

## 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 social services.

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

**History:** 1973 c. 323; 1985 a. 120.

**146.01 Infant blindness.** (1) For the prevention of ophthalmia neonatorum or infant blindness the attending physician or midwife shall use a prophylactic agent approved by the department.

(2) In a confinement not attended by a physician or midwife, if one or both eyes of an infant becomes inflamed, swollen and red or show an unnatural discharge at any time within 2 weeks after birth, the nurse, parents, or other person in charge shall report the facts in writing within 6 hours to the local health officer who shall immediately warn the person of the danger. The local health officer shall employ at the expense of the municipality a competent physician to examine and treat the case.

(3) Any person who violates this section may be required to forfeit not more than \$1,000.

**History:** 1979 c. 221; 1987 a. 332.

**146.015 Safety eye protective goggles.** (1) Every student and teacher in schools, colleges, universities and other educational institutions participating in or observing any of the following courses is required to wear appropriate industrial quality eye protective goggles at all times while participating in or observing such courses or laboratories:

(a) Vocational, technical or industrial arts shops, chemical or chemical-physical laboratories involving exposure to:

1. Hot molten metals or other molten materials.
2. Milling, sawing, turning, shaping, cutting, grinding or stamping of any solid materials.
3. Heat treatment, tempering or kiln firing of any metal or other materials.
4. Gas or electric arc welding or other forms of welding processes.

5. Repair or servicing of any vehicle.

6. Caustic or explosive materials.

(b) Chemical, physical or combined chemical-physical laboratories involving caustic or explosive materials, hot liquids or solids, injurious radiations or other hazards not enumerated.

(2) Eye protective goggles may be furnished for all students and teachers by the institution, purchased and sold at cost to students and teachers or made available for a moderate rental fee and shall be furnished for all visitors.

(3) In this section, "industrial quality eye protective goggles" means devices meeting the standards of the American National Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1 - 1968, and subsequent revisions thereof, approved by the American National Standards Institute, Inc.

(4) The state superintendent of public instruction shall prepare and circulate to each public and private educational institution in this state instructions and recommendations for implementing the eye safety provisions of this section.

**History:** 1973 c. 66.

**146.02 Tests for congenital disorders. (1) BLOOD TESTS.** The attending physician or nurse certified under s. 441.15 shall cause every infant born in each hospital or maternity home, prior to its discharge therefrom, to be subjected to blood tests as specified by the department, including tests for phenylketonuria, galactosemia, maple syrup urine disease, neonatal hypothyroidism, sickle cell anemia or other causes of congenital disorders. If the infant is born elsewhere than in a hospital or maternity home, the attending physician, nurse certified under s. 441.15 or birth attendant who attended the birth shall cause the infant, within one week of birth, to be subjected to these blood tests.

**(1m) URINE TESTS.** The department may establish a urine test program to test infants for causes of congenital disorders. The state laboratory of hygiene board may establish the methods of obtaining urine specimens and testing such specimens, and may develop materials for use in the tests. No person may be required to participate in programs developed under this subsection.

**(2) TESTS; DIAGNOSTIC, DIETARY AND FOLLOW-UP COUNSELING PROGRAM; FEES.** The department shall contract with the state laboratory of hygiene to perform the tests specified under this section and to furnish materials for use in the tests. The department shall provide necessary diagnostic services, special dietary treatment as prescribed by a physician for a patient with a congenital disorder as identified by tests under sub. (1) or (1m) and follow-up counseling for the patient and his or her family. The state laboratory of hygiene board, on behalf of the department, shall impose a fee for tests performed under this section sufficient to pay for services provided under the contract and shall include as part of this fee and pay to the department an amount the department determines is sufficient to fund the provision of diagnostic and counseling services, special dietary treatment and periodic evaluation of infant screening programs under this section.

**(3) EXCEPTIONS.** This section shall not apply if the parents or legal guardian of the child object thereto on the grounds that the test conflicts with their religious tenets and practices. No tests may be performed under sub. (1) or (1m) unless the parents or legal guardian are fully informed of the purposes of testing under this section and have been given reasonable opportunity to object as authorized in this subsection or in sub. (1m) to such tests.

**(4) CONFIDENTIALITY OF TESTS AND RELATED INFORMATION.** The state laboratory of hygiene shall provide the test results to the physician, who shall advise the parents or legal guardian of the results. No information obtained under this section from the parents or guardian or from specimens from the infant may be disclosed except for use in statistical data compiled by the department without reference to the identity of any individual and except as provided in ss. 146.81 and 146.82. The state laboratory of hygiene board shall provide to the department the names and addresses of parents of infants who have positive test results.

**(5) RELATED SERVICES.** The department shall disseminate information to families whose children suffer from congenital disorders and to women of child-bearing age with a history of congenital disorders concerning the need for and availability of follow-up counseling and special dietary treatment and the necessity for testing infants. The department shall also refer families of children who suffer from congenital disorders to available health and social services programs and shall coordinate the provision of these programs. The department shall

periodically consult appropriate experts in reviewing and evaluating the state's infant screening programs.

**History:** 1977 c. 160; 1983 a. 157; 1985 a. 255; 1987 a. 27; 1989 a. 31  
A physician and parent may enter an agreement to perform a PKU test after the infant has left the hospital without violating (1). 61 Atty. Gen. 66.

**146.021 Asbestos testing fees.** Notwithstanding s. 36.25 (11) (f), the state laboratory of hygiene board shall impose a fee sufficient to pay for any asbestos testing services which it provides.

**History:** 1987 a. 396.

**146.022 Services relating to acquired immunodeficiency syndrome. (1) DEFINITIONS.** In this section:

(a) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(b) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(c) "Nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181.

(d) "Organization" means a nonprofit corporation or a public agency which proposes to provide services to individuals with acquired immunodeficiency syndrome.

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

(e) "Public agency" means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

**(2) DISTRIBUTION OF FUNDS.** (a) *Acquired immunodeficiency syndrome services.* From the appropriations under s. 20.435 (1) (a) and (am), the department shall allocate a total of \$856,200 in state fiscal year 1989-90 and \$988,200 in state fiscal year 1990-91 and from the appropriations under s. 20.435 (1) (mc) and (md) and (6) (mc) the department shall allocate a total of \$177,000 in each of state fiscal years 1989-90 and 1990-91 for the provision of services to individuals with or at risk of contracting acquired immunodeficiency syndrome, as follows:

1. Partner referral and notification. The department shall contact an individual known to have received an HIV infection and encourage him or her to refer for counseling and HIV testing any person with whom the individual has had sexual relations or has shared intravenous equipment.

2. Grants to local projects. The department shall make grants to applying organizations for the provision of acquired immunodeficiency syndrome prevention information, the establishment of counseling support groups and the provision of direct care to persons with acquired immunodeficiency syndrome.

3. Statewide public education campaign. The department shall promote public awareness of the risk of contracting acquired immunodeficiency syndrome and measures for acquired immunodeficiency syndrome protection by development and distribution of information through family planning clinics, offices of physicians and clinics for sexually transmitted diseases and by newsletters, public presentations or other releases of information to newspapers, periodicals, radio and television stations and other public information resources. The information would be targeted at individuals whose behavior puts them at risk of contracting acquired immunodeficiency syndrome and would encompass the following topics:

a. Acquired immunodeficiency syndrome and HIV infection.

b. Means of identifying whether or not individuals may be at risk of contracting acquired immunodeficiency syndrome.

c. Measures individuals may take to protect themselves from contracting acquired immunodeficiency syndrome.

d. Locations for procuring additional information or obtaining testing services.

4. Information network. The department shall establish a network to provide information to local public health officers and other public officials who are responsible for acquired immunodeficiency syndrome prevention and training.

5. HIV seroprevalence studies. The department shall perform tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and conduct behavioral surveys among population groups determined by the department to be highly at risk of becoming infected with or transmitting HIV. Information obtained shall be used to develop targeted HIV prevention efforts for these groups and to evaluate the state's prevention strategies.

6. Grants for targeted populations and intervention services. The department shall make grants to those applying organizations determined by the department to be best able to contact individuals determined to be highly at risk of contracting acquired immunodeficiency syndrome for the provision of acquired immunodeficiency syndrome information and intervention services.

7. Contracts for counseling and laboratory testing services. The department shall contract with organizations to provide, at alternate testing sites, anonymous counseling services and laboratory testing services for the presence of HIV.

8. Life care services. The department shall allocate \$564,000 in fiscal year 1989-90 and \$696,000 in fiscal year 1990-91 in grants to applying organizations for the provision of needs assessments; assistance in procuring financial, medical, legal, social and pastoral services; counseling and therapy; homecare services and supplies; and advocacy.

(b) *Prevention training for alcohol and drug abuse workers.* From the appropriation under s. 20.435 (6) (mc), the department shall allocate \$25,000 in each of state fiscal years 1989-90 and 1990-91 to provide training for persons providing alcohol and other drug abuse services and counseling under s. 115.36 (3) or through county departments under s. 46.21, 46.23, 51.42 or 51.437, in order to enable these persons to educate individuals who are drug dependent with respect to the use of shared intravenous equipment and acquired immunodeficiency syndrome and its prevention.

(c) *Clinical trials program grant.* From the appropriation under s. 20.435 (1) (ao), the department shall allocate up to \$150,000 in state fiscal year 1990-91 as a grant to a community-based agency or a medical or academic institution. The grant under this paragraph is to establish a statewide program of community-based clinical trials of investigational new drugs for management of individuals with HIV infections in this state. These services will, under the program, be provided by a statewide network of physicians known as the Wisconsin community-based research consortium. Award of a grant to an entity under this paragraph is conditioned upon receipt by the department of an agreement by the entity to provide funds to match at least 100% of the amount of the grant awarded.

(3) **CONFIDENTIALITY OF INFORMATION.** The results of any test performed under sub. (2) (a) 5 are confidential and may be disclosed only to the individual who receives a test or to other persons with the informed consent of the test subject. Information other than that released to the test subject, if released under sub. (2) (a) 5, may not identify the test subject.

**History:** 1987 a. 27, 70, 399; 1989 a. 31, 201, 336.

**146.023 Blood tests for HIV. (1)** In this section:

(a) "Autologous transfusion" means the receipt by an individual, by transfusion, of whole blood, blood plasma, a blood product or a blood derivative, which the individual has previously had withdrawn from himself or herself for his or her own use.

(b) "HIV" has the meaning specified under s. 146.025 (1) (b).

(c) "State epidemiologist" has the meaning specified in s. 146.025 (1) (f).

(d) "Validated test result" has the meaning specified in s. 146.025 (1) (g).

