. (a) or (am) to be entered under sub. (4g) (a) 3.

(e) The nurse's assistant or home health aide may provide the department with a brief statement disputing the department's findings under par. (b) or the hearing officer's findings under par. (d) and, if so provided, the department shall enter the statement under sub. (4g) (a) 4.

(em) If the department of health and family services receives a report under par. (a) or (am) and determines that a person who is the subject of the report holds a credential that is related to the person's employment at, or contract with, the entity, the department of health and family services shall refer the report to the department of regulation and licensing.

(er) The department may contract with private field investigators to conduct investigations of reports received by the department under par. (a) or (am).

(f) Section 46.90 does not apply to this subsection.

**(5)** (a) The department, in consultation with the technical college system board, shall promulgate rules specifying standards for certification in this state of instructional and competency evaluation programs for nurse's assistants, home health aides and hospice aides. The standards shall include specialized training in providing care to individuals with special needs.

(b) The department shall promulgate rules specifying criteria for acceptance by this state of an instructional and competency evaluation program or a competency evaluation program that is certified in another state, including whether the other state grants nurse's assistant privileges, home health aide privileges or hospice aide privileges to persons who have completed instruction in an instructional and competency evaluation program that is certified under sub. (3) and whether one of the following is true:

1. If the other state certifies instructional and competency evaluation programs for nurse's assistants, home health aides or hospice aides, the state's requirements are substantially similar, as determined by the department, to certification requirements in this state.

2. If the other state certifies nurse's assistants, home health aides or hospice aides, that state's requirements are such that one of the following applies:

a. The instructional and competency evaluation programs required for attendance by persons receiving certificates are substantially similar, as determined by the department, to instructional and competency evaluation programs certified under sub. (3).

b. The competency evaluation programs required for successful completion by persons receiving certificates are substantially similar, as determined by the department, to competency evaluation programs approved under sub. (3m).

**(6)** Any person who violates sub. (2) shall forfeit not more than \$1,000.

**(7)** This section does not apply to a hospice that receives no federal or state moneys for any purpose.

**History:** 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74.

**Cross Reference:** See also chs. HFS 13 and 129, Wis. adm. code.

Sub. (4r) provides for a hearing examiner to make a determination of abuse. That determination is the final agency determination. *Kennedy v. DHSS*, 199 Wis. 2d 442, 544 N.W.2d 917 (Ct. App. 1996), 95–1072.

#### **146.50 Emergency medical services personnel; licensure; certification; training. (1) DEFINITIONS.** In this section:

(ag) "Act of terrorism" means a felony under ch. 939 to 951 that is committed with intent to terrorize and is committed under any of the following circumstances:

1. The person committing the felony causes bodily harm, great bodily harm, or death to another.

2. The person committing the felony causes damage to the property of another and the total property damaged is reduced in value by \$25,000 or more. For purposes of this subdivision, prop-



erty is reduced in value by the amount that it would cost either to repair or replace it, whichever is less.

3. The person committing the felony uses force or violence or the threat of force or violence.

(am) “Ambulance” means an emergency vehicle, including any motor vehicle, boat or aircraft, whether privately or publicly owned, which is designed, constructed or equipped to transport sick, disabled or injured individuals.

(c) “Ambulance service provider” means a person engaged in the business of transporting sick, disabled or injured individuals by ambulance to or from facilities or institutions providing health services.

(cr) “Automated external defibrillator” means a defibrillator device to which all of the following apply:

1. It is approved for commercial distribution by the federal food and drug administration.

2. It is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining without intervention by the user of the device whether defibrillation should be performed.

3. After having determined that defibrillation should be performed, it is capable, either at the command of an operator or without intervention by an operator, of delivering an electrical shock to an individual.

(d) “Basic life support” means emergency medical care that is rendered to a sick, disabled or injured individual, based on signs, symptoms or complaints, prior to the individual’s hospitalization or while transporting the individual between health care facilities and that is limited to use of the knowledge, skills and techniques received from training required for licensure as an emergency medical technician – basic, or for certification as a first responder.

(dm) “Defibrillation” means administering an electrical impulse to an individual’s heart in order to stop ventricular fibrillation or rapid ventricular tachycardia.

(e) “Emergency medical technician” means an emergency medical technician – basic, an emergency medical technician – intermediate or an emergency medical technician – paramedic.

(f) “Emergency medical technician – basic” means an individual who is licensed by the department to administer basic life support and to properly handle and transport sick, disabled or injured individuals.

(g) “Emergency medical technician – intermediate” means an individual who is licensed by the department as an emergency medical technician – intermediate under sub. (5).

(h) “Emergency medical technician – paramedic” means an individual who is specially trained in emergency cardiac, trauma and other lifesaving or emergency procedures in a training program or course of instruction prescribed by the department and who is examined and licensed as an emergency medical technician – paramedic under sub. (5).

(hm) “First responder” means an individual who is certified by the department as a first responder under sub. (8).

(hr) “Governmental unit” means the United States; the state; any county, city, village, or town; or any political subdivision, department, division, board, or agency of the United States, the state, or any county, city, village, or town.

(i) “Indian tribe” means a federally recognized American Indian tribe or band in this state.

(ig) “Intent to terrorize” means intent to influence the policy of a governmental unit by intimidation or coercion, to punish a governmental unit for a prior policy decision, to affect the conduct of a governmental unit by homicide or kidnapping, or to intimidate or coerce a civilian population.

(im) “Manual defibrillator” means a heart monitor and defibrillator that:

1. Is operated only after an operator has first analyzed and recognized an individual’s cardiac rhythm;

2. Charges and delivers, only at the command of the operator, an electrical impulse to an individual’s heart; and

3. In the case of a defibrillator that may be operated as a manual defibrillator or as an automated external defibrillator, is set to operate as a manual defibrillator.

(j) “Medical director” means a physician who trains, medically coordinates, directs, supervises, establishes standard operating procedures for, and designates physicians for direction and supervision of, emergency medical technicians and who reviews the performance of emergency medical technicians and ambulance service providers.

(k) “Nonprofit corporation” means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(L) “Person” includes an individual, firm, partnership, association, corporation, trust, foundation, company, public agency or a group of individuals, however named, concerned with the operation of an ambulance.

(m) “Physician” has the meaning specified in s. 448.01 (5).

(n) “Public agency” means this state, a county, city, village or town; an agency of this state or of a county, city, village or town; or an Indian tribe.

(p) “Ventricular fibrillation” means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular and ineffective twitching of the ventricles of the heart.

**(2) LICENSE OR CERTIFICATE REQUIRED.** No person may act as or advertise for the provision of services as an ambulance service provider unless the person holds an ambulance service provider license issued under this section. No individual may act as or advertise for the provision of services as an emergency medical technician unless he or she holds an emergency medical technician license or training permit issued under sub. (5). No individual may act as or advertise for the provision of services as a first responder unless he or she holds a first responder certificate issued under sub. (8).

**(3) EXCEPTION TO TREATMENT.** This section and the rules promulgated under this section may not be construed to authorize the provision of services or treatment to any individual who objects for reasons of religion to the treatment or services, but may be construed to authorize the transportation of such an individual to a facility of the individual’s choice within the jurisdiction of the emergency medical service.

**(4) AMBULANCE STAFFING; LIMITATIONS; RULES.** (a) If a sick, disabled or injured individual is transported by ambulance, the following other individuals shall be present in the ambulance:

1. Any 2 emergency medical technicians, licensed registered nurses, licensed physician assistants or physicians, or any combination thereof; or

2. One emergency medical technician plus one individual with a training permit issued under sub. (5) (b).

(b) An ambulance driver who is not an emergency medical technician may assist with the handling and movement of a sick, injured or disabled individual if an emergency medical technician, registered nurse, physician assistant or physician directly supervises the driver. No ambulance driver may administer care procedures that an emergency medical technician is authorized to administer unless he or she is an emergency medical technician.

(c) Notwithstanding par. (a), the department may promulgate rules that establish standards for staffing of ambulances in which the primary services provided are those which an emergency medical technician – intermediate is authorized to provide or those which an emergency medical technician – paramedic is authorized to provide.

**(5) LICENSING OF AMBULANCE SERVICE PROVIDERS AND EMERGENCY MEDICAL TECHNICIANS; TRAINING PERMITS.** (a) Except as provided in ss. 146.51 and 146.52, the department shall license qualified applicants as ambulance service providers or emergency medical technicians. The department shall, from the information

on the certification form specified under sub. (6) (c) 2., establish in each ambulance service provider's biennial license the primary service or contract area of the ambulance service provider.

(b) The department shall promulgate rules establishing a system and qualifications for issuance of training permits, except as provided in ss. 146.51 and 146.52, and specifying the period for which an individual may hold a training permit.

(c) A training permit application shall be signed by an ambulance service provider.

(d) An individual who holds a training permit issued under par. (b) may do the following:

1. If issued an emergency medical technician – basic training permit, he or she may perform the actions authorized under rules promulgated by the department for an emergency medical technician – basic, but only if an emergency medical technician directly supervises him or her.

2. If issued an emergency medical technician – intermediate training permit, he or she may perform the actions authorized under rules promulgated by the department for an emergency medical technician – intermediate, but only if a medical director or training instructor is present and giving direction.

3. If issued an emergency medical technician – paramedic training permit, he or she may perform the actions authorized under rules promulgated by the department for an emergency medical technician – paramedic, but only if a medical director or training instructor is present and giving direction.

(e) A license or training permit issued under this subsection is nontransferable and is valid for the balance of the license or training permit period or until surrendered for cancellation or suspended or revoked for violation of this section or of any other statutes or rules relating to ambulance service providers or emergency medical technicians.

(f) The department may charge a reasonable fee for a license or training permit issued under this subsection, except that no fee may be charged to an individual who is an employee of a public agency and who works for volunteer or paid-on-call ambulance service providers and who is an applicant for a license as an emergency medical technician – basic or for a training permit.

(g) Except as provided in ss. 146.51 and 146.52, an emergency medical technician license shall be issued to the individual licensed, and the department may not impose a requirement that an individual be affiliated with an ambulance service provider in order to receive an emergency medical technician license or to have an emergency medical technician license renewed.

**(6) QUALIFICATIONS FOR LICENSURE.** (a) Except as provided in ss. 146.51 and 146.52, to be eligible for an initial license as an emergency medical technician, an individual shall:

1. Be 18 years of age or older; be capable of performing the actions authorized in rules promulgated under sub. (13) (c) for an emergency medical technician – basic, an emergency medical technician – intermediate or an emergency medical technician – paramedic, for which licensure is sought; and, subject to ss. 111.321, 111.322 and 111.335, not have an arrest or conviction record.

2. Have satisfactorily completed a course of instruction and training, including training for response to acts of terrorism, prescribed by the department or have presented evidence satisfactory to the department of sufficient education and training in the field of emergency care.

3. Have passed an examination approved by the department.

4. Have such additional qualifications as may be required by the department.

(b) 1. Except as provided in ss. 146.51 and 146.52, to be eligible for a renewal of a license as an emergency medical technician, the licensee shall, in addition to meeting the requirements of par. (a) 1., complete the training, education or examination requirements specified in rules promulgated under subd. 2.

2. The department, in conjunction with the technical college system board, shall promulgate rules specifying training, education, or examination requirements, including requirements for training for response to acts of terrorism, for license renewals for emergency medical technicians.

(c) Except as provided in ss. 146.51 and 146.52, to be eligible for a license as an ambulance service provider, an individual shall be 18 years of age or older and have such additional qualifications as may be established in rules promulgated by the department, except that no ambulance service provider may be required to take training or an examination or receive education to qualify for licensure or for renewal of licensure. An ambulance service provider shall, as a condition of licensure, provide medical malpractice insurance sufficient to protect all emergency medical technicians who perform for compensation as employees of the ambulance service provider. For renewal of a biennial license as an ambulance service provider, an applicant shall also provide all of the following:

1. A financial report, on a form developed and provided by the department, of all expenditures made in the 2 previous fiscal years from all funds provided to the ambulance service provider under s. 146.55 (4).