(1m) Except as provided under sub. (3), any blood bank, blood center or plasma center in this state that purchases or receives whole blood, blood plasma, a blood product or a blood derivative shall, prior to its distribution or use and with informed consent under the requirements of s. 146.025 (2) (b), subject that blood, plasma, product or derivative to a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. This subsection does not apply to a blood bank that purchases or receives whole blood, blood plasma, a blood product or a blood derivative from a blood bank, blood center or plasma center in this state if the whole blood, blood plasma, blood product or blood derivative has previously been subjected to a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

(1r) For the purposes of this section, the state epidemiologist shall make separate findings of medical significance and sufficient reliability for a test or a series of tests to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV for each of the following purposes:

(a) Subjecting whole blood, blood plasma, a blood product or a blood derivative to a test prior to distribution or use of the whole blood, blood plasma, blood product or blood derivative.

(b) Providing disclosure of test results to the subject of the test.

(2) If performance of a test under sub. (1m) yields a validated test result positive for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, the whole blood, blood plasma, blood product or blood derivative so tested with this result may not be distributed or used except for purposes of research or as provided under sub. (5).

(3) If a medical emergency, including a threat to the preservation of life of a potential donee, exists under which whole blood, blood plasma, a blood product or a blood derivative that has been subjected to testing under sub. (1m) is unavailable, the requirement of sub. (1m) shall not apply.

(4) Subsections (1m) and (2) do not apply to the extent that federal law or regulations require that a blood bank, blood center or plasma center test whole blood, blood plasma, a blood product or a blood derivative.

(5) Whole blood, blood plasma, a blood product or a blood derivative described under sub. (2) that is voluntarily donated solely for the purpose of an autologous transfusion may be distributed to or used by the person who has donated the whole blood, blood plasma, blood product or blood derivative. No person other than the person who has donated the whole blood, blood plasma, blood product or blood derivative may receive or use the whole blood, blood plasma, blood product or blood derivative unless it has been subjected to a test under sub. (1m) and the test has yielded a negative result for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

**History:** 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36.

**146.024 Discrimination related to acquired immunodeficiency syndrome. (1)** In this section:

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(a) "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist or occupational therapy assistant certified under ch. 448, an optometrist licensed under ch. 449, a psychologist licensed under ch. 455, an employe or agent thereof, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, an emergency medical technician — advanced (paramedic) licensed under s. 146.35 or an ambulance attendant licensed under s. 146.50.

NOTE: 1989 Wis. Act 102 renamed "emergency medical technician—advanced (paramedic)" and "ambulance attendant" to "emergency medical technician—paramedic" and "emergency medical technician—basic," respectively. Both are now licensed under s. 146.50 (5).

(b) "HIV" has the meaning specified in s. 146.025 (1) (b).

(c) "Home health agency" has the meaning specified in s. 141.15 (1) (a).

(d) "Inpatient health care facility" means a hospital, nursing home, community-based residential facility, county home, county mental health complex, tuberculosis sanatorium or other place licensed or approved by the department under ss. 49.14, 49.16, 49.171, 50.02, 50.03, 50.35, 51.08, 51.09, 58.06, 149.01 and 149.02 or a facility under s. 45.365, 48.62, 51.05, 51.06 or 149.06 or ch. 142.

(2) No health care provider, home health agency or inpatient health care facility may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to \$5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

History: 1989 a. 201.

**146.025 Restrictions on use of a test for HIV. (1) DEFINITIONS.** In this section:

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

(b) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(c) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(d) "Informed consent for testing or disclosure" means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) "Informed consent for testing or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

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

(eg) "Relative" means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 852.03 (2). This relationship may be by consanguinity or direct affinity.

(em) "Significantly exposed" means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission of blood, semen or other body fluid into a body orifice.

2. Exchange of blood during the accidental or intentional infliction of a penetrating wound, including a needle puncture.

3. Blood or other body fluid exchange into an eye, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred.

4. Exposure to saliva as the result of a bite during the course of which skin is broken.

5. The provision of cardiopulmonary resuscitation.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(f) "State epidemiologist" means the individual designated by the secretary as the individual in charge of communicable disease control for this state.

(fm) "Universal precautions" means measures that a health care provider or an employe of a health care provider takes in accordance with recommendations of the federal centers for disease control for prevention of HIV transmission in health-care settings.

(g) "Validated test result" means a result of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV that meets the validation requirements determined to be necessary by the state epidemiologist.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. 1g, a health care provider who procures, processes, distributes or uses a human body part or human tissue donated as specified under s. 157.06 (6) (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds

medically significant and sufficiently reliable to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

1g. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to testing under subd. 1 is unavailable, the requirement of subd. 1 does not apply.

1r. A health care provider who procures, processes, distributes or uses human sperm or ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the procurement, processing, distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 146.023 (1r) to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 90 days from the date of initial testing. If the donor continues after the date of the 2nd test to donate sperm or ova, the health care provider shall test the donor at least every 3 months from the date of the 2nd test. If any validated test result of the donor for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is positive, the sperm or ova donated for use may not be used and, if donated, shall be destroyed.

2. The department, a laboratory certified under s. 143.15 (4) or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

3. The medical director of a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. A health care provider may subject an individual to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual's guardian, if the individual is adjudicated incompetent under ch. 880; from the individual's parent or guardian, if the individual is under 14 years of age; or from

the individual's closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

5. A health care provider or an employe of a health care provider who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who is significantly exposed to the patient may, without obtaining consent, subject the patient's blood to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if all of the following apply:

a. The health care provider or employe uses universal precautions against significant exposure except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the patient.

b. A physician, based on information provided to the physician, determines and certifies in writing that the health care provider or employe has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the health care provider or employe who is significantly exposed is a physician, he or she may not make this determination or certification.

c. The test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

d. The patient, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

e. The patient has been informed that his or her blood may be tested for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including the patient, without the patient's consent, except to the health care provider or employe who was significantly exposed; that if the health care provider or employe knows the identity of the patient, he or she may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the patient's identity.

5m. The results of a test under subd. 5 may be disclosed only to the patient, if the patient so consents, to anyone authorized by the patient and to the health care provider or employe of a health care provider who was significantly exposed. A record may be retained of the results of the test only if the record does not reveal the patient's identity. If the health care provider or employe knows the identity of the patient whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test performed.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under par. (a) shall, in instances under that paragraph in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to



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be incapacitated under s. 155.05 (2), the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed as specified under sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under sub. (5) (a) 2 to 15 or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(bm) The health care provider that subjects a person to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under par. (a) 3 shall provide the test subject and the test subject's guardian, if the test subject is incompetent under ch. 880, with all of the following information:

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

2. A statement of explanation that the test results may be disclosed as specified under sub. (5) (a) and either a listing that duplicates the persons or circumstances specified under sub. (5) (a) 2 to 15 or a statement that the listing is available upon request.

(3) **WRITTEN CONSENT TO DISCLOSURE.** A person who receives a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV under sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent to providing informed consent for disclosure under sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) **RECORD MAINTENANCE.** A health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained.

(5) **CONFIDENTIALITY OF TEST.** (a) The results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, except a test under sub. (2) (a) 5, may be disclosed only to the following persons or under the following circumstances, except that the person who receives a test or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to

be incapacitated under s. 155.05 (2), the health care agent may under sub. (2) (b) or (3) authorize disclosure to anyone:

1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employe of a health care provider under subd. 2 who prepares or stores patient health care records, as defined in s. 146.81 (4), for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens of body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under sub. (2) (a), for any of the following purposes:

a. Determining the medical acceptability of blood or plasma secured from the test subject.

b. Notifying the test subject of the test results.

c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 (6) (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 (5) or to other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV-infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13. To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

(b) A private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10 if he or she annually submits to the maintainer of his or her test results under sub. (4) (c) a signed, written request that denial be made.

**(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES.** Notwithstanding s. 157.05, a corpse may be subjected to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the attending physician of the funeral director, coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employe of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, and if a physician

who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employe has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

**(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED.** No person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV for self-use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

**(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED.** No person to whom the results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV have been disclosed under sub. (5) (a) or (5m) may disclose the test results except as authorized under sub. (5) (a) or (5m).

**(7) REPORTING OF POSITIVE TEST RESULTS.** (a) Notwithstanding ss. 227.01 (9) and 227.10 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under s. 140.05 (1). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 140.05 (1).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HIV infections.

(c) A report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 143.04 with respect to persons for whom a diagnosis of acquired immunodeficiency syndrome has been made.

**(8) CIVIL LIABILITY.** (a) Any person violating sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages and costs, plus exemplary damages of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a viola-

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tion occurred under sub. (2), (5) (a), (5m), (6) or (7) (c). A conviction under sub. (2), (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) **CRIMINAL PENALTY.** Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) 5m, (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359.

**146.0255 Testing infants for controlled substances. (1) DEFINITION.** In this section, "controlled substance" has the meaning given in s. 161.01 (4).

(2) **TESTING.** Any hospital employe who provides health care, social worker or foster care intake worker may refer an infant to a physician for testing of the infant's bodily fluids for controlled substances if the hospital employe who provides health care, social worker or foster care intake worker suspects that the infant has controlled substances in the infant's bodily fluids because of the mother's ingestion of controlled substances while she was pregnant with the infant. The physician may test the infant to ascertain whether or not the infant has controlled substances in the infant's bodily fluids, if the parent or guardian consents to the testing and if the physician determines that there is a serious risk that there are controlled substances in the infant's bodily fluids because of the mother's ingestion of controlled substances while she was pregnant with the infant. If the results of the test indicate that the infant does have controlled substances in the infant's bodily fluids, the physician shall make a report under s. 46.238.

(3) **TEST RESULTS.** The physician who performs a test under sub. (2) shall provide the infant's parents or guardian 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 must be disclosed to a county department under s. 46.215, 46.22 or 46.23 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).

(5) **APPLICABILITY.** This section does not apply after June 30, 1993.

**History:** 1989 a. 122, 359.

**146.0256 Referral and treatment information on perinatal addiction. (1)** From the appropriation under s. 20.435 (1) (a), the department shall allocate \$15,000 in state fiscal year 1990-91 for the development of referral and treatment information on perinatal addiction to controlled substances and for the dissemination of that information through the use of hotlines and other public outreach services. The department shall endeavor to use public hotlines that existed on January 31, 1990, for the dissemination of the referral and treatment information. If that is not possible, the department may contract out for the establishment of a hotline. The department shall submit a report that evaluates the development and implementation of the referral and treatment information by July 1, 1992, to the legislature under s. 13.172 (3).

(2) This section does not apply after June 30, 1993.

**History:** 1989 a. 122

**146.026 Sudden infant death syndrome. (1)** The department shall prepare and distribute printed informational materials relating to sudden infant death syndrome. The materials shall be directed toward the concerns of parents of victims

of sudden infant death syndrome and shall be distributed to maximize availability to the parents.

(2) The department shall make available upon request follow-up counseling by trained health care professionals for parents and families of victims of sudden infant death syndrome.

**History:** 1977 c. 246; Stats. 1977 s. 146.025; 1977 c. 447; Stats. 1977 s. 146.026.

**146.027 Cancer control and prevention grants. (1) DEFINITIONS.** In this section:

(a) "Institution" means any hospital, nursing home, county home, county mental hospital, tuberculosis sanatorium, community-based residential facility or other place licensed or approved by the department under ss. 49.14, 49.16, 49.171, 50.02, 50.03, 50.35, 51.08, 51.09, 58.06, 149.01 and 149.02.

(b) "Nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181.

(c) "Organization" means a nonprofit corporation or a public agency which proposes to provide services to individuals.

(d) "Public agency" means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

(2) From the appropriation under s. 20.435 (1) (cc), the department shall allocate up to \$400,000 in each of state fiscal years 1989-90 and 1990-91 to provide grants to applying individuals, institutions or organizations for the conduct of projects on cancer control and prevention. Funds shall be awarded on a matching basis, under which, for each grant awarded, the department shall provide 50%, and the grantee 50%, of the total grant funding.

(3) The department shall promulgate rules establishing the criteria and procedures for the awarding of grants for projects under sub. (2).

**History:** 1987 a. 399; 1989 a. 31.

**146.028 Birth and developmental outcome monitoring program. (1) DEFINITIONS.** In this section:

(a) "Adverse neonatal outcome" means one of the following resulting to an infant at birth or in the first month following birth:

1. Birth weight of less than 2,500 grams.

2. A condition of a chronic nature, including central nervous system hemorrhage or infection of the central nervous system, which may result in a need for long-term care.

3. An apgar score of 3 or less at 5 minutes following birth.

(b) "Apgar score" means a numerical expression of the condition of a newborn infant which is the sum of points achieved after assessing the infant's heart rate, respiratory effort, muscle tone, reflex irritability and color.

(c) "Birth defect" means one or more of the following conditions resulting to an infant or child:

1. A structural deformation.

2. A developmental malformation.

3. A genetic, inherited or biochemical disease.

(d) "Developmental disability" has the meaning specified under s. 51.01 (5) (a).

(e) "Infant or child" means a human from birth to the age of 6 years.

(f) "Local health officer" has the meaning specified under s. 143.01.

(g) "Other severe disability" means a severe sensory impairment, severe physical handicap or developmental delay that results from injury, infection or disease, is chronic in nature and requires long-term care.



(2) **REPORTING.** (a) Beginning on January 1, 1989, the persons specified in par. (b) shall report all of the following to the department:

1. The appearance of the condition, within 60 days after a suspected or confirmed diagnosis.

2. Information which disputes, augments or clarifies the suspected or confirmed diagnosis under subd. 1, within 60 days after receipt of the information.

(b) The persons required to report under par. (a) are the following:

1. A physician licensed under ch. 448 who is the primary treating physician for an infant or child treated or visited by the physician and who makes a diagnosis or suspects with reasonable medical certainty that the infant or child has a condition resulting from an adverse neonatal outcome, a birth defect or a developmental disability or other severe disability.

2. If no physician licensed under ch. 448 has treated an infant or child, a nurse registered, permitted or licensed under ch. 441 who knows or suspects with reasonable medical certainty that an infant or child visited by the nurse has a condition resulting from an adverse neonatal outcome, a birth defect or a developmental disability or other severe disability.

(3) **DEPARTMENTAL POWERS AND DUTIES.** From the appropriations under s. 20.435 (1) (md) and (8) (n), the department shall perform all of the following for the program under this section:

(a) Develop and implement a system for the collection, updating and analysis of information reported under sub. (2), including the publication and distribution of report forms.

(b) Disseminate data and information, publish an annual report, submit the report annually to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) and provide county-specific information to counties in this state on the results of information collected under sub. (2).

(c) Coordinate data dissemination activities of the department with those of the division for handicapped children and pupil services in the department of public instruction with respect to the information collected under sub. (2).

(4) **RULE-MAKING AUTHORITY.** (a) The department, following consultation with the early intervention interagency coordinating council, shall promulgate rules:

1. To define a condition requiring report under sub. (2).

2. To determine form content and format and procedures necessary for submittal to the department of a report under sub. (2).

(b) The department may promulgate rules specifying the types of information and the conditions under which that information may be released under sub. (5) (a).

(5) **CONFIDENTIALITY.** (a) The department may not release information specifically identifying an infant or child that is obtained from reports under sub. (2), except the following, under the following conditions:

1. To the parent or guardian of an infant or child for whom a report is made under sub. (2), upon receipt of a written request from the parent or guardian.

2. To a local health officer, under sub. (6).

3. To the division of handicapped children and pupil services of the department of public instruction, upon request, the name and address of an infant or child for whom a report is made under sub. (2) and other information necessary to aid the division in providing services to the infant or child. The department shall notify the parent or guardian of an infant or child about whom information is released under this subdivision, of the release. The division of handicapped

children and pupil services of the department of public instruction may disclose information received under this paragraph only as necessary to provide services to the infant or child.

4. To a physician or nurse reporting under sub. (2), for the purpose of verification of information reported by the physician or nurse.

5. To a representative of a federal or state agency, upon written request, information necessary to perform a legally authorized function of that agency, including investigation of causes, mortality, methods of prevention, treatment or care of birth defects, associated diseases or disabilities, except that the information may not include the name or address of an infant or child with a condition reported under sub. (2). The department shall notify the parent or guardian of an infant or child about whom information is released under this subdivision, of the release. The representative of the federal or state agency may disclose information received under this paragraph only as necessary to perform the legally authorized function of that agency for which the information was requested.

6. To any person who has the informed, written consent of the parent or guardian of an infant or child with a condition reported under sub. (2), any information concerning that infant or child, solely for the purpose of research in accordance with rules promulgated by the department.

(b) The department shall, not more than 10 years from the date of receipt of a report under sub. (2), delete from any file of the department the name of an infant or child that is contained in the report.

(6) **LOCAL HEALTH OFFICER ACCESS TO INFORMATION.** (a) If a local health officer submits to the department a written request for receipt of information submitted under sub. (2), the department shall forward to the public health officer, no later than the 10th day of the month following receipt of information under sub. (2), an abstract of information received for an infant or child for whom the parent or guardian has provided informed, written consent to a release of the information and who resides in the area of jurisdiction of the public health officer.

(b) The local health officer may disclose information in the abstract under par. (a) only as necessary to aid that local health officer in rendering or coordinating follow-up care for the infant or child or for conducting a health, demographic or epidemiologic investigation. The local health officer shall destroy all information obtained under par. (a) no later than 365 days after he or she receives it, except that this requirement does not apply to information, including individual medical records, obtained by the local health officer subsequent to his or her receipt of information under par. (a).

(c) The written request submitted under par. (a) is invalid after December 31 of the year in which the department receives it.

(7) **EXCEPTION.** Nothing in this section authorizes or requires the administration of a physical examination or medical care or treatment to an infant or child if the parent or legal guardian of the infant or child objects on the ground that the examination or care or treatment conflicts with his or her religious tenets or practices.

(8) **ADMISSIBILITY OF INFORMATION AS EVIDENCE.** Information collected under this section is not admissible as evidence in any legal action or proceeding before any court, tribunal, board, agency, person or for the purpose of determining insurability, except for the purpose of enforcing this section.

History: 1987 a. 371.

**146.029 Health care for migrant workers and families.** From the appropriation under s. 20.435 (1) (cr), the depart-

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ment shall allocate \$50,000 in each of state fiscal years 1989-90 and 1990-91 as a grant for the provision of direct health care services to migrant workers, as defined in s. 103.90 (5), and their families. The grant shall be awarded to an applying entity that is a migrant health center for purposes of receipt of federal funds under 42 USC 254b. Funding provided under the grant shall be used for payment for the professional staff of a health clinic to do all of the following:

- (1) Evaluate data on migrant health.
- (2) Plan and develop health care services to migrant workers and their families.
- (3) Provide medical care and medical education services to migrant workers and their families.

History: 1989 a. 31.

**146.03 Home manufacturing.** (1) Under this section "manufacturer" shall mean the owner or lessee of any factory or contractor for such owner or lessee, "manufactured" shall mean manufactured, altered, repaired or finished, and "home" shall mean any tenement or dwelling, or a shed or other building in the rear thereof.

(2) No articles shall be manufactured for a manufacturer in a home unless he shall have secured a license from the local health officer, which shall designate the room, apartment or building and name the persons to be employed. License shall be granted only upon payment of a fee of \$3, and when the health officer shall have satisfied himself through inspection that the place is clean and fit for the purpose and that none of the persons employed or living therein are afflicted with any communicable disease likely to be transmitted to consumers. The license shall be issued for one year. At least one reinspection shall be made during the year, and the license revoked if reinspection discloses improper conditions. The license shall be kept on file in the principal office of the licensee.

(3) The department may adopt and enforce rules for local health officers hereunder, and may prohibit home work upon specified articles when necessary to protect health of consumers or workers. Section 140.05 (3), (4) and (5) shall apply.

(4) Every manufacturer giving out articles or materials to be manufactured, in any home shall issue therewith a label bearing the name or place of business of the factory, written or printed legibly in English, and shall keep a register of the names and addresses of the persons to whom given, and with whom contracts to do so were made, the quantities given out and completed and the wages paid. This register may be inspected by the department or the local health officer.

(5) Anyone who shall for himself or as manager or agent give out materials to be manufactured, in a home, for an unlicensed manufacturer or who shall employ, or contract with anyone to do such work without such license shall forfeit to the state not less than \$10 nor more than \$100 for each offense.

History: 1971 c. 164 s. 85; 1973 c. 135; 1979 c. 34.

**146.04 Mattresses and upholstery.** (1) Whoever manufactures for sale, offers for sale, sells, delivers, or has in his possession with intent to sell or deliver any mattress which is not properly branded, or labeled; or whoever uses, in whole or in part in the manufacture of mattresses, any material which has been used, or has formed a part of any mattress, pillow or bedding used in or about public or private hospitals or on or about any person having a communicable disease; or dealing in mattresses, has a mattress in his possession for the purpose of sale, or offers it for sale, without a brand or label as herein provided, or removes, conceals or defaces the brand or label, shall be fined not less than twenty-five nor more than five hundred dollars, or imprisoned not to exceed six months,

or both. The brand or label herein required shall contain, in plain print in the English language, a statement of the material used, whether they are, in whole or in part, new or secondhand, and the qualities. Such brand or label shall be a paper or cloth tag securely attached. A mattress within this section is a quilted, stuffed pad, to be used on a bed for sleeping or reclining purposes.