2. Certification, on a form developed and provided by the department, signed by a representative of the ambulance service provider and the clerk of each county, city, town or village served by the ambulance service provider, of the population and boundaries of the ambulance service provider's primary service or contract area in that county, city, town or village.

**(6g) CERTIFICATION FOR PERFORMANCE OF DEFIBRILLATION.** (a) Except as provided in ss. 146.51 and 146.52, the department shall certify qualified applicants for the performance of defibrillation, under certification standards that the department shall promulgate as rules.

(b) A certificate issued under this subsection shall specify whether the holder of the certificate is authorized to perform defibrillation by use of any of the following:

2m. An automated external defibrillator.

3. A manual defibrillator.

**(6n) AUTHORIZED ACTIONS OF EMERGENCY MEDICAL TECHNICIANS.** An emergency medical technician may undertake only those actions that are authorized in rules promulgated under sub. (13) (c).

**(7) LICENSING IN OTHER JURISDICTIONS.** Except as provided in ss. 146.51 and 146.52, the department may issue a license as an emergency medical technician, without examination, to any individual who holds a current license or certificate as an emergency medical technician from another jurisdiction if the department finds that the standards for licensing or issuing certificates in the other jurisdiction are at least substantially equivalent to those in this state, and that the applicant is otherwise qualified.

**(8) CERTIFICATION OF FIRST RESPONDERS.** (a) Except as provided in ss. 146.51 and 146.52, the department shall certify qualified applicants as first responders.

(b) To be eligible for initial certification as a first responder, except as provided in ss. 146.51 and 146.52, an individual shall meet all of the following requirements:

1. The individual is 18 years of age or older and capable of performing the actions authorized under par. (e), or in rules promulgated under par. (e), for a first responder.

2. Subject to ss. 111.321, 111.322 and 111.335, the individual does not have an arrest or conviction record.

3. The individual satisfactorily completes a first responder course that meets or exceeds the guidelines issued by the National Highway Traffic Safety Administration under 23 CFR 1205.3 (a) (5), that includes training for response to acts of terrorism, and that is approved by the department.

(c) To be eligible for a renewal of a certificate as a first responder, except as provided in ss. 146.51 and 146.52, the holder of the certificate shall satisfactorily complete a first responder refresher course that meets or exceeds the guidelines issued by the National Highway Traffic Safety Administration under 23 CFR 1205.3 (a) (5), that includes training for response to acts of terrorism, and that is approved by the department.

(d) The department may not charge a fee for a certificate initially issued or renewed under this subsection.

(e) A certified first responder is authorized to use an automated external defibrillator, as prescribed for first responders in rules promulgated by the department. The rules shall set forth authorization for the use of an automated external defibrillator or, for a defibrillator that may be operated in more than one mode, use as an automated external defibrillator only. A certified first responder is also authorized to employ other techniques, including the administration of nonvisualized advanced airways, and the administration of medications that are specified by the department by rule. In promulgating the rules under this paragraph, the department shall consult with the state medical director for emergency medical services and the emergency medical services board. The rule shall include those techniques that are specified in the most current guidelines issued by the National Highway Traffic Safety Administration under 23 CFR 1205.3 (a) (5).

(f) Except as provided in ss. 146.51 and 146.52, the department may issue a certificate as a first responder, without requiring satisfactory completion of any instruction or training that may be required under par. (b), to any individual who holds a current license or certificate as a first responder from another jurisdiction if the department finds that the standards for licensing or issuing certificates in the other jurisdiction are at least substantially equivalent to the standards for issuance of certificates for first responders in this state, and that the applicant is otherwise qualified.

(g) The department may not impose a requirement that an individual be affiliated with an ambulance service provider in order to receive a first responder certificate.

**(8m) QUALIFICATIONS FOR MEDICAL DIRECTORS.** The department shall promulgate rules that set forth qualifications for medical directors. Beginning on July 1, 1995, no ambulance service provider that offers services beyond basic life support services may employ, contract with or use the services of a physician to act as a medical director unless the physician is qualified under this subsection.

**(9) TRAINING.** The department may arrange for or approve courses of or instructional programs in or outside this state to meet the education and training requirements of this section, including training required for license or certificate renewal. If the department determines that an area or community need exists, the courses shall be offered at technical colleges in the area or community. Initial priority shall be given to the training of emergency medical technicians – basic serving the rural areas of the state. If an emergency medical technician – basic completes a course approved by the department on treatment of anaphylactic shock, the emergency medical technician – basic acts within the scope of the license if he or she performs injections or other treatment for anaphylactic shock under the direction of a physician.

**(10) LICENSE RENEWAL.** Every holder of a license issued under sub. (5) or (7) shall renew the license on July 1 of each even-numbered year by applying to the department on forms provided by the department. Upon receipt of an application for renewal containing documentation acceptable to the department that the requirements of sub. (6) have been met, the department shall renew the license unless the department finds that the applicant has acted in a manner or under circumstances constituting grounds for suspension or revocation of the license.

**(11) UNLICENSED OR UNCERTIFIED OPERATION.** Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in all proceed-

ings, institute an action in the name of the state against any person for any of the following:

(a) To restrain or prevent action as an ambulance service provider by a person in violation of sub. (2).

(b) To restrain or prevent action by an ambulance service provider in violation of this section or a rule promulgated under this section.

(c) To restrain or prevent action as an emergency medical technician by an individual in violation of sub. (2).

(d) To restrain or prevent action by an emergency medical technician in violation of this section or a rule promulgated under this section.

(e) To restrain or prevent the establishment, management or operation of an ambulance service, as defined in s. 146.55 (1) (a), in violation of sub. (4).

(f) To restrain or prevent action by a first responder in violation of this section or a rule promulgated under this section.

**(12) CONFIDENTIALITY OF RECORDS.** (a) All records made by an ambulance service provider, an emergency medical technician or a first responder in administering emergency care procedures to and handling and transporting sick, disabled or injured individuals shall be maintained as confidential patient health care records subject to ss. 146.81 to 146.84 and, if applicable, s. 252.15 (5) (a) (intro.), (6), (8) and (9). For the purposes of this paragraph, an ambulance service provider, an emergency medical technician or a first responder shall be considered to be a health care provider under s. 146.81 (1). Nothing in this paragraph permits disclosure to an ambulance service provider, an emergency medical technician or a first responder under s. 252.15 (5) (a), except under s. 252.15 (5) (a) 11.

(b) Notwithstanding par. (a), an ambulance service provider, who is an authority, as defined in s. 19.32 (1), may make available, to any requester, information contained on a record of an ambulance run which identifies the ambulance service provider and emergency medical technicians involved; date of the call; dispatch and response times of the ambulance; reason for the dispatch; location to which the ambulance was dispatched; destination, if any, to which the patient was transported by ambulance; and name, age and gender of the patient. No information disclosed under this paragraph may contain details of the medical history, condition or emergency treatment of any patient.

**(13) RULES.** (a) The department may promulgate rules necessary for administration of this section.

(b) The department shall promulgate rules under subs. (8) (b), (c) and (e) and (8m).

(c) The department shall promulgate rules that specify actions that emergency medical technicians may undertake after December 31, 1995, including rules that specify the required involvement of physicians in actions undertaken by emergency medical technicians.

**History:** 1973 c. 321; 1975 c. 39 ss. 645 to 647d, 732 (2); 1975 c. 224; 1977 c. 29, 167; 1979 c. 321; 1981 c. 73, 380; 1981 c. 391 s. 211; 1983 a. 189; 1985 a. 120, 135; 1987 a. 70, 399; 1989 a. 31; 1989 a. 102 ss. 20, 21, 36 to 59; 1991 a. 39, 238; 1993 a. 27, 29, 105, 183, 251, 399; 1997 a. 79, 191, 237; 1999 a. 7, 56; 2001 a. 109; 2005 a. 25, 486.

**Cross Reference:** See also chs. HFS 110, 111, 112, and 113, Wis. adm. code. Malpractice liability of state officers and employees is discussed. 67 Atty. Gen. 145.

Under present law, ambulance records relating to medical history, condition, or treatment are confidential while other ambulance call records are subject to disclosure under the public records law. 78 Atty. Gen. 71.

**146.51 Denial, nonrenewal and suspension of license, training permit or certification based on certain delinquency in payment.** (1) Except as provided in sub. (1m), the department shall require each applicant to provide the department with the applicant's social security number, if the applicant is an individual, as a condition of issuing or renewing any of the following:

(a) A license under s. 146.50 (5) (a).

(b) A training permit under s. 146.50 (5) (b).

(c) A certification under s. 146.50 (6g) (a) or (8) (a).

**(1m)** If an individual who applies for or to renew a license, training permit or certification under sub. (1) does not have a social security number, the individual, as a condition of obtaining the license, training permit or certification, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license, training permit or certification issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

**(2)** The department of health and family services may not disclose any information received under sub. (1) to any person except to the department of workforce development for the purpose of making certifications required under s. 49.857.

**(3)** The department of health and family services shall deny an application for the issuance or renewal of a license, training permit or certification specified in sub. (1), shall suspend a license, training permit or certification specified in sub. (1) or may, under a memorandum of understanding under s. 49.857 (2), restrict a license, training permit or certification specified in sub. (1) if the department of workforce development certifies under s. 49.857 that the applicant for or holder of the license, training permit or certification is delinquent in the payment of court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

**History:** 1997 a. 191; 1999 a. 9.

#### 146.52 Denial, nonrenewal and revocation of license, certification or permit based on tax delinquency.

**(1)** Except as provided in sub. (1m), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing or renewing any of the following:

- (a) A license under s. 146.50 (5) (a) or (7).
- (b) A training permit under s. 146.50 (5) (b).
- (c) A certificate under s. 146.50 (6g) (a) or (8) (a) or (f).

**(1m)** If an individual who applies for or to renew a license, training permit or certificate under sub. (1) does not have a social security number, the individual, as a condition of obtaining the license, training permit or certificate, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A license, training permit or certificate issued or renewed in reliance upon a false statement submitted under this subsection is invalid.

**(2)** The department may not disclose any information received under sub. (1) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

**(3)** Except as provided in sub. (1m), the department shall deny an application for the issuance or renewal of a license, certificate or permit specified in sub. (1) if the applicant does not provide the information specified in sub. (1).

**(4)** The department shall deny an application for the issuance or renewal of a license, certificate or permit specified in sub. (1) or shall revoke a license, certificate or permit specified in sub. (1), if the department of revenue certifies under s. 73.0301 that the applicant for or holder of the license, certificate or permit is liable for delinquent taxes.

**(5)** An action taken under sub. (3) or (4) is subject to review only as provided under s. 73.0301 (2) (b) and (5).

**History:** 1997 a. 237; 1999 a. 9.

#### 146.53 State emergency medical services activities.

**(1)** DEFINITIONS. In this section:

(a) "Ambulance service provider" has the meaning given in s. 146.50 (1) (c).

(b) "Board" means the emergency medical services board.

(c) "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

(d) "First responder" means a person who, as a condition of employment or as a member of an organization that provides emergency medical care before hospitalization, provides emergency medical care to a sick, disabled or injured individual before the arrival of an ambulance, but who does not provide transportation for a patient.

(e) "Medical director" has the meaning given in s. 146.50 (1) (j).

(f) "Physician" has the meaning given in s. 448.01 (5).

**(2)** STATE EMERGENCY MEDICAL SERVICES PLAN. (a) By December 31, 1995, the department shall prepare a state emergency medical services plan. The plan shall include an identification of priorities for changes in the state emergency medical services system for the 2 years following preparation of the plan. In preparing the plan, the department shall review all statutes and rules that relate to emergency medical services and recommend in the plan any changes in those statutes and rules that the department considers appropriate. After initial preparation of the plan, the department shall keep the plan current and shall reorder priorities for changes in the state emergency medical services system, based on determinations of the board.

(b) Biennially, prior to final adoption of the state emergency medical services plan, the department shall hold at least one public hearing on a draft of the plan.

(c) The department shall provide a copy of the state emergency medical services plan biennially to the legislature under s. 13.172 (2).