(2) Any person upholstering or reupholstering any article, or who manufactures for sale, offers for sale, sells or delivers, or who has in his possession with intent to sell or deliver anything containing upholstery, without a brand or label as herein provided or who removes, conceals or defaces the brand or label, shall be punished as provided in sub. (1). The brand or label shall contain, in plain print in English, a statement of the kind of materials used in the filling and in the covering, according to the grades of filling and covering used by the trade, whether they are in whole or in part new or secondhand, and the qualities, and whether, if secondhand, they have been thoroughly cleaned and disinfected. Such brand or label shall be a paper or cloth tag securely attached.

History: 1983 a. 27.

**146.05 Public places.** The owner and occupant and everyone in charge of a public building, as defined by s. 101.01 (2) (a) to (i), shall keep the same clean and sanitary.

History: 1971 c. 185 s. 7.

**146.06 Calcimining and paper hanging.** Before repapering or recalcimining any part of a wall or ceiling in any hotel or other public place anyone engaged in the business, shall remove all old paper or calcimine and thoroughly cleanse the surface. Violation shall be fined not less than five nor more than twenty-five dollars for each offense.

**146.07 Drinking cups.** (1) If the owner or manager shall furnish, or permit the use of a common drinking cup in a railroad train or station, state or other public building, street, public park, educational institution, hotel or lodging house, theater, department store, barber shop, or other places where it is inimical to health, and the department so finds and orders, he shall be fined not less than ten nor more than fifty dollars.

(2) No railroad car in which any passenger is permitted to ride for more than ten miles of continuous passage in one general direction shall be operated unless there is provided for every passenger therein, at all times during such operation, opportunity to obtain free of charge a paper drinking cup not theretofore used by any person. Such drinking cups shall be kept in a clean, conspicuous and convenient place at or near the drinking fountain in each such car. Any owner or manager or person in charge who shall fail to comply herewith shall forfeit not less than twenty-five nor more than one hundred dollars for every day or part of day of such failure, to be recovered in an action to be brought by the attorney general in the name of the state of Wisconsin. The provisions of this section shall be enforced by the department of transportation.

History: 1977 c. 29 s. 1654 (9) (a).

**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 industry, labor and human relations 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.

**146.09 Sweeping.** If the owner or manager shall sweep, or permit the sweeping, except when vacuum cleaners or properly filled reservoir dustless brushes are used, of floors in a railroad station, passenger car, state or public building, educational institution, hotel, or department store, without the floor being first sprinkled with water, moist sawdust, or other substance so as to prevent the raising of dust, he shall be fined not less than ten nor more than fifty dollars.

**146.10 Smoke.** The council of any city or the board of any village may regulate or prohibit the emission of dense smoke into the open air within its limits and one mile therefrom.

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

**146.125 Powers of villages, cities and towns.** Section 95.72 shall not be construed as depriving any city or village from passing any ordinance prohibiting the rendering of dead animals within the boundaries specified in s. 66.052 nor as nullifying any existing law or ordinance prohibiting the rendering of dead animals within such area, nor prohibiting any city or village from licensing, revoking such license, and regulating the business of rendering and transporting dead animals under sanitary conditions no less stringent than provided by said section and the rules of the department of agriculture, trade and consumer protection and any such licensing and regulation shall be construed as supplementary to the provisions of this section and the rules of the department shall not be construed as excusing or justifying any failure or neglect to comply with this section and the rules of the department. Section 95.72 shall be expressly construed as modifying the powers granted to towns and any city, village or town is empowered to take any action to be taken under s. 146.14 and to institute and maintain court proceedings to prevent, abate or remove any nuisances thereunder and to institute and maintain any action under ss. 823.01, 823.02 and 823.07.

**History:** 1973 c. 206; Sup. Ct. Order, 67 W (2d) 774; 1977 c. 29 s. 1650m (4).

**146.13 Discharging noxious matter into highway and surface waters. (1)** If anyone constructs or permits any drain, pipe, sewer or other outlet to discharge into a public highway infectious or noxious matter, the board of health of the village, town or city shall, and the town sanitary district commission or the county board of health, acting alone or jointly with the local board of health may, order the person maintaining it to remove it within 10 days and if such condition continues or recurs after the expiration of 10 days the board or boards issuing the order may enter upon the property and cause removal of the nuisance. The cost thereof may be recovered from the person permitting such violation, or such cost may be paid by the municipal treasurer and such account, after being paid by the treasurer, shall be filed with the municipal clerk, who shall enter the amount chargeable to the property in the next tax roll in a column headed, "For Abatement of a Nuisance," as a tax on the lands upon which such nuisance was abated, which tax shall be collected as other taxes are. In case of railroad or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the clerk to the state treasurer who shall add the amount designated therein to the sum due from the company owning, occupying or controlling the land specified, and he shall collect the same as prescribed in subch. I of ch. 76 and return the amount collected to the town, city or

village from which such certificate was received. Anyone maintaining such a nuisance shall also be fined not exceeding \$300 or imprisoned not exceeding 90 days, or both.

**(2)** No person shall discharge by any means whatsoever untreated domestic sewage into any surface water or into any drainage ditch governed by ch. 88; nor shall any person discharge effluents or pumpage by any means whatsoever from any septic tank, dry well or cesspool into any surface water or into any drainage ditch governed by ch. 88. Whoever violates this subsection shall be fined not to exceed \$50 for the first offense and not less than \$50 nor more than \$200 or imprisoned for 30 days, or both, for each subsequent offense.

**History:** 1979 c. 34 s. 2102 (39) (g); 1979 c. 102 s. 237; 1989 a. 359.

**146.14 Nuisances. (1)** A "nuisance," under this section, is any source of filth or cause of sickness. The department may order the abatement or removal of a nuisance on private premises, and if the owner or occupant fails to comply, the department, or its agent, may enter upon the premises and abate or remove such nuisance.

**(2)** If a nuisance, caused by improper sewerage disposal facilities, is found on private property the local health officer or the chairman of the local board of health shall notify the owner and the occupant of such property by registered mail with return receipt requested of the presence of such nuisance and order its abatement or removal within 30 days of receipt of notice. The officer shall also notify the local governing body of the nuisance. If the nuisance is not corrected by that date, the local governing body shall immediately enter upon the property and abate or remove the nuisance or may contract to have the work performed. The nuisance shall be abated in a manner which is approved by the department of industry, labor and human relations. The cost thereof may be recovered from the person permitting such violation or may be paid by the municipal treasurer and such account, after being paid by the treasurer, shall be filed with the municipal clerk, who shall enter the amount chargeable to the property in the next tax roll in a column headed "For Abatement of a Nuisance" as a special tax on the lands upon which such nuisance was abated, which tax shall be collected as are other taxes. In case of railroads or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the clerk to the state treasurer who shall add the amount designated therein to the sum due from the company owning, occupying or controlling the land specified, and the treasurer shall collect the same as prescribed in subch. I of ch. 76 and return the amount collected to the town, city or village from which such certificate was received. Anyone maintaining such a nuisance may also be fined not more than \$300 or imprisoned not more than 90 days or both. The only defenses an owner shall have against the collection of a tax under this subsection are that no nuisance existed on the owner's property, that no nuisance was corrected on the owner's property, that the procedure outlined in this subsection was not followed or any applicable defense under s. 74.33. If a nuisance resulted from any other cause or source, the local board of health or town sanitary district commission shall order its abatement within 24 hours, and if the owner or occupant fails to comply, he or she shall forfeit not less than \$25 nor more than \$100, and the board or commission may abate or remove the nuisance.

**(3)** If the local board of health or commission is refused entry to any building or vessel to examine into and abate, remove or prevent a nuisance, any member may complain under oath to a judge of a court of record, stating the facts in the member's knowledge. Upon a finding of probable cause the judge shall issue a warrant commanding the sheriff or any

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constable of the county to take sufficient aid, and being accompanied by 2 or more members of the board of health or commission; and under their direction, between sunrise and sunset, abate, remove or prevent the nuisance.

(4) In cities under general charter the health commissioner or a person under the commissioner may enter into and examine any place at any time to ascertain health conditions, and anyone refusing to allow such entrance at reasonable hours shall be fined not less than \$10 nor more than \$100; and if the commissioner deems it necessary to abate or remove a nuisance found on private property, the commissioner shall serve notice on the owner or occupant to abate or remove within a reasonable time, not less than 24 hours; and if he or she fails to comply, or if the nuisance is on property whose owner is a nonresident, or cannot be found, the commissioner shall cause abatement or removal.

(5) The cost of abatement or removal of a nuisance under this section may be at the expense of the municipality and may be collected from the owner or occupant, or person causing, permitting or maintaining the nuisance, or may be charged against the premises and, upon certification of the health official, assessed as are other special taxes. In cases of railroads or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the clerk to the state treasurer who shall add the amount designated therein to the sum due from the company owning, occupying or controlling the land specified, and the treasurer shall collect the same as prescribed in subch. I of ch. 76 and return the amount collected to the town, city or village from which such certificate was received. Anyone maintaining such a nuisance may also be fined not more than \$300 or imprisoned not more than 90 days or both. The only defenses an owner shall have against the collection of a tax under this subsection are that no nuisance existed on the owner's property, or that no nuisance was corrected on the owner's property, or that the procedure outlined in this subsection was not followed, or any applicable defense under s. 74.33.

(6) Cities of the first class may but shall not be required to follow the provisions of this section. Cities of the first class may follow the provisions of its charter.

History: 1979 c. 102 s. 237, 176; 1981 c. 20 s. 2200; 1987 a. 378.

**146.145 Asbestos management.** (1) In this section:

- (a) "Asbestos" has the meaning given in s. 140.06 (1) (a).
- (b) "Asbestos abatement activity" has the meaning given in s. 140.06 (1) (b).
- (c) "Asbestos-containing material" has the meaning given in s. 140.06 (1) (c).
- (d) "School" has the meaning given under s. 118.257 (1) (c).

(2) The department shall promulgate rules to do all of the following:

(a) Establish building inspection requirements and procedures to protect students and employees from asbestos hazards in schools.

(b) Regulate asbestos abatement activities in schools.

(c) Establish requirements for the maintenance of asbestos-containing material in schools which contain asbestos-containing material.

(d) Establish priorities for asbestos abatement activities in schools which contain asbestos-containing materials.

(e) Require a management plan for asbestos-containing material in every school which contains asbestos-containing material.

(2m) No requirement under sub. (2) may be stricter than any requirement under 15 USC 2641 to 2654.

(3) A school district and any school which is not a public school may apply to the department for a variance to any standard adopted under this section under the provisions of s. 101.055 (4) (a) to (c).

(4) Any person who intentionally violates any rule promulgated under this section shall forfeit not less than \$100 nor more than \$1,000 for each violation. Each violation constitutes a separate offense and each day of continued violation is a separate offense.