**(3)** QUALIFICATIONS OF STATE SUPERVISOR. The board shall recommend to the department the qualifications of any individual who may be hired on or after April 23, 1994, to supervise the subunit of the department that is primarily responsible for regulation of emergency medical services.

**(4)** DEPARTMENTAL RULES; CONSULTATION. The department shall consult with the board before promulgating a proposed rule that relates to funding of emergency medical services programs under s. 146.55 or to regulation of emergency medical services.

**(5)** DEPARTMENTAL DUTIES. The department shall:

(a) Serve as the lead state agency for emergency medical services.

(b) Implement measures to achieve objectives that are set forth in the state emergency medical services plan under sub. (2).

(c) Provide quality assurance in the emergency medical services system, including collecting and analyzing data relating to local and regional emergency medical services systems, ambulance service providers, first responders and emergency medical technicians.

(d) Provide technical assistance to ambulance service providers, first responders and emergency medical technicians in developing plans, expanding services and complying with applicable statutes and rules.

(e) Set standards for all organizations that offer training to first responders and emergency medical technicians on what topics should be included in initial training and continuing training.

(f) Facilitate integration of ambulance service providers and hospitals in the same geographic area.

(g) Review recommendations of the board. The department may promulgate any rule changes necessary to implement those recommendations and may pursue any statutory changes necessary to implement those recommendations.

(h) Investigate complaints received regarding ambulance service providers, first responders, emergency medical technicians and medical directors and take appropriate actions after first consulting with the board and the state medical director for emergency medical services.

(i) Provide advice to the adjutant general of the department of military affairs on the emergency medical aspects of the state plan of emergency management under s. 166.03 (2) (a) 1. and coordinate emergency activities with the department of military affairs.

(j) Consult at least annually with the technical college system board and the department of transportation on issues that affect ambulance service providers, first responders and emergency medical technicians.

(k) Promulgate rules that set forth the authority and duties of medical directors and the state medical director for emergency medical services.

**History:** 1993 a. 251, 491; 1995 a. 247.

### 146.55 Emergency medical services programs.

#### (1) DEFINITIONS. In this section:

(a) “Ambulance service” means the business of transporting sick, disabled, or injured individuals by ambulance, as defined in s. 146.50 (1) (am), to or from facilities or institutions providing health services.

(b) “Ambulance service provider” has the meaning given in s. 146.50 (1) (c).

(d) “Emergency medical technician” has the meaning given in s. 146.50 (1) (e).

(e) “Emergency medical technician – paramedic” has the meaning given in s. 146.50 (1) (h).

(f) “Nonprofit corporation” means a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(g) “Public agency” has the meaning given in s. 146.50 (1) (n).

(2) EMERGENCY MEDICAL SERVICES PROGRAMS. (a) Any county, city, town, village, hospital or combination thereof may, after submission of a plan approved by the department, conduct an emergency medical services program using emergency medical technicians – paramedics for the delivery of emergency medical care to sick, disabled or injured individuals at the scene of an emergency and during transport to a hospital, while in the hospital emergency department until responsibility for care is assumed by the regular hospital staff, and during transfer of a patient between health care facilities. An ambulance service provider may, after submission of a plan approved by the department, conduct an emergency medical services program using emergency medical technicians – paramedics for the delivery of emergency medical care to sick, disabled or injured individuals during transfer of the individuals between health care facilities. Nothing in this section shall be construed to prohibit the operation of fire department, police department, for-profit ambulance service provider or other emergency vehicles using the services of emergency medical technicians – paramedics in conjunction with a program approved by the department. Hospitals that offer approved training courses for emergency medical technicians – paramedics should, if feasible, serve as the base of operation for approved programs using emergency medical technicians – paramedics.

(b) The department shall review and, if the department determines that the plans are satisfactory, approve the plans submitted under par. (a). The department shall:

1. Provide administrative support and technical assistance to emergency medical services programs that use emergency medical technicians or ambulance service providers.

2. Coordinate the activities of agencies and organizations providing training for the delivery of emergency medical services.

3. Assist the development of training for emergency medical technicians.

4. Assess the emergency medical resources and services of the state and encourage the allocation of resources to areas of identified need.

5. Assist hospitals in planning for appropriate and efficient handling of the critically ill and injured.

(2m) STATE MEDICAL DIRECTOR FOR EMERGENCY MEDICAL SERVICES PROGRAM. (a) The department shall contract with a physician to direct the state emergency medical services program. The department may expend from the funding under the federal preventive health services project grant program under 42 USC 2476 under the appropriation under s. 20.435 (1) (mc), \$25,000 in each fiscal year for this purpose.

(b) The physician under par. (a) shall be called the state medical director for the emergency medical services program, shall have at least 3 years of experience in the conduct and delivery of prehospital emergency medical services as a physician practicing emergency or prehospital medicine in a hospital or agency and shall have actively participated in and had major responsibility for the development, management, execution and coordination of programs, policies and procedures in the delivery of emergency medical services.

(4) SUPPORT AND IMPROVEMENT OF AMBULANCE SERVICES. (a) From the appropriation under s. 20.435 (5) (ch), the department shall annually distribute funds for ambulance service vehicles or vehicle equipment, emergency medical services supplies or equipment or emergency medical training for personnel to an ambulance service provider that is a public agency, a volunteer fire department or a nonprofit corporation, under a funding formula consisting of an identical base amount for each ambulance service provider plus a supplemental amount based on the population of the ambulance service provider’s primary service or contract area, as established under s. 146.50 (5).

(b) If a public agency has contracted for ambulance service with an ambulance service provider that operates for profit, the department shall distribute funds under par. (a) to the public agency.

(c) Funds distributed under par. (a) or (b) shall supplement existing, budgeted moneys of or provided to an ambulance service provider and may not be used to replace, decrease or release for alternative purposes the existing, budgeted moneys of or provided to the ambulance service provider. In order to ensure compliance with this paragraph, the department shall require, as a condition of relicensure, a financial report of expenditures under this subsection from an ambulance service provider and may require a financial report of expenditures under this subsection from an owner or operator of an ambulance service or a public agency, volunteer fire department or a nonprofit corporation with which an ambulance service provider has contracted to provide ambulance services.

(5) EMERGENCY MEDICAL TECHNICIAN TRAINING AND EXAMINATION AID. (a) From the appropriation under s. 20.435 (5) (ch), the department shall annually distribute funds to ambulance service providers that are public agencies, volunteer fire departments, or nonprofit corporations to purchase the training required for licensure and renewal of licensure as an emergency medical technician – basic under s. 146.50 (6), and to pay for administration of the examination required for licensure or renewal of licensure as an emergency medical technician – basic under s. 146.50 (6) (a) 3. and (b) 1.

(b) The department shall require as a condition of relicensure that an ambulance service provider submit to the department a financial report on the expenditure of funds received under par. (a).

(6) UNLICENSED OPERATION. (a) In this subsection, “person” has the meaning specified in s. 146.50 (1) (L).

(b) Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the

advice of the attorney general, who shall represent the department in all proceedings, institute an action in the name of the state against any person to restrain or prevent the establishment, management or operation of any emergency medical services program that is not approved under sub. (2) (a) or that is in violation of this section or a rule promulgated under this section.

(7) **INSURANCE.** A physician who participates in an emergency medical services program under this section or as required under s. 146.50 shall purchase health care liability insurance in compliance with subch. III of ch. 655, except for those acts or omissions of a physician who, as a medical director, reviews the performance of emergency medical technicians or ambulance service providers, as specified under s. 146.37 (1g).

(8) **EXCEPTION TO TREATMENT.** This section and the rules promulgated under this section may not be construed to authorize the provision of services or treatment to any individual who objects for reasons of religion to the treatment or services, but may be construed to authorize the transportation of such an individual to a facility of the individual's choice within the jurisdiction of the emergency medical service.

**History:** 1989 a. 102 ss. 15 to 17, 23, 25, 26, 60; 1991 a. 39, 269; 1993 a. 16, 251, 399, 491; 1997 a. 27, 79; 2001 a. 16, 109; 2005 a. 25.

**146.56 Statewide trauma care system. (1g)** In this section, “performance improvement” means a method of evaluating and improving processes of trauma patient care that emphasizes a multidisciplinary approach to problem solving.

(1r) The department shall develop and implement a statewide trauma care system. The department shall seek the advice of the statewide trauma advisory council under s. 15.197 (25) in developing and implementing the system, and, as part of the system, shall develop regional trauma advisory councils.

(2) The department shall promulgate rules to develop and implement the system. The rules shall include a method by which to classify all hospitals as to their respective emergency care capabilities. The classification rule shall be based on standards developed by the American College of Surgeons. Within 180 days after promulgation of the classification rule, and every 3 years thereafter, each hospital shall certify to the department the classification level of trauma care services that is provided by the hospital, based on the rule. The department may require a hospital to document the basis for its certification. The department may not direct a hospital to establish a certain level of certification. Confidential injury data that is collected under this subsection shall be used for confidential review relating to performance improvements in the trauma care system, and may be used for no other purpose.

(3) Except as provided in sub. (4), all information and documents provided by a hospital under sub. (2) and all information and documents procured by or furnished to the department, the statewide trauma advisory council, or regional trauma advisory councils with respect to performance improvement activities, certifications by hospitals under sub. (2), and documentation of the bases for hospitals' certifications under sub. (2) are immune from discovery under ch. 804, confidential, and privileged and may not be used or admitted into evidence in a civil action. With respect to a communication made by a staff member of the department or by an individual serving on the statewide trauma advisory council or a regional trauma advisory council, and to a finding or recommendation made under this section by the department, the statewide trauma advisory council, or a regional trauma advisory council, all of the following apply:

(a) The staff member or individual may not be examined in an action for civil damages with respect to the communication, finding, or recommendation.

(b) The staff member or individual has immunity from civil liability, with respect to the communication, finding, or recommendation, for any of the following:

1. An action taken or omitted by the staff member or individual in an official capacity.

2. A statement made in good faith by the staff member or individual in an official capacity.

(4) Subsection (3) does not apply to the release of information and documents specified in sub. (3) created apart from a performance improvement activity or apart from a certification by a hospital under sub. (2) that are maintained by or for a hospital, the department, the statewide trauma advisory council, or a regional trauma advisory council for the particular purpose of diagnosing, treating, or documenting care provided to a particular patient or for another purpose, upon a showing by clear and convincing evidence that the information or documents are otherwise unavailable.

(5) This section does not apply to s. 146.38.

**History:** 1997 a. 154; 1999 a. 9; 2001 a. 16, 109; 2005 a. 315.

**Cross Reference:** See also ch. HFS 118, Wis. adm. code.

**146.57 Statewide poison control system. (1m) DEFINITIONS.** In this section:

(a) “Appropriate health-oriented background” means one of the following:

1. Licensure as an emergency medical technician – basic, emergency medical technician – intermediate or emergency medical technician – paramedic under s. 146.50 (5) (a).

2. Licensure as a licensed practical nurse under s. 441.10 (3).

3. Completion of a training program directed by a physician specializing in toxicology and, as determined by the medical director of a poison control center, background sufficient to understand and interpret standard poison information resources and to transmit that information understandably to both health professionals and the public under the direct supervision of a staff member specified under sub. (3m) (b) 1. to 7. or the medical director.

(b) “On-line staff member” means a member of the staff of a poison control center who personally responds to telephone inquiries received by the poison control center.

(c) “Pharmacist” has the meaning given in s. 450.01 (15).

(d) “Physician” has the meaning given in s. 448.01 (5).

(e) “Poison control services” means poison prevention education, and rapid and accurate poison interpretation, poison intervention and management information.

(f) “Registered nurse” means a nurse who is licensed under s. 441.06.

(g) “School of pharmacy” means a school of pharmacy that is accredited by the American Council on Pharmaceutical Education.

(3) **POISON CONTROL.** (a) The department shall implement a statewide poison control system, which shall provide poison control services that are available statewide, on a 24-hour per day and 365-day per year basis and shall provide poison information and education to health care professionals and the public. From the appropriation under s. 20.435 (5) (ds), the department shall, if the requirement under par. (b) is met, distribute total funding of not more than \$375,000 in each fiscal year to supplement the operation of the system and to provide for the statewide collection and reporting of poison control data. The department may, but need not, distribute all of the funds in each fiscal year to a single poison control center.