History: 1987 a. 396.

**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 chs. 143 to 146 not made otherwise chargeable, shall be paid by the town, city or village.

History: 1983 a. 27 s. 2202 (20).

**146.17 Limitations.** Nothing in the statutes shall be construed to authorize interference with the individual's right to select his 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.

**146.18 Maternal and child health.** (1) The department shall prepare and submit to the proper federal authorities a state plan for maternal and child health services. Such plan shall conform with all requirements governing federal aid for this purpose and shall be designed to secure for this state the maximum amount of federal aid which can be secured on the basis of the available state, county, and local appropriations. It shall make such reports, in such form and containing such information, as may from time to time be required by the federal authorities, and comply with all provisions which may be prescribed to assure the correctness and verification of such reports.

(2) No official, agent or representative of the department, by virtue of this section, shall have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them, or of the person standing in the place of a parent or having custody of such child. Nothing in this section shall be construed as limiting the power of a parent or guardian or person standing in the place of a parent to determine what treatment or correction shall be provided for a child or the agency or agencies to be employed for such purpose.

(3) The department shall use sufficient funds from the appropriation now made by s. 20.435 (1) (a) for the promotion of the welfare and hygiene of maternity and infancy to match the funds received by the state from the United States under the provisions of such act of congress.

History: 1979 c. 110 s. 60 (1).

**146.183 High-risk pregnancy grants.** (1) (a) From the appropriation under s. 20.435 (1) (ei), the department shall allocate \$250,000 in fiscal year 1989-90 and \$250,000 in fiscal year 1990-91 as grants to applying local public health agencies, family planning agencies and nonprofit health care agencies to provide all of the following services:

1. Early identification of women who are at high risk of having problem pregnancies due to alcohol or other drug use or abuse.

## 2. Pregnancy testing, education and counseling.

3. Referral of women who are at high-risk of having problem pregnancies due to alcohol or other drug use or abuse for early and comprehensive prenatal care and alcohol and other drug abuse treatment and referral for case management.

(b) The department shall develop procedures and criteria for the review and award of grants under this section.

(2) This section does not apply after June 30, 1993.

History: 1989 a. 122.

**146.184 Training in perinatal alcohol or controlled substance detection and treatment. (1)** In this section:

(a) "Controlled substance" has the meaning given in s. 161.01 (4).

(b) "Health care professional" has the meaning given in s. 154.01 (3).

(2) From the appropriation under s. 20.435 (1) (ej), the department shall provide specialized education and training to health care professionals, persons who provide alcohol and other drug abuse services and counseling and social workers in appropriate areas of perinatal alcohol and controlled substance detection and treatment. The department shall ensure that appropriate training is offered to health care providers and others with respect to all of the following:

(a) Treatment for perinatal problems related to the child's mother's use of alcohol or controlled substances.

(b) Detection of perinatal problems related to the child's mother's use of alcohol or controlled substances.

(c) Provision of care and treatment of infants with low birthweight and other disabilities related to the child's mother's use of alcohol or controlled substances.

(d) Provision of treatment in the hospital and the community to mothers who are dependent on alcohol or controlled substances and their infants.

(3) This section does not apply after June 30, 1993.

History: 1989 a. 122.

**146.185 State supplemental food program for women, infants and children.**

From the appropriation under s. 20.435 (1) (em), the department shall supplement the provision of supplemental foods, nutrition education and other services, including nutritional counseling, to low-income women, infants and children who meet the eligibility criteria under the federal special supplemental food program for women, infants and children authorized under 42 USC 1786. To the extent that funds are available under this section and to the extent that funds are available under 42 USC 1786, every county shall provide the supplemental food, nutrition education and other services authorized under this section and shall establish or designate an agency to administer that provision.

History: 1985 a. 29; 1987 a. 27; 1989 a. 31.

**146.20 Servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies. (2) DEFINITIONS.** For the purpose of this section:

(a) "Department" means the department of natural resources.

(b) "Grease trap" means a watertight tank for the collection of grease present in sewage and other wastes, and from which grease may be skimmed from the surface of liquid waste for disposal.

(c) "Privy" means a cavity in the ground or a portable above-ground device constructed for toilet uses which receives human excrement either to be partially absorbed directly by the surrounding soil or stored for decomposition and periodic removal.

(d) "Septage" means the scum, liquid, sludge or other waste in a septic tank, soil absorption field, holding tank, grease trap or privy.

(e) "Septic tank" means and includes a septic toilet, chemical closet and any other watertight enclosure used for storage and decomposition of human excrement, domestic or industrial wastes.

(f) "Servicing" means removing septage from a septic tank, soil absorption field, holding tank, grease trap or privy and disposing of the septage.

(g) "Soil absorption field" means an area or cavity in the ground which receives the liquid discharge of a septic tank or similar wastewater treatment device.

(2m) **POWERS OF THE DEPARTMENT.** The department shall have general supervision and control of servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies.

(3) **LICENSE; CERTIFICATION.** (a) *License, application.* Every person before engaging in servicing in this state shall submit an application for a license on forms prepared by the department. If the department, after investigation, is satisfied that the applicant has the qualifications, experience, understanding of proper servicing practices, as demonstrated by the successful completion of an examination given by the department, and equipment to perform the servicing in a manner not detrimental to public health it shall issue the license, provided a surety bond has been executed. The license fee shall accompany all applications.

(b) *Expiration date of license.* All licenses issued under this section are for one year, expire on June 30 or December 31 and are not transferable. Application for renewal shall be filed on or before July 1 or January 1 and if filed after that date a penalty shall be charged. The department shall promulgate a rule setting the amount of the penalty for late filing.

(c) *Wisconsin sanitary licensee.* Any person licensed under this section shall paint on the side of any vehicle that is used for servicing, the words "Wisconsin Sanitary Licensee" and immediately under these words "License No. ...." with the number of the license in the space so provided with letters and numbers at least 2 inches high; and all lettering and numbering shall be in distinct color contrast to its background.

(d) *License exception.* A farmer who disposes of septage on land is exempt from the licensing requirement under par. (a) if all of the following apply:

1. The farmer removes the septage from a septage system that is located on the same parcel of land on which the septage is disposed.

2. The farmer disposes of no more than 3,000 gallons of septage per week on the same parcel of land.

3. The farmer complies with all statutes and rules applicable to servicing.

4. The farmer has sufficient land that is suitable for septage disposal.

(e) *Operator certification.* No person, except for a farmer exempted from licensing under par. (d), may service a septage system or operate a septage servicing vehicle unless the person is certified as an operator of a septage servicing vehicle under s. 144.025 (2) (L).

(4) **SURETY BOND.** Before receiving a license the applicant shall execute and deposit with the department a surety bond covering the period for which the license is issued, by a surety company authorized to transact business within the state. The bond shall be for the costs of cleanup at the site of and disposal of a spill where a violation of rules promulgated under s. 145.20 involving servicing or contamination of groundwater or soil due to servicing has occurred. Such bond



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shall be in the amount of \$1,000 for residents of the state and \$5,000 for nonresidents; provided that the aggregate liability of the surety to all such persons shall, in no event, exceed the amount of the bond.

**(4g) RULES ON SERVICING.** The department shall promulgate rules relating to servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies in order to protect the public health against unsanitary and unhealthful practices and conditions, and to protect the surface waters and groundwaters of the state from contamination by septage. The rules shall comply with ch. 160. The rules shall apply to all septage disposal, whether undertaken pursuant to a license or registration under sub. (3). The rules shall require each person with a license under sub. (3) to maintain records of the location of sites serviced and the volume and location of septage disposed.

**(4m) SITE LICENSES.** (a) The department may require a soil test and a license for any location where septage is stored or disposed of on land, except that the department may not require a soil test and a license for septage disposal in a licensed solid waste disposal facility. In determining whether to require a license for a site, the department shall consider the septage disposal needs of different areas of the state.

(b) Notwithstanding par. (a), the department may not require a license for a location where septage is disposed of on land if:

1. The septage is removed from a septic tank, soil absorption field, holding tank, grease trap or privy which is located on the same parcel where the septage is disposed of;

2. No more than 3,000 gallons of septage per week are disposed of on the property; and

3. The person complies with all applicable statutes and rules in removing and disposing of the septage.

(c) If a location is exempt from licensing under par. (b), the department may require the person who services the septic tank, soil absorption field, holding tank, grease trap or privy to register the disposal site with the department and provide information to show that sufficient land area is available for disposal.

**(4s) FEES.** (a) The department shall collect the following fees:

1. For a license under sub. (3) (a) for a state resident, \$25 for each vehicle used for servicing.

2. For a license under sub. (3) (a) for a nonresident licensee, \$50 for each vehicle used for servicing.

4. For a site licensed under sub. (4m) which is 20 acres or larger, \$60.

(b) The department may establish by rule a fee for a site licensed under sub. (4m) which is less than 20 acres.

(d) In addition to the license fee under par. (a) 1 or 2, the department shall collect a groundwater fee of \$50 per licensee. The moneys collected under this paragraph shall be credited to the environmental fund for groundwater management.

**(5) AUTHORITY TO SUSPEND OR REVOKE LICENSES.** (a) The department may and upon written complaint shall make investigations and conduct hearings and may suspend or revoke any license if the department finds that the licensee has:

1. Failed to execute, deposit and maintain a surety bond.

2. Made a material misstatement in the application for license or any application for a renewal thereof.

3. Demonstrated incompetency in conducting servicing.

4. Violated any provisions of this section or any rule prescribed by the department or falsified information on inspection forms under s. 144.245 (3).

(b) The department may not reissue a license for a period of one year after revocation.

(c) The department may promulgate by rule a procedure for the temporary suspension of a license.

**(5m) COUNTY REGULATION.** (a) A county may submit to the department an application to regulate the disposal of septage on land. The county shall include in its application a complete description of the proposed county program, including a proposed ordinance and forms and information on plans for personnel, budget and equipment. The department shall investigate the capability of the county to implement a regulatory program under this subsection and shall approve or deny the application based on the county's capability. If the department approves the county application, the county may adopt and enforce a septage disposal ordinance.

(b) The county septage disposal ordinance shall apply uniformly to the entire area of the county. No city, village or town may adopt or enforce a septage disposal ordinance if the county has adopted such an ordinance. If a city, village or town adopts a septage disposal ordinance, the ordinance shall conform with requirements applicable to a county septage disposal ordinance under this section.

(c) The site criteria and disposal procedures in a county ordinance shall be identical to the corresponding portions of rules promulgated by the department under this section. The county shall require the person engaged in septage disposal to submit the results of a soil test conducted by a soil tester certified under s. 145.045 and to obtain an annual license for each location where the person disposes of septage on land, except that the county may not require a license for septage disposal in a licensed solid waste disposal facility. The county shall maintain records of soil tests, site licenses, county inspections and enforcement actions under this subsection. A county may not require licensing or registration for any person or vehicle engaged in septage disposal. The county may establish a schedule of fees for site licenses under this paragraph. The county may require a bond or other method of demonstrating the financial ability to comply with the septage disposal ordinance. The county shall provide for the enforcement of the septage disposal ordinance by penalties identical to those in sub. (6).

(d) The department shall monitor and evaluate the performance of any county adopting a septage disposal ordinance. If a county fails to comply with the requirements of this subsection or fails adequately to enforce the septage disposal ordinance, the department shall conduct a public hearing in the county seat upon 30 days' notice to the county clerk. As soon as practicable after the hearing, the department shall issue a written decision regarding compliance with this subsection. If the department determines that there is a violation of this subsection, the department shall by order revoke the authority of the county to adopt and enforce a septage disposal ordinance. At any time after the department issues an order under this paragraph, a county may submit a new application under par. (a). The department may enforce this section and rules adopted under this section in any county which has adopted a septage disposal ordinance.

**(6) PENALTIES.** Any person who violates any provision of subs. (2) to (5) or any rule adopted under those subsections shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day such violation continues constitutes a separate offense.

**History:** 1979 c. 34; 1981 c. 1 s. 47; 1983 a. 189, 410, 538; 1989 a. 31.

**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

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

History: 1977 c. 418.

**146.24 Certification of milk sheds.** The department shall conduct sampling surveys of milk sheds in Wisconsin to the extent necessary to certify to the department of agriculture, trade and consumer protection, the U.S. public health service, and local health departments, the compliance rating of such milk sheds based upon the standards for grade A milk and grade A milk products of the department of agriculture, trade and consumer protection and the provisions of the recommended milk ordinance and code of the U.S. public health service. The department may act to monitor milk volume under this section, including requiring the monthly reporting of volume by individual dairy plants, and may promulgate rules establishing fees which may be charged to dairy plants to fund these activities.

History: 1977 c. 29 s. 1650m (4); 1987 a. 27.

**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 employe, 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's 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.

**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 wilful 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 wilful misconduct by that hospital, nonprofit tissue bank, physician, nurse or other medical personnel.

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

Sub. (1) is an unconstitutional violation of the commerce clause, art. I, sec. 8, and the supremacy clause, art. VI, of the U.S. Constitution. *State v. Interstate Blood Bank, Inc.* 65 W (2d) 482, 222 NW (2d) 912.

**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 880 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, 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. 767.60, "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. 852.03

(2) This relationship may be by consanguinity or direct affinity.

(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:

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(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 ch. 48 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.

**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 may be fined not more than \$50,000 or imprisoned for not more than 5 years or both.

History: 1987 a. 97.

**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).

(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 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.

Person reviewing peer can be found to have acted in bad faith even if procedural rights under (2) were not denied, but whether procedural rights were

## MISCELLANEOUS HEALTH PROVISIONS 146.40

denied is factor, which must be considered in determination of "good faith".  
Qasem v. Kozarek, 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), and an emergency medical technician, as defined in s. 146.50 (1) (e).

(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;

(e) With regard to any criminal matter, to a court of record, in accordance with chs. 885 to 895 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.

History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102.

Conclusions of hospital governing body, based on records and conclusions of peer review committees, were not privileged under this section. State ex rel. Good Samaritan v. Moroney, 123 W (2d) 89; 365 NW (2d) 887 (Ct. App. 1984).

**146.40 MISCELLANEOUS HEALTH PROVISIONS****146.40 Instructional programs for nurse's assistants and home health aids. (1)** In this section:

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

(b) "Home health agency" has the meaning specified in s. 141.15 (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.

(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.

(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 or 459 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.

(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) After September 30, 1990, 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 and a home health agency may not employ or contract for the services of an individual as a home health aide, regardless of the title under which the individual is employed, unless one of the following is true:

(a) For hospitals, nursing homes or home health agencies, 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 or for home health aides that is certified by the department under sub. (3).

(am) For hospitals, nursing homes or home health agencies and intermediate care facilities for the mentally retarded, if the individual was employed or under contract as a nurse's assistant or home health 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.

(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 or home health agencies 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 or home health aide fewer than 120 calendar days by the hospital, nursing home or home health agency.

(d) For hospitals, nursing homes or home health agencies 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 competency evaluation program or has successfully completed a competency evaluation program for nurse's assistants or for home health aides that is certified in another state that is specified by the department by rule, or the individual is certified as a nurse's assistant or as a home health aide in another state that is specified by the department by rule, except that after December 31, 1991, par. (a) applies.

(e) For hospitals or home health agencies 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 or home health 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 has successfully completed a basic nursing course from a school that is on the accredited list of schools specified under s. 441.01 (4) and 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 or home health agencies 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).

(3) The department shall certify instructional and competency evaluation programs for nurse's assistants and for home health 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. The department may, following a hearing, suspend or revoke the certification of an instructional and competency evaluation program if the program does not satisfy the standards for certification.

**(3m)** The department shall review competency evaluation programs for nurse's assistants and for home health aids and may approve those competency evaluation programs that satisfy standards for approval that are specified in rules of the department. The department may, following a hearing, suspend or revoke approval of a competency evaluation program if the competency evaluation program fails to satisfy the standards.

**(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.

**(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), 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).

3. Findings of the department under sub. (4r) (b) or of the hearing officer under sub. (4r) (d) concerning the neglect, abuse or misappropriation of property 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.

**(4r)** (a) Any individual may report to the department that he or she believes that a nurse's assistant has neglected, abused or misappropriated the property of a nursing home resident or a hospital patient or that a home health aide has neglected, abused or misappropriated the property of a home health agency patient.

(b) The department shall review and investigate any report received under par. (a) and, if the allegation is substantiated, make specific, documented findings concerning the neglect, abuse or misappropriation of property. The department shall in writing by certified mail notify the nurse's assistant or home health aide specified in the report that his or her name and the department's findings about him or her shall be listed in the registry under sub. (4g) (a) 2 and 3 unless he or she contests the listings in a hearing before the department. The written notification shall describe the investigation conducted by the department, enumerate the findings alleging neglect, abuse or misappropriation of property of a nursing home resident or home health agency patient and explain the consequence to the nurse's assistant or home health aide of waiving a hearing to contest the findings. The nurse's assistant or home health aide named 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 nurse's assistant or home health aide under par. (b) timely notifies the department that he or she contests the listings in the registry under par. (b), the department 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 nurse's assistant or home health aide performed an action alleged under par. (a), 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 nurse's assistant or home health aide performed an action alleged under par. (a), the hearing officer shall so find and shall cause the name of the nurse's assistant or home health aide to be entered under sub. (4g) (a) 2 and the hearing officer's findings about the nurse's assistant or home health aide 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.

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

**(5)** (a) The department, in consultation with the board of vocational, technical and adult education, shall promulgate rules specifying standards for certification in this state of instructional and competency evaluation programs for nurse's assistants and for home health aides. The standards shall include specialized training in providing care to individuals with special needs. The department shall promulgate rules regarding this specialized training in consultation with a private nonprofit organization awarded a grant under s. 46.855.

(b) The department shall promulgate rules specifying states that are included under sub. (2) (d). A state may be specified in the rule only if the state grants nurse's assistant privileges or home health aide privileges to persons who have completed instruction in an instructional and competency evaluation program that is certified under sub. (3) and if one of the following is true:

1. If the other state certifies instructional and competency evaluation programs for nurse's assistants or for home health 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 or home health aids, 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).

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

History: 1987 a. 128; 1989 a. 31, 84, 336.

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

(a) "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.

(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.

(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).

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

(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, nonprofit corporation organized under ch. 181.

(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.

(2) LICENSE 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).

(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's 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's 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) 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 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 this section and under rules promulgated by the department, if any, 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 this section and under rules promulgated by the department, if any, 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 this section and under rules promulgated by the department, if any, 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 employe 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.

**(6) QUALIFICATIONS FOR LICENSURE.** (a) 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 under sub. (6m) 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 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. 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 board of vocational, technical and adult education, shall promulgate rules specifying training, education or examination requirements for license renewals for emergency medical technicians.

(c) 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 employes 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.

**(6m) AUTHORIZED ACTIONS OF EMERGENCY MEDICAL TECHNICIANS.** (a) An emergency medical technician — basic who is licensed under sub. (5) is authorized to administer basic life support and to handle and transport sick, disabled or injured individuals.

(b) An emergency medical technician — intermediate who is licensed under sub. (5) is authorized to administer basic life support, to handle and transport sick, disabled or injured individuals and to provide, under the oral direction and supervision of a physician, all of the following:

1. Application of an esophageal obturator airway or esophageal gastric tube airway.

2. Administration of intravenous infusions.

3. Administration of subcutaneous injections.

4. Application of medical anti-shock trousers.

5. Drawing of blood samples.

6. Administration of selected medications.

(c) An emergency medical technician — paramedic who is licensed under sub. (5) is authorized to do all of the following:

1. Render rescue, emergency care and resuscitation services, including basic life support.

2. While caring for patients in a hospital administer parenteral medications under the direct supervision of a physician or registered nurse.

3. Perform cardiopulmonary resuscitation and defibrillation on a pulseless, nonbreathing patient.

4. If voice contact with or without a telemetered electrocardiogram is monitored by a physician and direct communication is maintained, upon order of the physician perform or administer the following:

a. Administer intravenous solutions.

b. Perform gastric and endotracheal intubation.

c. Administer parenteral injections.

5. Perform emergency medical procedures other than those specified in subds. 1 to 4 that are prescribed in rules promulgated by the department.

**(7) LICENSING IN OTHER JURISDICTIONS.** 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.

**(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 renewal. Courses required for a license or renewal of a license as an emergency medical technician — basic shall be free of charge to an individual who is employed by or affiliated with a public agency, volunteer fire company or nonprofit corporation and is the holder of a license or training permit as an emergency medical technician — basic or eligible to hold such a license or training permit. If the department determines that an area or community need exists, the courses shall be offered at vocational, technical and adult education schools 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 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 proceedings, institute an action in the name of the state against any person for any of the following:

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(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).

**(12) CONFIDENTIALITY OF RECORDS.** (a) All records made by an ambulance service provider or an emergency medical technician 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 the requirements of ss. 146.82 and 146.83 and, if applicable, s. 146.025 (5) (a) (intro.), (6), (8) and (9). For the purposes of this paragraph, an ambulance service provider or an emergency medical technician 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 or an emergency medical technician under s. 146.025 (5) (a), except under s. 146.025 (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.** The department may promulgate rules necessary for administration of this section.

**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.

Discussion of malpractice liability of state officers and employees. 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 public records law. 78 Atty. Gen. 71.