(b) No poison control center may receive funds under par. (a) unless the poison control center provides a matching contribution of at least 50% of the state funding for the center. Private funds and in-kind contributions may be used to meet this requirement.

(3m) **REQUIREMENTS OF POISON CONTROL CENTERS.** (a) A poison control center shall maintain telephone services capable of providing rapid, accurate and complete poison information that is accessible throughout the state and that is free to users through a statewide toll-free hotline.

(b) An on–line staff member who interprets poison exposure data and provides poison intervention and management information shall be one of the following:

1. A registered nurse.
2. A pharmacist.
3. A physician.
4. A person who is certified by or eligible for certification by the American Association of Poison Control Centers as a specialist in poison information.
5. A school of pharmacy graduate who is in residency training.
6. A school of pharmacy enrollee who has completed the 2nd professional practice year.
7. A person who was employed as an on–line staff member on May 1, 1994, who has worked in that capacity at the poison control center for at least 3 years and who annually receives at least 16 documented hours of continuing education in interpreting poison exposure data and providing poison intervention and management information.
8. A person who is designated as a poison information provider, annually receives at least 16 documented hours of job–relevant continuing education and has an appropriate health–oriented background.

(4) **RULE MAKING.** The department shall promulgate rules that specify the information that shall be reported to the department under the statewide poison control program.

**History:** 1993 a. 16; 1995 a. 27; 1997 a. 27; 1999 a. 9.

**Cross Reference:** See also ch. HFS 167, Wis. adm. code.

**146.58 Emergency medical services board.** The emergency medical services board shall do all of the following:

(1) Appoint an advisory committee of physicians with expertise in the emergency medical services area to advise the department on the criteria for selection of the state medical director for emergency medical services and on the performance of the director and to advise the director on appropriate medical issues.

(4) Periodically review all emergency medical services statutes and rules for surface, water and air transportation and recommend to the department and the department of transportation changes in those statutes and rules to provide different personnel and equipment requirements, where appropriate, for emergency response, nonemergency response and interfacility transportation of patients.

(5) Seek involvement in its deliberations by appropriate personnel from the department, the technical college system board and the department of transportation.

(6) Seek involvement in its deliberations by ambulance service provider personnel, emergency medical technicians, first responders, persons who train emergency medical services personnel and other interested persons.

(7) Advise, make recommendations to, and consult with the department concerning the funding under s. 146.55 (4) and (5), including recommending a formula for allocating funds among ambulance service providers under s. 146.55 (5).

(8) Review the annual budget prepared by the department for the expenditures under s. 20.435 (5) (ch).

**History:** 1993 a. 16 ss. 2578f, 2578g, 2578p; 1995 a. 225; 1997 a. 27; 2005 a. 25.

**146.59 University of Wisconsin Hospitals and Clinics Board.** (1) In this section:

(a) “Authority” means the University of Wisconsin Hospitals and Clinics Authority.

(b) “Board” means the University of Wisconsin Hospitals and Clinics Board.

(2) (a) Subject to 1995 Wisconsin Act 27, section 9159 (2) (k), the board shall negotiate and enter into a contractual services agreement with the authority that meets the requirements under s. 233.04 (4) and shall comply with s. 233.04 (4m) (a).

(b) If a contractual services agreement is terminated under s. 233.04 (4m) (b), the University of Wisconsin Hospitals and Clinics Board may negotiate and enter into a contractual services agreement with the University of Wisconsin Hospitals and Clinics Authority or the board of regents of the University of Wisconsin System under s. 233.04 (4m) (b).

(3) (a) Any contractual services agreement under sub. (2) may include a provision that authorizes the authority to perform specified duties for the board with respect to employees of the board. This authorization may include duties related to supervising employees, taking disciplinary action or recommending new hires or layoffs, or with respect to collective bargaining, claims, complaints, or benefits and records administration.

(b) Any authorization under par. (a) shall comply with all applicable provisions of subch. V of ch. 111 and ch. 230, any delegation of authority by the office of state employment relations to the board, and any collective bargaining agreement with respect to employees of the board.

**History:** 1995 a. 27, 216; 2003 a. 33 ss. 2060, 9160.

**146.60 Notice of release of genetically engineered organisms into the environment.** (1) **DEFINITIONS.** In this section:

(a) “Confidential information” means information entitled to confidential treatment under sub. (6) (a) 1. or 2.

(b) “Coordinated framework” means the coordinated framework for regulation of biotechnology set forth in 51 Fed. Reg. 23302 to 23350 (June 26, 1986), as amended by 52 Fed. Reg. 22892 to 22915 (June 16, 1987), and subsequent amendments to the coordinated framework for regulation of biotechnology.

(c) “Departments” means the department of agriculture, trade and consumer protection and the department of natural resources.

(d) “Federal regulator” means a federal agency or a designee of a federal agency which is responsible for regulating a release into the environment under the coordinated framework.

(e) “Regulated release” means a release into the environment for which the coordinated framework requires that the person proposing to commence the release into the environment do any of the following:

1. Notify a federal regulator of the release into the environment.

2. Secure the approval of or a permit or license from a federal regulator as a condition of commencing the release into the environment.

3. Secure a determination by a federal regulator of the need for notification, approval, licensing or permitting by the federal regulator, if the determination is part of a procedure specified in the coordinated framework.

(f) “Release into the environment” means the introduction or use in this state of an organism or pathogen anywhere except within an indoor facility which is designed to physically contain the organism or pathogen, including a laboratory, greenhouse, growth chamber or fermenter.

(g) “Reviewing department” means the department designated in sub. (2) to review a regulated release.

(2) **DEPARTMENT DESIGNATION.** (a) The department of natural resources shall be the reviewing department for any regulated release subject to 15 USC 2601 to 2629.

(b) The department of agriculture, trade and consumer protection shall be the reviewing department for any regulated release subject to any federal requirement in the coordinated framework, except a requirement under 15 USC 2601 to 2629.

(c) If a regulated release is subject to 15 USC 2601 to 2629 and to any other federal requirement in the coordinated framework, both departments shall be reviewing departments and shall enter into a memorandum of understanding designating one of them to be the lead reviewing department.

(3) **NOTIFICATION.** (a) Except as provided under sub. (7), no person may commence a regulated release unless the person pro-

vides to the reviewing department for that regulated release all of the following information within 7 days after the person submits or should have submitted the information specified in subd. 1. to a federal regulator, whichever is sooner:

1. A copy of all information which the person is required to submit to the federal regulator and which is not confidential information.

2. A summary of any confidential information which the person submits or is required to submit to a federal regulator. The summary shall be sufficient enough to enable the reviewing department to prepare the comment authorized under sub. (4) and to provide information to the public and shall have minimal extraneous and irrelevant information.

(b) A reviewing department may request that a person submit to it part or all of any of the confidential information that is the subject of the summary submitted to that reviewing department under par. (a) 2. That person shall submit the information to the reviewing department no later than 3 working days after receiving the request.

(c) Notwithstanding sub. (6) (a):

1. If the department of natural resources receives information under this subsection or sub. (4) (c), it shall provide the department of agriculture, trade and consumer protection with a copy of the information.

2. If the department of agriculture, trade and consumer protection receives information under this subsection or sub. (4) (c), it shall provide the department of natural resources with a copy of the information.

**(3m) PUBLIC NOTICE.** No later than 5 working days after receiving information under sub. (3), the reviewing department shall send written notice of receipt of the information to the county board chairperson in a county without a county executive or county administrator or the county executive or county administrator and to the town board chairperson, village president or mayor of any town, village or city in which the release is proposed. No later than 5 working days after sending notice under this subsection, the reviewing department shall cause publication of a class 1 notice under ch. 985 in the county to which the notice is sent.

**(4) COMMENT.** The reviewing department may prepare a formal comment on the regulated release for submission to the federal regulator for that regulated release. The reviewing department shall submit that comment within the time established by the federal regulator for that regulated release. The comment shall address the criteria for notification or the granting of approval, a permit or a license under the applicable requirement in the coordinated framework and for the protection of the public health and the environment. To assist in the preparation of a comment, the reviewing department may do any of the following:

(a) Hold an informational meeting on the proposed regulated release.

(b) Provide an opportunity for the public to comment on the proposed regulated release.

(c) Request information on the proposed regulated release from the person providing the information under sub. (3), in addition to the information provided under sub. (3). That person is not required to submit that information to the reviewing department.

(d) Conduct a technical review of the proposed regulated release.

(e) Seek the assistance of the University of Wisconsin System faculty and academic staff or the department of health and family services in reviewing the proposed regulated release.

**(5) MEMORANDUM OF UNDERSTANDING.** Within 6 months after June 13, 1989, the department of natural resources shall enter into a memorandum of understanding with the department of agriculture, trade and consumer protection setting forth the procedures and responsibilities of the departments in the administration of this section. The memorandum shall establish procedures that

minimize the duplication of effort between the departments and for the person providing information under sub. (3).

**(6) CONFIDENTIAL TREATMENT OF RECORDS.** (a) Except as provided in pars. (b) and (c), the departments shall keep confidential any information received under this section if the person submitting the information notifies the departments that any of the following applies to that information:

1. The federal regulator to which the information has been submitted has determined that the information is entitled to confidential treatment and is not subject to public disclosure under 5 USC 552 or under the coordinated framework.

2. The person submitting the information to the departments has submitted a claim to the federal regulator that the information is entitled to confidential treatment under 5 USC 552 or under the coordinated framework, and the federal regulator has not made a determination on the claim.

(b) Paragraph (a) shall not prevent the departments from exchanging information under sub. (3) (c) or (4) (c) or from using the information for the purposes of sub. (4) (d) or (e), subject to the requirements under par. (d). Any person receiving such information is subject to the penalty specified under sub. (9) (b) for the unauthorized release of that information.

(c) The departments shall allow public access to any information which has been granted confidentiality under par. (a) if any of the following occurs:

1. The person providing the information to the departments expressly agrees to the public access to the information.

2. After information has been granted confidentiality under par. (a) 2., the federal regulator makes a determination that the information is not entitled to confidential treatment under 5 USC 552 or under the coordinated framework.

3. Either of the departments determines that:

a. The person providing the information to the departments has not submitted that information under par. (a) or a claim under par. (a) 2. to the federal regulator; or

b. The federal regulator to which the information has been submitted has determined that the information is not entitled to confidential treatment and is subject to public disclosure under 5 USC 552 or under the coordinated framework.

(d) 1. The departments shall establish procedures to protect information required to be kept confidential under par. (a). Under the procedure, the departments may not submit any information under sub. (4) (d) or (e) to any person who is not an employee of either of the departments unless that person has signed an agreement which satisfies the requirements of subd. 2.

2. The agreement required under subd. 1. shall provide that information which is the subject of the agreement is subject to confidential treatment, shall prohibit the release or sharing of the information with any other person except at the direction of the reviewing department and in compliance with this section, shall acknowledge the penalties in sub. (9), s. 134.90 and any other applicable state law identified by the departments for the unauthorized disclosure of the information and shall contain a statement that the person receiving the information, any member of his or her immediate family or any organization with which he or she is associated has no substantial financial interest in the regulated release which is the subject of the information. Any person submitting the information under sub. (3) or (4) may waive any of the requirements under this subdivision.

**(7) EXEMPTIONS.** (a) This section does not apply to any of the following which is intended for human use and regulated under 21 USC 301 to 392 or 42 USC 262:

1. Drug.
2. Cosmetic.
3. Medical device.
4. Biological product.

(b) A reviewing department may waive part or all of the requirements under sub. (3) for a specified regulated release if the



reviewing department determines that the satisfaction of that requirement is not necessary to protect the public health or the environment.

(c) A reviewing department may exempt a class of regulated releases from part or all of any requirement under sub. (3) if the department determines that the satisfaction of that requirement or part of a requirement is not necessary to protect the public health or the environment.