**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) (a), to or from facilities or institutions providing health services.

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

(c) "Board" means the emergency medical services assistance board.

(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, nonprofit corporation organized under ch. 181.

(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. 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.

**(3) BOARD; DUTIES.** The board shall do all of the following:

(a) Advise, make recommendations to and consult with the department concerning the funding under subs. (4) and (5).

(b) Review the annual budget prepared by the department for the expenditures under s. 20.435 (1) (dt) and (r).

**(4) SUPPORT AND IMPROVEMENT OF AMBULANCE SERVICES.**

(a) From the appropriations under s. 20.435 (1) (dt) and (r), the department shall annually allocate 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 allocate funds under par. (a) to the public agency.

(c) Funds allocated 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 ambu-

lance service provider has contracted to provide ambulance services.

(5) **EMERGENCY MEDICAL TECHNICIAN TRAINING AND EXAMINATION AID.** (a) From the appropriations under s. 20.435 (1) (dt) and (r), the department shall annually allocate funds to entities, including vocational, technical and adult education districts, whose courses or instructional programs are approved by the department under s. 146.50 (9), to assist the entities in providing the training required for licensure and renewal of licensure as an emergency medical technician — basic under s. 146.50 (6), and to fund each examination administered by the entity for licensure or renewal of licensure as an emergency medical technician — basic under s. 146.50 (6) (a) 3 and (b) 1.

(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).

History: 1989 a. 102 ss. 15 to 17, 23, 25, 26, 60.

**146.56 Injury prevention grant program. (1)** In this section:

(a) "Nonprofit corporation" means a nonstock, nonprofit corporation organized under ch. 181.

(b) "Organization" means a nonprofit corporation or a public agency which proposes to provide services to individuals.

(c) "Public agency" means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

(d) "Public health agency" means a county health department, as defined in s. 140.09 (1), a county health commission or committee under s. 141.01, a city or village board of health under s. 141.015 or a town board of health under s. 141.01 (9).

(2) From the appropriation under s. 20.435 (1) (cs), the department shall, in state fiscal year 1990-91, allocate up to \$75,000 for operation of the injury prevention grant program and shall allocate up to \$118,300 to provide grants to applying organizations or public health agencies to establish and maintain injury prevention campaigns to promote and evaluate the promotion of all of the following:

(a) The use of bicycle helmets, infant and child car restraints and smoke detectors.

(b) Pedestrian safety.

(c) The prevention of burns from hot water, accidental poisonings, farm injuries, injuries in day care centers and drownings.

(d) Other injury prevention activities.

(3) The department shall promulgate rules establishing the criteria and procedures for the awarding of grants for projects under sub. (2), which shall include the requirement that priority in awarding shall be given to an applying organization or public health agency with a proposed injury

prevention campaign that involves coordination with the local emergency medical services program.

History: 1989 a. 318.

**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 CFR 23302 to 23350 (June 26, 1986), as amended by 52 CFR 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 provides 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



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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 social 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 employe 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 shall be fined not less than \$1,000 nor more than \$50,000 or imprisoned for not more than one year 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.

**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).

(2) **DISTRIBUTION OF LOANS.** From the appropriation under s. 20.435 (1) (dr) the department shall establish and fund initial loans from, and from the appropriation under s. 20.435 (1) (gr) the department shall continue, with loan repayments, a fund to make loans to applying nonprofit rural hospitals with fewer than 100 beds; including a cooperative organized under ch. 185 that consists of one or more rural hospitals, to assist the rural hospitals in altering services to meet the changing medical needs of their patient service areas. A rural hospital may use a loan granted under this subsection for a purpose that includes any of the following:

(a) Professional services for planning and feasibility studies, including market studies, business and financial plans,

financial packaging and other activities related to the early planning stages of project.

(b) Development of cooperative ventures to share personnel or services.

(c) Diversification projects.

(d) Professional services related to the implementation of a project, including market assistance, financial services, engineering studies, design assistance and architectural services.

(e) Management efficiency analysis.

(3) **LOAN LIMITATIONS.** A loan made under sub. (2) may be for no more than 2 years and may not exceed \$50,000 per year, except that loans to 2 or more hospitals for a single multihospital project may exceed \$50,000 per year in the aggregate but are limited to \$50,000 per year for each hospital of the multihospital project. At least one-third of the total loans made under sub. (2) in each state fiscal year shall be made to hospitals that are part of cooperative ventures involving 2 or more hospitals.

(4) **DEPARTMENTAL DUTIES.** The department shall administer the loan program under this section, as follows:

(a) Solicit and review loan applications and approve those loan applications that the department determines best meet the criteria specified under par. (b).

(b) Use all of the following criteria to determine the need for a loan and the loan amount:

1. The degree to which the proposed project will strengthen the financial, managerial or service delivery capability of the rural hospital.

2. The degree to which the proposed project uses innovative approaches to address defined community health or social service needs.

3. The degree to which the proposed project will improve or provide access to quality care in rural community or communities.

4. The degree of coordination that can be expected with other local or regional health or social services providers or local units of government.

5. The likelihood of success of the proposed project, as evidenced by a clear management plan and a statement of achievable goals in the application.

6. The ability of the rural hospital to carry out the proposed project with its own resources.

(c) Determine the interest rate, which shall be below the prevailing market interest rate, to be charged for each loan made.

(d) Negotiate with each recipient of a loan the schedule of repayments and collect the loan repayments as they are due. 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 this section 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.

**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.

(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.

(j) "Telecommunications utility" has the meaning designated under s. 196.01 (10).

(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, 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.

(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 data base 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 data base 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 25 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, and does not exceed 40 cents each month for each exchange access line or its equivalent in any other county or combination of counties.

(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 commission'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 data base required to operate a sophisticated system.

(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) TELECOMMUNICATIONS UTILITY NOT LIABLE. A telecommunications utility shall not be liable to any person who uses an emergency number system created under this section.

(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 services 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 shall be fined not more than \$10,000 or imprisoned not more than 5 years or both 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 data base 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 telecommuni-

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cations 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.

**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.

See note to 939.22, citing *State v. Cornelius*, 152 W (2d) 272, 448 NW (2d) 434 (Ct. App. 1989).

**146.75 Pregnancy counseling services.** The department shall make grants from the appropriation under s. 20.435 (1) (eg) to individuals and organizations to provide pregnancy counseling services. For a program to be eligible under this section, an applicant must demonstrate that moneys provided in a grant under s. 20.435 (1) (eg) will not be used to perform an abortion.

**History:** 1985 a. 29.

**146.78 Informed consent for abortions. (1) MEDICAL AND OTHER INFORMATION.** Prior to the performance of an abortion otherwise permitted by law, the attending physician or a person who is assisting the attending physician:

(a) Shall verbally provide the pregnant woman with accurate information on each of the following:

1. Whether or not, according to the best judgment of the attending physician or the person who is assisting the attending physician, the woman is pregnant.

2. The number of weeks that have elapsed from the probable time of conception of the woman's fetus or unborn child, based upon the information provided by her as to the time of her last menstrual period, which information shall be provided after a medical history, physical examination and any appropriate laboratory tests have been completed for the woman.

3. The availability of public and private agencies and services to provide the woman with birth control information, including natural family planning information.

4. The availability of public and private agencies and services to assist the woman during pregnancy and after the birth of her child, if she chooses not to have an abortion, regardless of whether she keeps the child or places the child for adoption.

5. If the woman is a minor, the availability of services under s. 46.24 to assist a minor contemplating an abortion who wishes to notify a parent or guardian of the contemplated abortion.

6. Any particular risks associated with the woman's pregnancy and the abortion technique to be employed, including at least a general description of the medical instructions it is recommended that she follow subsequent to the abortion to ensure her safe recovery and other information which in the judgment of the attending physician or the person who is assisting the attending physician is relevant to her decision whether to have an abortion or to carry her pregnancy to term.

(b) Shall, if the pregnant woman is a minor, provide her with a copy of the written policy under sub. (5) (a).

(c) May verbally provide the pregnant woman with accurate information on the probable physical characteristics of the fetus or unborn child at the gestational point of development of the fetus or unborn child at the time the abortion is to be performed.

(2) **WRITTEN INFORMATION UPON REQUEST.** The attending physician or a person who is assisting the attending physician under sub. (1) shall, upon request of the woman receiving information under that subsection provide her with the following written information provided by the county department under s. 46.245:

(a) A list of the public and private agencies and services that are available to provide the woman with birth control information, including natural family planning information.

(b) A list of the public and private agencies and services that are available to assist the woman during pregnancy and after the birth of her child, including adoption agencies and services.

(3) **CONSENT STATEMENT.** Following the provision of the information required under subs. (1) and (2), the pregnant woman shall, prior to the performance of any abortion, sign a statement acknowledging that she has been provided with that information and stating that she consents, freely and without coercion, to the abortion.

(4) **EMERGENCY PROCEDURE.** Subsections (1) to (3) do not apply if there is an emergency requiring abortion performance because the continuation of the pregnancy constitutes an immediate threat and a grave risk to the life and health of the woman and if the attending physician so certifies in writing. The written certification shall set forth the nature of the threat or risk and the consequences which would accompany the continuation of the pregnancy. The certification shall be kept with the woman's other medical records which are maintained by the physician in the hospital, clinic or other facility in which the abortion is performed.

(5) **PARENTAL NOTIFICATION FOR ABORTION FOR A MINOR.** (a) Each hospital, clinic or other facility in which a physician performs an abortion shall have a written policy regarding notification of parents or guardians of minor patients who are seeking an abortion.

(b) A copy of the policy under par. (a) shall be given to each minor patient seeking an abortion.

(c) The policy shall require that the hospital, clinic or other facility personnel strongly encourage the minor patient to consult her parents or guardian regarding the abortion unless the minor has a valid reason for not doing so or, if the personnel determine that there is a valid reason for the minor patient not to notify the parents or guardian, that the personnel encourage the patient to notify another family member, close family friend, school counselor, social worker or other appropriate person. The policy shall also include the following information:

1. The availability of services under s. 46.24 to assist a minor contemplating an abortion who wishes to notify a parent or guardian of the contemplated abortion.

2. That the hospital, clinic or other facility and persons affiliated with the facility may not notify the minor's parent or guardian concerning an abortion performed or to be performed, without the written consent of the minor, as specified in par. (d).

(d) No hospital, clinic or other facility in which abortions are performed and no person affiliated with the hospital, clinic or facility may notify the parent or guardian of a minor concerning an abortion performed or to be performed on a minor without the written consent of the minor.

(e) Each hospital, clinic or other facility in which a physician performs an abortion shall file a copy of the policy under par. (a) annually with the department of health and social services.