(8) ENFORCEMENT. The attorney general shall enforce subs. (3) and (6). The circuit court for Dane County or for the county where a violation occurred in whole or in part has jurisdiction to enforce this section by injunctive and other relief appropriate for enforcement. In an enforcement action under this section, if it is determined that a person commenced a regulated release and did not comply with sub. (3), the court shall issue an injunction directing the person to prevent or terminate the regulated release.

(9) PENALTIES. (a) Any person who fails to submit the information required under sub. (3) and has not commenced a regulated release shall forfeit not more than \$100 for each violation. Any person who commences or continues a regulated release without having submitted the information required under sub. (3) shall forfeit not less than \$10 nor more than \$25,000 for each violation. Each day of continued violation under this paragraph is a separate offense.

(ag) Any person who intentionally violates sub. (3) after commencing a regulated release shall be fined not less than \$100 nor more than \$25,000 or imprisoned for not more than one year in the county jail or both.

(am) For a 2nd or subsequent violation under par. (ag), a person may be fined not more than \$50,000 or imprisoned for not more than 9 months or both.

(ao) Each day of continued violation under pars. (ag) and (am) is a separate offense.

(b) Any person who intentionally violates any requirement under sub. (6) (a) or (b) shall be fined not less than \$50 nor more than \$50,000 or imprisoned for not less than one month nor more than 6 months or both.

(bm) In pars. (ag) and (b), “intentionally” has the meaning given under s. 939.23 (3).

(c) Paragraphs (a) and (ag) do not apply to any person who provides the information required under sub. (3) to either of the departments.

(10) RELATION TO OTHER LAWS. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

**History:** 1989 a. 15; 1993 a. 213; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2001 a. 109.

**146.62 Rural hospital loan program. (1) DEFINITION.** In this section:

(a) “Hospital” has the meaning given under s. 50.33 (2).

(b) “Rural” means outside a metropolitan statistical area, as specified under 42 CFR 412.62 (ii) (A).

(4) DEPARTMENTAL DUTIES. The department shall negotiate with each recipient of a loan made under s. 146.62 (2) and (3), 1989 stats., the schedule of repayments and collect the loan repayments as they are due. Loan repayments shall be deposited in the general fund. Except as provided in sub. (5), repayment for each loan shall begin no later than 12 months after the project funded under the loan begins operation.

(5) LOAN FORGIVENESS. If a rural hospital that receives a loan under s. 146.62 (2) and (3), 1989 stats., is unable to undertake the proposed project, the rural hospital may submit to the department a final report concerning the feasibility of loan repayment. The department shall review the report and may forgive all or part of the loan.

**History:** 1989 a. 31; 1991 a. 39; 1993 a. 16.

**146.65 Rural health dental clinics. (1)** From the appropriation under s. 20.435 (5) (dm), the department shall distribute moneys as follows:

(a) In each fiscal year, not more than \$232,000, to the rural health dental clinic located in Ladysmith that provides dental services to persons who are developmentally disabled or elderly or who have low income, in the counties of Rusk, Price, Taylor, Sawyer, and Chippewa.

(b) In each fiscal year, not more than \$355,600, to the rural health dental clinic located in Menomonie that provides dental services to persons who are developmentally disabled or elderly or who have low income, in the counties of Barron, Chippewa, Dunn, Pepin, Pierce, Polk, and St. Croix.

(c) In each fiscal year, not more than \$400,000, to a rural health clinic in Chippewa Falls to provide dental services to persons who are developmentally disabled or elderly or who have low income, in the area surrounding Chippewa Falls, including the counties of Chippewa, Dunn, Barron, Taylor, Clark, and Eau Claire.

(2) The department shall also seek federal funding to support the operations of the rural health dental clinics under sub. (1).

**History:** 2001 a. 16; 2003 a. 33; 2005 a. 25.

**146.70 Statewide emergency services number.**

(1) DEFINITIONS. In this section:

(a) “Automatic location identification” means a system which has the ability to automatically identify the address of the telephone being used by the caller and to provide a display at the central location of a sophisticated system.

(b) “Automatic number identification” means a system which has the ability to automatically identify the caller’s telephone number and to provide a display at the central location of a sophisticated system.

(c) “Basic system” means a telecommunications system which automatically connects a person dialing the digits “911” to a public safety answering point.

(cm) “Commercial mobile radio service provider” has the meaning given in s. 196.01 (2g).

(d) “Department” means the department of administration.

(e) “Direct dispatch method” means a telecommunications system providing for the dispatch of an appropriate emergency service vehicle upon receipt of a telephone request for such service.

(f) “Public agency” means any municipality as defined in s. 345.05 (1) (c) or any state agency which provides or is authorized by statute to provide fire fighting, law enforcement, ambulance, medical or other emergency services.

(g) “Public safety agency” means a functional division of a public agency which provides fire fighting, law enforcement, medical or other emergency services.

(gm) “Public safety answering point” means a facility to which a call on a basic or sophisticated system is initially routed for response, and on which a public agency directly dispatches the appropriate emergency service provider, relays a message to the appropriate emergency service provider or transfers the call to the appropriate emergency services provider.

(h) “Relay method” means a telecommunications system whereby a request for emergency services is received and relayed to a provider of emergency services by telephone.

(i) “Sophisticated system” means a basic system with automatic location identification and automatic number identification.

(k) “Transfer method” means a telecommunications system which receives telephone requests for emergency services and transfers such requests directly to an appropriate public safety agency or other provider of emergency services.

(2) EMERGENCY PHONE SYSTEM. (a) Every public agency may establish and maintain within its respective jurisdiction a basic or sophisticated system under this section. Such a system shall be in a central location.

(b) Every basic or sophisticated system established under this section shall be capable of transmitting requests for law enforcement, fire fighting and emergency medical and ambulance services to the public safety agencies providing such services. Such system may provide for transmittal of requests for poison control to the appropriate regional poison control center under s. 146.57, suicide prevention and civil defense services and may be capable of transmitting requests to ambulance services provided by private corporations. If any agency of the state which provides law enforcement, fire fighting, emergency medical or ambulance services is located within the boundaries of a basic or sophisticated system established under this section, such system shall be capable of transmitting requests for the services of such agency to the agency.

(c) The digits “911” shall be the primary emergency telephone number within every basic or sophisticated system established under this section. A public agency or public safety agency located within the boundaries of a basic or sophisticated system established under this section shall maintain a separate 7–digit phone number for nonemergency telephone calls. Every such agency may maintain separate secondary 7–digit back–up numbers.

(d) Public agencies, including agencies with different territorial boundaries, may combine to establish a basic or sophisticated system established under this section.

(e) If a public agency or group of public agencies combined to establish an emergency phone system under par. (d) has a population of 250,000 or more, such agency or group of agencies shall establish a sophisticated system.

(f) Every basic or sophisticated system established under this section shall utilize the direct dispatch method, the relay method or the transfer method.

(g) Every telecommunications utility providing coin–operated telephones for public use within the boundaries of a basic or sophisticated system established under this section shall convert, by December 31, 1987, all such telephones to telephones which enable a user to reach “911” without inserting a coin. Any coin–operated telephone installed by a telecommunications utility after December 31, 1987, in an agency which has established an emergency phone system under this section shall enable a user to reach “911” without inserting a coin.

(h) A commercial mobile radio service provider shall permit a user of the provider to access a basic or sophisticated system if the provider operates within the boundaries of a system.

(i) If a user reaches a basic or sophisticated system through a commercial mobile radio service provider and the service requested is to be provided outside of the jurisdiction served by the system, the public agency operating the system shall transfer the request for services to the appropriate jurisdiction.

**(3) FUNDING FOR COUNTYWIDE SYSTEMS.** (a) *Definitions.* In this subsection:

1. “Commission” means the public service commission.
2. “Costs” means the costs incurred by a service supplier after August 1, 1987, in installing and maintaining the trunking and central office equipment used only to operate a basic or sophisticated system and the database used only to operate a sophisticated system.
3. “Service supplier” means a telecommunications utility which provides exchange telephone service within a county.
4. “Service user” means any person who is provided telephone service by a service supplier which includes access to a basic or sophisticated system.

(b) *Charge authorized.* A county by ordinance may levy a charge on all service users in the county to finance the costs related to the establishment of a basic or sophisticated system in that county under sub. (2) if:

1. The county has adopted by ordinance a plan for that system.
2. Every service user in that county has access to a system.

3. The county has entered into a contract with each service supplier in the county for the establishment of that system to the extent that each service supplier is capable of providing that system on a reasonable economic basis on the effective date of the contract and that contract includes all of the following:

a. The amount of nonrecurring charges service users in the county will pay for all nonrecurring services related to providing the trunking and central office equipment used only to operate a basic or sophisticated system established in that county and the database used only to operate that sophisticated system.

b. The amount of recurring charges service users in the county will pay for all recurring services related to the maintenance and operation of a basic or sophisticated system established in that county.

c. Every provision of any applicable schedule which the service supplier has filed with the commission under s. 196.19 or 196.20, which is in effect on the date the county signs the contract and which is related to the provision of service for a basic or sophisticated system.

4. The charge is calculated, under a schedule filed under s. 196.19 or 196.20, by dividing the costs related to establishing a basic or sophisticated system in that county by the total number of exchange access lines, or their equivalents, which are in the county and which are capable of accessing that system.

5. The charge is billed to service users in the county in a service supplier’s regular billing to those service users.

6. Every public safety answering point in the system is in constant operation.

7. Every public safety agency in the county maintains a telephone number in addition to “911”.

8. The sum of the charges under subd. 3. a. and b. does not exceed any of the following:

a. Twenty–five cents each month for each exchange access line or its equivalent in the county if the county has a population of 500,000 or more.

b. One dollar each month for each exchange access line or its equivalent if the county has a population of less than 500,000 and the county is recovering charges under subd. 3. a.

c. Forty cents each month for each exchange access line or its equivalent if the county has a population of less than 500,000 and the county is not recovering charges under subd. 3. a.

(c) If 2 or more counties combine under sub. (2) (b) to establish a basic or sophisticated system, they may levy a charge under par. (b) if every one of those counties adopts the same ordinance, as required under par. (b).

(d) Charges under par. (b) 3. a. may be recovered in rates assessed over a period not to exceed 36 months.

(e) If a county has more than one service supplier, the service suppliers in that county jointly shall determine the method by which each service supplier will be compensated for its costs in that county.

(f) 1. Except as provided under subd. 2., a service supplier which has signed a contract with a county under par. (b) 3. may apply to the commission for authority to impose a surcharge on its service users who reside outside of that county and who have access to the basic or sophisticated system established by that county.

2. A service supplier may not impose a surcharge under subd. 1. on any service user who resides in any governmental unit which has levied a property tax or other charge for a basic or sophisticated system, except that if the service user has access to a basic or sophisticated system provided by the service supplier, the service supplier may impose a surcharge under subd. 1. for the recurring services related to the maintenance and operation of that system.

3. The surcharge under subd. 1. shall be equal to the charge levied under par. (b) by that county on service users in that county. A contract under par. (b) 3. may be conditioned upon the commis-

sion's approval of such a surcharge. The commission's approval under this paragraph may be granted without a hearing.

(g) No service supplier may bill any service user for a charge levied by a county under par. (b) unless the service supplier is actually participating in the countywide operation of a basic or sophisticated system in that county.

(h) Every service user subject to and billed for a charge under this subsection is liable for that charge until the service user pays the charge to the service supplier.

(i) Any rate schedule filed under s. 196.19 or 196.20 under which a service supplier collects a charge under this subsection shall include the condition that the contract which established the charge under par. (b) 3. is compensatory and shall include any other condition and procedure required by the commission in the public interest. Within 20 days after that contract or an amendment to that contract has been executed, the service supplier which is a party to the contract shall submit the contract to the commission. The commission may disapprove the contract or an amendment to the contract if the commission determines within 60 days after the contract is received that the contract is not compensatory, is excessive or does not comply with that rate schedule. The commission shall give notice to any person, upon request, that such a contract has been received by the commission. The notice shall identify the service supplier and the county that have entered into the contract.

(j) A service supplier providing telephone service in a county, upon request of that county, shall provide the county information on its capability and an estimate of its costs to install and maintain trunking and central office equipment to operate a basic or sophisticated system in that county and the database required to operate a sophisticated system.

**(3m) WIRELESS PROVIDERS.** (a) *Definitions.* In this subsection:

1. "Commercial mobile radio service provider" has the meaning given in s. 196.01 (2g).

2. "Commission" means the public service commission.

3. "Federal wireless orders" means the orders of the federal communications commission regarding 911 emergency services for wireless telephone users in FCC docket no. 94–102.

4. "Local government" means a city, village, town, or county, or an entity formed by a contract under s. 66.0301 (2) by a city, village, town, or county.

5. "Reimbursement period" means the period beginning on September 3, 2003, and ending on the last day of the 3–year period beginning on the first day of the 2nd month beginning after the effective date of the rules promulgated under par. (f) 1.

6. "Wireless provider" means a commercial mobile radio service provider that is subject to the federal wireless orders.

7. "Wireless public safety answering point" means a facility to which a person dialing the digits "911" on a wireless provider's system is initially routed for response, and on which a public agency directly dispatches the appropriate emergency service provider, relays a message to the appropriate emergency service provider, transfers the call to the appropriate emergency services provider, or relays a message or transfers the call to a local government emergency call center that dispatches the appropriate emergency services provider.

(am) *Designated public safety answering points.* A wireless public safety answering point shall be a designated public safety answering point for the purpose of implementing the federal wireless orders only if the wireless public safety answering point is identified in a resolution adopted under par. (c) 3. or 6.

(b) *Grant applications; wireless providers.* 1. Except as provided in subd. 2. and par. (d) 1e., a wireless provider may not receive a grant under par. (d) unless, no later than the first day of the 3rd month beginning after the effective date of the rules promulgated under par. (d) 4., the wireless provider applies to the commission with an estimate, and supporting documentation, of

the costs that it has incurred, or will incur, during the reimbursement period to upgrade, purchase, lease, program, install, test, operate, or maintain all data, hardware, and software necessary to comply with the federal wireless orders in this state. The estimate may not include, and a wireless provider may not seek reimbursement for, any such costs that the wireless provider recovers or has recovered from customers in this state during or before the reimbursement period for the implementation of wireless 911 emergency service in this state.

2. A wireless provider that does not provide service to customers in this state prior to September 3, 2003, may make an application under subd. 1. after the date specified in subd. 1. pursuant to rules promulgated by the commission under par. (d) 4.

(c) *Grant applications; local governments.* 1. Except as provided in par. (d) 1e., a local government that operates a wireless public safety answering point, or local governments that jointly operate a wireless public safety answering point, may not receive a grant under par. (d) unless the requirements under subds. 3. to 5. are satisfied and, no later than the first day of the 3rd month beginning after the effective date of the rules promulgated under par. (d) 4., every county that itself is one of the local governments or in which any of the local governments is located applies to the commission with an estimate, and supporting documentation, of the costs specified in subd. 1r. and the costs that the local government or local governments have directly and primarily incurred, or will directly and primarily incur, during the reimbursement period for leasing, purchasing, operating, or maintaining the wireless public safety answering point, including costs for all of the following:

a. Necessary network equipment, computer hardware and software, database equipment, and radio and telephone equipment, that are located within the wireless public safety answering point.

b. Training operators of a wireless public safety answering point.

c. Network costs for delivery of calls from a wireless provider to a wireless public safety answering point.

d. Collection and maintenance of data used by the wireless public safety answering point, including data to identify a caller and the location of a caller.

e. Relaying messages regarding wireless emergency 911 telephone calls via data communications from the wireless public safety answering point to local government emergency call centers in operation before June 1, 2003, that dispatch the appropriate emergency service providers, but only if the rules promulgated under par. (d) 4. allow for reimbursement of such costs.

1m. The estimate under subd. 1. may not include, and a local government may not seek reimbursement for, any costs described in subd. 1. that the local government recovers in the form of a gift or grant received by the local government for the purposes described in subd. 1.

1r. An application under subd. 1. may include an estimate of costs directly and primarily incurred by the local government or local governments between January 1, 1999, and September 3, 2003, for any of the costs identified in subd. 1. a. and d.

2. If an application under subd. 1. is for the joint operation of a wireless public safety answering point by local governments, the application shall specify the manner in which the estimated costs are apportioned among the local governments.

3. A local government that operates a wireless public safety answering point, or local governments that jointly operate a wireless public safety answering point, are not eligible for grants under par. (d) unless, no later than the first day of the 3rd month beginning after the effective date of the rules promulgated under par. (d) 4., every county that itself is one of the local governments or in which any of the local governments is located has passed a resolution specifying that the wireless public safety answering point is eligible for the grants. Except as provided in subd. 4., only one

wireless public safety answering point in each county is eligible for local governments to receive grants under par. (d).

4. If a county or local government in a county jointly operates a wireless public safety answering point with another county or local government in another county, the resolution passed by each county under subd. 3. shall specify the same wireless public safety answering point, and the counties shall submit a joint application under subd. 1. that complies with the requirement under subd. 2. In each county that submits a joint application, only the wireless public safety answering point specified in the resolutions is eligible for local governments to receive grants under par. (d).

5. Except as provided in subd. 6. a., a local government that operates, or local governments that jointly operate, a wireless public safety answering point are not eligible for grants under par. (d) unless the wireless public safety answering point serves the entire geographic area of all of the following:

a. For each local government that is not a county, each county in which the local government is located.

b. For each local government that is a county, the county itself.

6. a. A local government is not required to serve, with its wireless public safety answering point, the area of a city, village, or town that, by resolution, states its intention to establish a wireless public safety answering point separate from the wireless public safety answering point specified in a resolution under subd. 3. passed by the county in which the city, village, or town is located. A city, village, or town that adopts a resolution under this subd. 6. a. shall ensure that its entire geographic area is served by another wireless public safety answering point.

b. A city, village, or town that adopts a resolution under subd. 6. a. is not required to receive wireless 911 emergency service from the wireless public safety answering point specified in a resolution under subd. 3. passed by the county in which the city, village, or town is located. A city, village, or town that rescinds a resolution adopted under subd. 6. a. is required to receive wireless 911 emergency service from the wireless public safety answering point specified in a resolution under subd. 3. passed by the county in which the city, village, or town located, unless the city, village, or town subsequently adopts a new resolution under subd. 6. a.

c. A city, village, or town that adopts a resolution under subd. 6. a. shall submit a copy of the resolution to the county in which it is located and to the commission.

(d) *Grants; commission approval and rules.* 1. The commission shall approve an application under par. (b) or (c) if the commission determines that the costs estimated in the application are reasonable and have been, or will be, incurred for the purpose of promoting a cost-effective and efficient statewide system for responding to wireless emergency 911 telephone calls and, for an application under par. (c), if the requirements under subd. 1g. are satisfied.

1e. If a wireless provider or local government submits an application after the deadline specified in par. (b) 1. or (c) 1. (intro.), the commission shall reduce the costs approved under subd. 1. by the following amounts:

a. If the application is no more than 1 week late, 5%.

b. If the application is 1 week or more but less than 2 weeks late, 10%.

c. If the application is 2 weeks or more but less than 4 weeks late, 25%.

d. If the application is 4 weeks or more late, the wireless provider or local government is not eligible for a grant.

1g. If an application under par. (c) includes an estimate of costs identified in par. (c) 1. d. incurred during the reimbursement period or between January 1, 1999, and September 3, 2003, the commission may approve the application only if the commission determines that the local government's collection of land information, as defined in s. 16.967 (1) (b), and development of a land information system, as defined in s. 16.967 (1) (c), that is related

to that purpose are consistent with the applicable county land records modernization plans developed under s. 59.72 (3) (b), conform to the standards on which such plans are based, and do not duplicate land information collection and other efforts funded through the land information program under s. 16.967 (7). The commission shall obtain the advice of the department of administration in making determinations under this subdivision.

1r. If the commission does not approve an application under subd. 1., the commission shall provide the applicant or applicants with the commission's reasons and give the applicant or applicants an opportunity to resubmit the application.

2. From the appropriation under s. 20.155 (3) (q), the commission shall make grants to reimburse wireless providers and local governments for costs approved under subd. 1. that are actually incurred by the wireless providers and local governments, except that no wireless provider or local government may receive a total amount in grants that exceeds the estimated amount approved by the commission under subd. 1. for that wireless provider or local government. For applications for the joint operation of a wireless public safety answering point, the commission shall apportion the grants in the manner specified under par. (c) 2.

3. No grant to a local government under subd. 2. may be used to reimburse costs for any of the following:

a. Emergency service dispatch, including personnel, training, equipment, software, records management, radio communications, and mobile data network systems.

b. Vehicles and equipment in vehicles.

c. Communications equipment and software used to communicate with vehicles.

d. Real estate and improvements to real estate, other than improvements necessary to maintain the security of a wireless public safety answering point.

e. Salaries and benefits of operators of a wireless public safety answering point.

4. The commission shall promulgate rules establishing requirements and procedures for making grants under this paragraph, including criteria for approving estimated costs under subd. 1. The rules shall require the commission to make the grants during the 3-year period beginning on the first day of the 3rd month beginning after the effective date of the rules promulgated under par. (f) 1. The rules shall include record-keeping requirements to ensure that the grants are used to reimburse estimated costs approved by the commission. The rules shall allow the commission to make the grants in installments. The rules shall also include requirements for wireless providers specified in par. (b) 2. to apply for grants. The rules shall specify the conditions under which a wireless provider or local government may revise an application approved under subd. 1.

4m. The rules promulgated under subd. 4. may allow local governments to receive grants for reimbursement of the costs described in par. (c) 1. e., but only if the commission determines that reimbursement of such costs is in the public interest, promotes public health and safety.

6. If the commission approves an application under subd. 1., the wireless provider or a local government that submitted the application may, before the commission makes a grant award to the wireless provider or local government, revise the application pursuant to the rules promulgated under subd. 4.

(e) *Supplemental grants.* The commission shall promulgate rules for making supplemental grants from the appropriation under s. 20.155 (3) (q) to counties that submit joint applications required under par. (c) 4. The rules shall establish the supplemental grants in amounts that provide an incentive for counties to submit joint applications. The rules may not impose any limits on the use of a supplemental grant and shall allow the commission to make the grants in installments.

(f) *Wireless surcharge.* 1. The commission shall promulgate rules requiring each wireless provider to impose the same monthly

surcharge for each telephone number of a customer that has a billable address in this state, except that the rules shall adjust the amount of the surcharge that is imposed on customers who prepay for service to ensure that such customers pay an amount that is comparable to the monthly amount paid by other customers. The rules shall require the surcharge to be imposed during the 3-year period beginning on the first day of the 2nd month beginning after the effective date of the rules. The amount of the surcharge shall be sufficient for the commission to administer and make the grants under par. (d) and the supplemental grants under par. (e). The rules shall require wireless providers to pay the surcharge to the commission for deposit in the wireless 911 fund.

2. The commission may promulgate rules that increase or decrease the surcharge, except that the commission may not increase the surcharge more than once per year and any increase must be uniform statewide.

3. A wireless provider shall identify the surcharge on a customer's bill on a separate line that consists of the words "federal wireless 911 mandate fee."

4. The commission may bring an action to collect a surcharge that is not paid by a customer and the customer's wireless provider is not liable for the unpaid surcharge.

(g) *Confidentiality of information.* The commission shall withhold from public inspection any information received under this subsection that would aid a competitor of a wireless provider in competition with the wireless provider.

(h) *Other charges prohibited.* No local government or state agency, as defined in s. 560.9810 (1), except the commission, may require a wireless provider to collect or pay a surcharge or fee related to wireless emergency telephone service.

(i) *Commission authority.* Nothing in this section affects the exemption from commission authority for commercial mobile radio service providers in s. 196.202.

(j) *Sunset.* This subsection does not apply after the first day of the 42nd month beginning after the effective date of the rules promulgated under par. (f) 1.

**(4) DEPARTMENTAL ADVISORY AUTHORITY.** The department may provide information to public agencies, public safety agencies and telecommunications utilities relating to the development and operation of emergency number systems.

**(6) TELECOMMUNICATIONS UTILITY REQUIREMENTS.** A telecommunications utility serving a public agency or group of public agencies which have established a sophisticated system under sub. (2) (e) shall provide by December 31, 1985, or upon establishing a system, whichever is later, such public agency or group of public agencies access to the telephone numbers of subscribers and the addresses associated with the numbers as needed to implement automatic number identification and automatic location identification in a sophisticated system, but such information shall at all times remain under the direct control of the telecommunications utility and a telecommunications utility may not be required to release a number and associated address to a public agency or group of public agencies unless a call to the telephone number "911" has been made from such number. The costs of such access shall be paid by the public agency or group of public agencies.

**(7) LIABILITY EXEMPTION.** A telecommunications utility, wireless provider, as defined in sub. (3m) (a) 6., or local government, as defined in sub. (3m) (a) 4., shall not be liable to any person who uses an emergency number system created under this section or makes an emergency telephone call initially routed to a wireless public safety answering point, as defined in sub. (3m) (a) 7.

**(9) JOINT POWERS AGREEMENT.** (a) In implementing a basic or sophisticated system under this section, public agencies combined under sub. (2) (d) shall annually enter into a joint powers agreement. The agreement shall be applicable on a daily basis and shall provide that if an emergency services vehicle is dispatched in response to a request through the basic or sophisticated system established under this section, such vehicle shall render its ser-

vices to the persons needing the services regardless of whether the vehicle is operating outside the vehicle's normal jurisdictional boundaries.

(b) Public agencies and public safety agencies which have contiguous or overlapping boundaries and which have established separate basic or sophisticated systems under this section shall annually enter into the agreement required under par. (a).

(c) Each public agency or public safety agency shall cause a copy of the annual agreement required by pars. (a) and (b) to be filed with the department of justice. If a public agency or public safety agency fails to enter into such agreement or to file copies thereof, the department of justice shall commence judicial proceedings to enforce compliance with this subsection.

**(10) PENALTIES.** (a) Any person who intentionally dials the telephone number "911" to report an emergency, knowing that the fact situation which he or she reports does not exist, shall be fined not less than \$50 nor more than \$300 or imprisoned not more than 90 days or both for the first offense and is guilty of a Class H felony for any other offense committed within 4 years after the first offense.

(b) Any person who discloses or uses, for any purpose not related to the operation of a basic or sophisticated system, any information contained in the database of that system shall be fined not more than \$10,000 for each occurrence.

**(11) PLANS.** Every public agency establishing a basic or sophisticated system under this section shall submit tentative plans for the establishment of the system as required under this section to every local exchange telecommunications utility providing service within the respective boundaries of such public agency. The public agency shall submit final plans for the establishment of the system to the telecommunications utility and shall provide for the implementation of the plans.

**History:** 1977 c. 392; 1979 c. 34, 361; 1981 c. 20 s. 2202 (1) (b); 1981 c. 383; 1983 a. 27; 1983 a. 53 s. 114; 1983 a. 189 s. 329 (31); 1985 a. 29, 120; 1985 a. 297 ss. 12, 76; 1985 a. 332; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 267; 1993 a. 16, 388, 496; 1997 a. 218, 283; 1999 a. 185; 2001 a. 109; 2003 a. 48, 320; 2005 a. 25.

**Cross Reference:** See also ch. PSC 173, Wis. adm. code.

**146.71 Determination of death.** An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards.

**History:** 1981 c. 134.

To determine whether an infant was "born alive" under s. 939.22 (16) for purposes of the homicide laws, courts apply s. 146.71. *State v. Cornelius*, 152 Wis. 2d 272, 448 N.W.2d 434 (Ct. App. 1989).

**146.81 Health care records; definitions.** In ss. 146.81 to 146.84:

**(1)** "Health care provider" means any of the following:

- (a) A nurse licensed under ch. 441.
- (b) A chiropractor licensed under ch. 446.
- (c) A dentist licensed under ch. 447.
- (d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.
- (dg) A physical therapist licensed under subch. III of ch. 448.
- (dr) A podiatrist licensed under subch. IV of ch. 448.
- (em) A dietitian certified under subch. V of ch. 448.
- (eq) An athletic trainer licensed under subch. VI of ch. 448.
- (es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
- (f) An optometrist licensed under ch. 449.
- (fm) A pharmacist licensed under ch. 450.
- (g) An acupuncturist certified under ch. 451.
- (h) A psychologist licensed under ch. 455.
- (hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

(hm) A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(hp) A massage therapist or bodyworker certified under ch. 460.

(i) A partnership of any providers specified under pars. (a) to (hp).

(j) A corporation or limited liability company of any providers specified under pars. (a) to (hp) that provides health care services.

(k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

(L) A hospice licensed under subch. IV of ch. 50.

(m) An inpatient health care facility, as defined in s. 50.135 (1).

(n) A community–based residential facility, as defined in s. 50.01 (1g).

(p) A rural medical center, as defined in s. 50.50 (11).

**(2)** “Informed consent” means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

(a) The name of the patient whose record is being disclosed.

(b) The type of information to be disclosed.

(c) The types of health care providers making the disclosure.

(d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.

(e) The individual, agency or organization to which disclosure may be made.

(f) The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.

(h) The time period during which the consent is effective.

**(3)** “Patient” means a person who receives health care services from a health care provider.

**(4)** “Patient health care records” means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records related to sales of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1), or a pupil’s physical health records maintained by a school under s. 118.125. “Patient health care records” also includes health summary forms prepared under s. 302.388 (2).

**(5)** “Person authorized by the patient” means the parent, guardian, or legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m), or (4n), the guardian of a patient adjudicated incompetent in this state, the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, “person authorized by the patient” also means an adult member of the deceased patient’s immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by

the patient to decide upon the release of records, if no guardian has been appointed for the patient.

**History:** 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89; 2005 a. 262, 387.

A letter written by a person not licensed as a health care provider under sub. (1) was not a record under sub. (4) prepared under the supervision of a health care provider under sub. (1) (j) when the person was employed by a corporation that employed health care professionals but the corporation’s shareholders were not health care providers. *Hart v. Bennet*, 2003 WI App 231, 267 Wis. 2d 919, 672 N.W.2d 306, 02–2993.

When a health care provider denied access to records on the ground that the patient was possibly incompetent to consent to the release of the records, it was obligated under sub.(5) to petition for a temporary guardian for the patient. *Szymczak v. Terrace at St. Francis*, 2006 WI App 3, 289 Wis. 2d 110, 709 N.W.2d 103, 04–2067.

**146.815 Contents of certain patient health care records.** **(1)** Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient’s occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient’s usual occupation.

**(2)** (a) If a hospital inpatient’s health problems may be related to the inpatient’s occupation or past occupations, the inpatient’s physician shall ensure that the inpatient’s health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient’s health problems may be related to the occupation or past occupations of the inpatient’s parents, the inpatient’s physician shall ensure that the inpatient’s health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

**(3)** The department shall provide forms that may be used to record information specified under sub. (2) and shall provide guidelines for determining whether to prepare the occupational history required under sub. (2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

**History:** 1981 c. 214.

**146.817 Preservation of fetal monitor tracings and microfilm copies.** **(1)** In this section, “fetal monitor tracing” means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

**(2)** (a) Unless a health care provider has first made and preserved a microfilm copy of a patient’s fetal monitor tracing, the health care provider may delete or destroy part or all of the patient’s fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient’s fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient’s fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient’s fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars. (a) and (b) shall be sent to the patient’s last–known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient’s right, within 30 days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.

**History:** 1987 a. 27, 399, 403.

**146.819 Preservation or destruction of patient health care records.** (1) Except as provided in sub. (4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with ss. 146.81 to 146.835.

(b) Provide for the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par. (a), and for the deletion or destruction of some of the records, as specified in par. (b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub. (1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last-known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub. (1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least 35 days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, to the last-known address of the patient to whom the records pertain or the last-known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) A community-based residential facility or nursing home licensed under s. 50.03.

(b) A hospital approved under s. 50.35.

(c) A hospice licensed under s. 50.92.

(d) A home health agency licensed under s. 50.49 (4).

(f) A local health department, as defined in s. 250.01 (4), that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

**History:** 1991 a. 269; 1993 a. 27; 1999 a. 9.

**Cross Reference:** See also ch. Med 21, Wis. adm. code.

**146.82 Confidentiality of patient health care records.**

(1) **CONFIDENTIALITY.** All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the

patient. This subsection does not prohibit reports made in compliance with s. 146.995, 253.12 (2) or 979.01; testimony authorized under s. 905.04 (4) (h); or releases made for purposes of health care operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164, subpart E.

(2) **ACCESS WITHOUT INFORMED CONSENT.** (a) Notwithstanding sub. (1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. 146.50, including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for billing, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To an elder-adult-at-risk agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) and (5) or to an adult-at-risk agency designated under s. 55.02 [s. 55.043 (1d)] for purposes of s. 55.043. The health care provider may release information by initiating contact with the elder-adult-at-risk agency or adult-at-risk agency without receiving a request for release of the information from the elder-adult-at-risk agency or adult-at-risk agency.

**NOTE:** The bracketed language indicates the correct cross-reference.

8. To the department under s. 255.04. The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for

whom a guardian is appointed under s. 54.10 or s. 880.33, 2003 stats.

b. Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62 (1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 54.10 or s. 880.33, 2003 stats., the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, if the patient files a submission of controversy under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of

investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 (7).

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply:

a. The employee or agent has responsibility for preparation or storage of patient health care records.

b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under s. 940.22.

14. To a representative of the board on aging and long-term care, in accordance with s. 49.498 (5) (e).

15. To the department under s. 48.60 (5) (c), 50.02 (5) or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 48.60 (5) (a), 50.035 (5) (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long-term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long-term care facility, as specified in s. 16.009 (4) (b).

17. To the department under s. 50.53 (2).

18. Following the death of a patient, to a coroner, deputy coroner, medical examiner or medical examiner's assistant, for the purpose of completing a medical certificate under s. 69.18 (2) or investigating a death under s. 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or juvenile correctional facility, including a placement under s. 48.205, 48.21, 938.205, or 938.21, or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or juvenile correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, to the foster parent or treatment foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or juvenile correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.



19. To an organ procurement organization by a hospital pursuant to s. 157.06 (5) (b) 1.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) Except as provided in s. 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par. (a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released.

(c) Notwithstanding sub. (1), patient health care records shall be released to appropriate examiners and facilities in accordance with s. 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17.

(cm) Notwithstanding sub. (1), patient health care records shall be released, upon request, to appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health and family services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the treatment records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning records made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health and family services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

**(3) REPORTS MADE WITHOUT INFORMED CONSENT.** (a) Notwithstanding sub. (1), a physician or advanced practice nurse prescriber certified under s. 441.16 (2) who treats a patient whose physical or mental condition in the physician's or advanced practice nurse prescriber's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(b) Notwithstanding sub. (1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(c) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

**History:** 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434.

Because under s. 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMOVWI trial without patient approval. *City of Muskego v. Godec*, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now s. 49.22] may be admitted into evidence under the exception to confidentiality

found under sub. (2) (a) 3. *State v. Allen*, 200 Wis. 2d 301, 546 N.W.2d 517 (1996), 95–0792.

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. *State v. Thompson*, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998), 97–2744.

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. (2) provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician–patient privilege and was subject to release by “lawful court order.” *Crawford v. Care Concepts, Inc.* 2001 WI 45, 243 Wis. 2d 119, 625 N.W.2d 876, 99–0863.

Disclosure of patient health care records in Wisconsin. Lehner, WBB Aug. 1984.

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

Balancing Federal and Wisconsin Medical Privacy Laws. Hartin. Wis. Law. June 2003.

Attorney access to and use of medical records. Stone. Wis. Law. Aug. 2003

Attorney access to medical records. Stone. Wis. Law. Oct. 2003

### 146.83 Access to patient health care records.

**(1)** Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub. (3m).

(c) Receive a copy of the health care provider's X–ray reports or have the X–rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub. (3m).

**(1m)** (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent.

(b) The health care provider under par. (a) may be charged reasonable costs for the provision of the patient's health care records.

**(2)** The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in s. 50.135 (1), or upon the first provision of services by the health care provider.

**(3)** The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.

**(3m)** (a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub. (1) (b) for duplicate patient health care records and under sub. (1) (c) for duplicate X–ray reports or the referral of X–rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors:

1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies.

2. The varying cost of retrieval of records, based on the different media on which the records are maintained.

3. The cost of separating requested patient health care records from those that are not requested.

4. The cost of duplicating requested patient health care records.

5. The impact on costs of advances in technology.

(b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par. (a) to account for increases or decreases in actual costs.

**(4)** No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with

intent to prevent its release to the patient, to his or her guardian, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

**History:** 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109; 2005 a. 387.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. *Cruz v. All Saints Healthcare System, Inc.* 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344, 00–1473.

The party asserting the health care services review privilege under sub. (1m) bears the burden of establishing 2 conditions: 1) the investigation must be part of a program organized and operated to improve the quality of health care at the hospital, and 2) the person conducting the investigation must be acting on behalf of, or as part of a group with relatively constant membership, officers, a purpose, and a set of regulations. The privilege did not apply to an investigation conducted by an individual doctor, and not the hospital's peer review committee, that was initiated by the hospital to report a problem to the supervisor of the residency program in which the defendant resident was enrolled, and not to improve the quality of health care at the hospital. *Phelps v. Physicians Insurance Company of Wisconsin, Inc.* 2005 WI 85, 282 Wis. 2d 69, 698 N.W.2d 643, 03–0580.

**146.835 Parents denied physical placement rights.** A parent who has been denied periods of physical placement under s. 767.41 (4) (b) or 767.451 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

**History:** 1987 a. 355; 2005 a. 443 s. 265.

**146.836 Applicability.** Sections 146.815, 146.82, 146.83 (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

**History:** 1999 a. 78.

**146.84 Violations related to patient health care records. (1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION.** (a) A custodian of records incurs no liability under par. (bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than \$1,000 and costs and reasonable actual attorney fees.

(c) An individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

**(2) PENALTIES.** (a) Whoever does any of the following may be fined not more than \$25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under s. 146.82 or 146.83 (1) under false pretenses.
2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.
3. Violates s. 146.83 (4).

(b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than \$1,000 for each violation.

(c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined

not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

**(3) DISCIPLINE OF EMPLOYEES.** Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended without pay.

**(4) EXCEPTIONS.** This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

**History:** 1991 a. 39; 1993 a. 445; 1999 a. 9, 79.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. *Cruz v. All Saints Healthcare System, Inc.* 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344, 00–1473.

**146.87 Federal registration numbers for prescribers of controlled substances. (1)** In this section:

(a) "Controlled substance" has the meaning given in s. 961.01 (4).

(b) "Federal registration number" means the registration number required under 21 USC 822 for practitioners who prescribe controlled substances.

(c) "Health care provider" has the meaning given in 42 USC 1320d (3).

(d) "Practitioner" has the meaning given in s. 450.01 (17).

(e) "Prescription order" has the meaning given in s. 450.01 (2).

**(2)** Beginning on the first day on which small health plans are required to comply with a U.S. Department of Health and Human Services regulation under 42 USC 1320d–2 (b) that requires use of a unique identifier for health care providers, no person may do any of the following:

(a) Require that a practitioner include his or her federal registration number on a prescription order for a drug or device that is not a controlled substance.

(b) Disclose a practitioner's federal registration number without the practitioner's consent for any purpose other than complying with or enforcing federal or state law related to controlled substances.

(c) Use a federal registration number to identify or monitor the prescribing practices of a practitioner, except for the purpose of complying with or enforcing federal or state law related to controlled substances.

**(3)** A person who violates this section may be required to forfeit not more than \$10,000 for each violation.

**History:** 2003 a. 272.

**146.89 Volunteer health care provider program. (1)** In this section:

(d) "Governing body" means the governing body of any of the following:

1. A charter school, as defined in s. 115.001 (1).
2. A private school, as defined in s. 115.001 (3r), that participates in the Milwaukee Parental Choice Program under s. 119.23.

(g) "School" means any of the following:

1. A public elementary school.
2. A charter school, as defined in s. 115.001 (1).
3. A private school, as defined in s. 115.001 (3r), that participates in the Milwaukee Parental Choice Program under s. 119.23.

(h) "School board" has the meaning given in s. 115.001 (7).

(r) "Volunteer health care provider" means an individual who is licensed as a physician under ch. 448, dentist or dental hygienist under ch. 447, registered nurse, practical nurse, or nurse–midwife under ch. 441, optometrist under ch. 449, or physician assistant

under ch. 448, who is certified as a dietitian under subch. V of ch. 448, or who is a nurse practitioner, as defined in s. 255.06 (1) (d), and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency or school specified under sub. (3).

(2) (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency, school board, or governing body to the department of administration and that department approves the application. If the volunteer health care provider submits a joint application with a school board or governing body, the application shall include a statement by the school board or governing body that certifies that the volunteer health care provider has received materials that specify school board or governing body policies concerning the provision of health care services to students and has agreed to comply with the policies. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency, school board, or governing body of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency, school board, or governing body to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub. (2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par. (b) without charge, except as provided in sub. (3m), at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub. (2) (a).

(b) Under this section, the nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider; and dental hygiene services, performed by a dental hygienist who is a volunteer health provider.

(c) Under this section, the nonprofit agency may not provide emergency medical services, hospitalization, or surgery, except as provided in par. (b) 8.

(d) Under this section, the nonprofit agency shall provide health care services primarily to low-income persons who are uninsured and who are not recipients of any of the following:

2. Except as provided in sub. (3m), Medical Assistance under subch. IV of ch. 49.

3. Medicare under 42 USC 1395–1395ccc.

(3m) A volunteer health care provider who is a dentist may provide dental services or a volunteer health care provider who is a dental hygienist may provide dental hygiene services, to persons who are recipients of Medical Assistance, if all of the following apply:

(a) The nonprofit agency's fees for these services apply to the recipients and to persons who are not recipients of Medical Assistance.

(b) The agency accepts discounted payments, based on ability to pay, from the persons who are not Medical Assistance recipients.

(c) The volunteer health care provider is certified under s. 49.45 (2) (a) 11. a., the department has waived the requirement for certification, or the volunteer health care provider is not required to be certified under s. 49.45 (2) (a) 11. a.

(3r) All of the following apply to a volunteer health care provider whose joint application with a school board or relevant governing body is approved under sub. (2):

(a) Before first providing health care services in a school, the volunteer health care provider shall provide to the school board or relevant governing body proof of satisfactory completion of any competency requirements that are relevant to the volunteer health care provider, as specified by the department of public instruction by rule, and shall consult with the school nurse, if any, of the school.

(b) Under this subsection, the volunteer health care provider may provide only to students from 4-year-old kindergarten to grade 6 the following health care services:

1. Except as specified in par. (c), the health care services specified in sub. (3) (b) 1. to 5. and 7., other than referrals to reproductive health care specialists, and in sub. (3) (b) 8.
2. First aid for illness or injury.
3. Except as specified in par. (c), the administration of drugs, as specified in s. 118.29 (2) (a) 1. to 3.
4. Health screenings.
5. Any other health care services designated by the department of public instruction by rule.

(c) Under this subsection, the volunteer health care provider may not provide any of the following:

1. Hospitalization.
2. Surgery, except as provided in par. (b) 2. and 5.
3. A referral for abortion, as defined in s. 48.375.
4. A contraceptive article, as defined in s. 450.155 (1) (a).
5. A pregnancy test.

(d) Any health care services provided under par. (b) shall be provided without charge at the school and shall be available to all students from 4-year-old kindergarten to grade 6 regardless of income.

(e) Under this subsection, a volunteer health care provider may provide instruction in human growth and development if the instructional program is in compliance with requirements of s. 118.019, except that the volunteer health care provider may not provide instruction on a topic specified under s. 118.019 (2) (e).

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health and family services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

**History:** 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23; 2003 a. 92; 2005 a. 188.

**146.905 Reduction in fees prohibited.** (1) Except as provided in sub. (2), a health care provider, as defined in s. 146.81 (1), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

**146.91 Long-term care insurance.** (1) In this section, “long-term care insurance” means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long-term care insurance, the office of the commissioner of insurance, the board on aging and long-term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long-term care insurance, based on the purchasers’ ability to pay.

(b) Reinsuring by the state of policies issued in this state by long-term care insurers.

(c) Allowing persons to retain liquid assets in excess of the amounts specified in s. 49.47 (4) (b) 3g., 3m. and 3r., for purposes of medical assistance eligibility, if the persons purchase long-term care insurance.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub. (2).

(5) In designing the program, the department shall consult with the federal department of health and human services to determine the feasibility of procuring a waiver of federal law or regulations that will maximize use of federal medicaid funding for the program designed under sub. (2).

(6) The department, with the advice of the council on long-term care insurance, may examine use of tax incentives for the sale and purchase of long-term care insurance.

History: 1987 a. 27; 1989 a. 56.

**146.95 Patient visitation.** (1) DEFINITIONS. In this section:

(a) “Health care provider” has the meaning given in s. 155.01 (7).

(b) “Inpatient health care facility” has the meaning given in s. 252.14 (1) (d).

(c) “Treatment facility” has the meaning given in s. 51.01 (19).

(2) PATIENT-DESIGNATED VISITORS. (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par. (b), no inpatient health care facility may deny visitation during the inpatient health care facility’s regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally

expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

**146.96 Uniform claim processing form.** Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109.

**146.99 Assessments.** The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in s. 50.33 (2), a total of \$1,500,000, in proportion to each hospital’s respective gross private-pay patient revenues during the hospital’s most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under s. 20.435 (4) (gp).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1999 a. 9.

**146.995 Reporting of wounds and burn injuries.** (1) In this section:

(a) “Crime” has the meaning specified in s. 949.01 (1).

(b) “Inpatient health care facility” has the meaning specified in s. 50.135 (1).

(2) (a) Any person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par. (b):

1. A gunshot wound.

2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime.

3. Second-degree or 3rd-degree burns to at least 5% of the patient’s body or, due to the inhalation of superheated air, swelling of the patient’s larynx or a burn to the patient’s upper respiratory tract, if the person has reasonable cause to believe that the burn occurred as a result of a crime.

(b) For any mandatory report under par. (a), the person shall report the patient’s name and the type of wound or burn injury involved as soon as reasonably possible to the local police department or county sheriff’s office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than \$500.

(3) Any person reporting in good faith under sub. (2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub. (2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient’s name and type of wound or burn injury have been previously reported under sub. (2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

History: 1987 a. 233; 1991 a. 39; 1993 a. 27.

**146.997 Health care worker protection.** (1) DEFINITIONS. In this section:

(a) “Department” means the department of workforce development.

(b) “Disciplinary action” has the meaning given in s. 230.80 (2).

(c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital,

county mental health complex or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.50, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.
5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.
12. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
13. A massage therapist or bodyworker issued a certificate under ch. 460.
14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.
15. A partnership of any providers specified under subs. 1. to 14.
16. A corporation or limited liability company of any providers specified under subs. 1. to 14. that provides health care services.
17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
18. A hospice licensed under subch. IV of ch. 50.
19. A rural medical center, as defined in s. 50.50 (11).
20. A home health agency, as defined in s. 50.49 (1) (a).

**(2) REPORTING PROTECTED.** (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard–setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.
2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard–setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard–setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the

health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard–setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

**(3) DISCIPLINARY ACTION PROHIBITED.** (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person’s behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

**(4) ENFORCEMENT.** (a) Any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.54 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a).

**(5) CIVIL PENALTY.** Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12–month period shall be measured by using the dates of the violations that resulted in convictions.

**(6) POSTING OF NOTICE.** Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form

approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

**History:** 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105; 2003 a. 33; 2005 a. 22.  
Wisconsin Health Care Workers: Whistleblowers Protection. Neuser. Wis. Law. March 2004.