**(6) INAPPLICABILITY.** Section 939.61 (1) does not apply to violations of this section.

**History:** 1985 a. 56, 176.

Discussion of state parental notification provisions. *Hodgson v. Minnesota*, 497 US , 111 LEd 2d 344 (1990) and *Ohio v. Akron Reprod. Health Center*, 497 US , 111 LEd 2d 405 (1990).

**146.80 Family planning. (1) DEFINITIONS.** In this section:

(a) "Family planning" means voluntary action by individuals to prevent or aid conception but does not include the performance, promotion or encouragement of voluntary termination of pregnancy.

(b) "Family planning services" mean counseling by trained personnel regarding family planning; distribution of information relating to family planning; and referral to licensed physicians or local health agencies for consultation, examination, medical treatment and prescriptions for the purpose of family planning, but does not include the performance of voluntary termination of pregnancy.

**(2) DEPARTMENT'S DUTIES.** (a) The department shall provide for delivery of family planning services throughout the state by developing and by annually reviewing and updating a state plan for community-based family planning programs.

(b) The department shall allocate state and federal family planning funds under its control in a manner which will promote the development and maintenance of an integrated system of community health services. It shall maximize the use of existing community family planning services by encouraging local contractual arrangements.

(c) The department shall coordinate the delivery of family planning services by allocating family planning funds in a manner which maximizes coordination between the agencies.

(d) The department shall encourage maximum coordination of family planning services between county social services departments, family planning agencies and local health agencies to maximize the use of health, social service and welfare resources.

(e) The department shall promulgate all rules necessary to implement and administer this section.

**(3) INDIVIDUAL RIGHTS, MEDICAL PRIVILEGE.** (a) The request of any person for family planning services or his or her refusal to accept any service shall in no way affect the right of the person to receive public assistance, public health services or any other public service. Nothing in this section may abridge the right of the individual to make decisions concerning family planning, nor may any individual be required to state his or her reason for refusing any offer of family planning services.

(b) Any employe of the agencies engaged in the administration of the provisions of this section may refuse to accept the duty of offering family planning services to the extent that the duty is contrary to his or her personal beliefs. A refusal may not be grounds for dismissal, suspension, demotion, or any other discrimination in employment. The directors or supervisors of the agencies shall reassign the duties of employes in order to carry out the provisions of this section.

(c) All information gathered by any agency, entity or person conducting programs in family planning, other than statistical information compiled without reference to the identity of any individual or other information which the individual allows to be released through his or her informed consent, shall be considered a confidential medical record.

**History:** 1977 c. 418; 1979 c. 89.

Toward greater reproductive freedom: Wisconsin's new family planning act. 1979 WLR 509.

**146.81 Health care records; definitions.** In ss. 146.81 to 146.83:

**(1)** "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist, occupational therapy assistant or respiratory care practitioner certified under ch. 448, an optometrist licensed under ch. 449, an acupuncturist certified under ch. 451, a psychologist licensed under ch. 455, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, a hospice licensed under subch. IV of ch. 50 or an inpatient health care facility or community-based residential facility, as defined in s. 140.85 (1) or 140.86.

**NOTE:** Sub. (1) is shown as affected by 1989 Wis. Act 199, s. 9, and 1989 Wis. Act 229, eff. 5-1-91. Prior to 5-1-91, it reads as follows:

"(1) "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist or occupational therapy assistant certified under ch. 448, an optometrist licensed under ch. 449, an acupuncturist certified under ch. 451, a psychologist licensed under ch. 455, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, a hospice licensed under subch. IV of ch. 50 or an inpatient health care facility or community-based residential facility, as defined in s. 140.85 (1) or 140.86."

**NOTE:** Sub. (1) is affected by 1989 Wis. Act 199, s. 9, and 1989 Wis. Acts 229 and 316, eff. 7-1-93, to read:

"(1) "Health care provider" means a nurse licensed under ch. 441, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician, podiatrist or physical therapist licensed or an occupational therapist, occupational therapy assistant or respiratory care practitioner certified under ch. 448, an optometrist licensed under ch. 449, an acupuncturist certified under ch. 451, a psychologist licensed under ch. 455, a speech-language pathologist or audiologist licensed under subch. II of ch. 459, a partnership thereof, a corporation thereof that provides health care services, an operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employes in its own facility, a hospice licensed under subch. IV of ch. 50 or an inpatient health care facility or community-based residential facility, as defined in s. 140.85 (1) or 140.86."

**(2)** "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization containing the name of the patient whose record is being disclosed, the purpose of the disclosure, the type of information to be disclosed, the individual, agency or organization to which disclosure may be made, the types of health care providers making the disclosure, the signature of the patient or the person authorized by the patient, the date on which the consent is signed and 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, but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 343.305, 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.

**(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 guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4), 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

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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.

**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.

**146.82 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 or testimony authorized under s. 905.04 (4) (h).

(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 but not limited to medical staff members, employes or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if:

a. The person is rendering assistance to the patient;  
b. The person is being consulted regarding the health of the patient; or  
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 a county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) (a) and (5). The health care provider may release information by initiating contact with the county agency without receiving a request for release of the information from the county agency.

8. To the department under s. 46.73. The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 46.73 (2).

9. 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 development disabilities, as defined under s. 51.62 (1) (a), 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), except that, if the patient has a guardian appointed under s. 880.33, information concerning the patient obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited to the nature of an alleged rights violation, if any, 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 any guardian of the patient and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's guardian in writing of the request and of the guardian's right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

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 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 employe 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 employe 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).

(b) 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.

**(3) REPORTS MADE WITHOUT INFORMED CONSENT.** (a) Notwithstanding sub. (1), a physician who treats a patient whose physical or mental condition in the physician'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.

**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

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

**146.83 Patient access to 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 reasonable costs.

(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 reasonable costs.

(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. 140.86 (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.

**History:** 1979 c. 221; 1989 a. 56

**146.835 Parents denied physical placement rights.** A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (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

**146.87 Health care education funding report.** The department shall contract for a study of funding of graduate medical education in this state and shall submit the study to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) by December 1, 1986. The study shall include analyses of all of the following:

(1) Current and projected costs and revenues for graduate medical education in this state.

(2) Proposals to directly fund graduate medical education by providing block grants to certain hospitals for the purpose of funding graduate medical education.

History: 1985 a 29.

**146.88 Continuation coverage premium subsidies. (1) DEFINITIONS.** In this section:

(a) "Continuation coverage" means coverage under a group health plan that is available under s. 632.897, 29 USC 1161 to 1168 or 42 USC 300bb-1 to 300bb-8, to a group member upon termination of the group member's employment or a reduction in his or her hours.

(b) "Group health plan" means an insurance policy or a partially or wholly uninsured plan or program, that provides hospital, medical or other health coverage to members of a group.

(c) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(d) "HIV infection" means the pathological state produced by a human body in response to the presence of HIV.

(e) "Residence" means the concurrence of physical presence with intent to remain in a place of fixed habitation. Physical presence is prima facie evidence of intent to remain.

(2) **SUBSIDY PROGRAM.** The department shall establish and administer a program to subsidize, from the appropriation under s. 20.435 (1) (ak), the premium costs for continuation coverage available to an individual who has HIV infection and who is unable to continue his or her employment or must reduce his or her hours because of an illness or medical condition arising from or related to HIV infection.

(3) **ELIGIBILITY.** An individual is eligible to receive a subsidy in an amount determined under sub. (4), if the department determines that the individual meets all of the following criteria:

(a) Has residence in this state.

(b) Has a family income, as defined by rule under sub. (6), that does not exceed 200% of the federal poverty line, as defined under 42 USC 9902 (2), for a family the size of the individual's family.

(c) Has submitted to the department a certification from a physician, as defined in s. 448.01 (5), of all of the following:

1. That the individual has an infection that is an HIV infection.

2. That the individual's employment has terminated or his or her hours have been reduced, because of an illness or medical condition arising from or related to the individual's HIV infection.

(d) Is eligible for continuation coverage.

(e) Authorizes the department, in writing, to do all of the following:

1. Contact the individual's former employer or the administrator of the group health plan under which the individual is covered, to verify the individual's eligibility for continuation coverage and the premium and any other conditions of coverage, to make premium payments as provided in sub. (4) and for other purposes related to the administration of this section.

2. Make any necessary disclosure to the individual's former employer or the administrator of the group health plan under which the individual is covered regarding the individual's HIV status.

(f) Is not covered by a group health plan other than any of the following:

1. The group health plan under which the individual is eligible for continuation coverage.

2. A group health plan that offers a substantial reduction in covered health care services from the group health plan under subd. 1.

(g) Is not covered by an individual health insurance policy other than an individual health insurance policy that offers a substantial reduction in covered health care services from the group health plan under par. (f) 1.

(h) Is not eligible for medicare under 42 USC 1395 to 1395zz.

(i) Is employed by an employer that employed at least 20 individuals on a typical business day during the preceding year, if the continuation coverage for which the subsidy is sought is available through that employer.

(4) **AMOUNT AND PERIOD OF SUBSIDY.** (a) Except as provided in pars. (b) and (c), if an individual satisfies sub. (3), the department shall pay the full amount of each premium payment for continuation coverage that is due from the individual under s. 632.897 (2) (d), 29 USC 1162 (3) or 42 USC 300bb-2 (3), whichever is applicable, on or after the date on which the individual becomes eligible for a subsidy under sub. (3). The department may not refuse to pay the full amount of each premium payment because the continuation coverage that is available to the individual who satisfies sub. (3) includes coverage of the individual's spouse and dependents. Except as provided in par. (b), the department shall terminate the payments under this section when the individual's continuation coverage ceases, when the individual no longer satisfies sub. (3) or upon the expiration of 18 months after the continuation coverage began, whichever occurs first. The department may not make payments under this section for premiums for a conversion policy or plan that is available to an individual under s. 632.897 (4) or (6), 29 USC 1162 (5) or 42 USC 300bb-2 (5).

(b) The obligation of the department to make payments under this section is subject to the availability of funds in the appropriation under s. 20.435 (1) (ak).

(c) The amount paid under par. (a) may not exceed the applicable premium, as defined in 29 USC 1164 or 42 USC 300bb-4, as amended to April 7, 1986.

(5) **APPLICATION PROCESS.** The department may establish, by rule, a procedure under which an individual who does not satisfy sub. (3) (b), (c) 2 or (d) may submit to the department an application for a premium subsidy under this section that the department shall hold until the individual satisfies each requirement of sub. (3), if the department determines that the procedure will assist the department to make premium payments in a timely manner once the individual satisfies each requirement of sub. (3). If an application is submitted by an employed individual under a procedure established by rule under this subsection, the department may not contact the individual's employer or the administrator of the group health plan under which the individual is covered, unless the individual authorizes the department, in writing, to make that contact and to make any necessary disclosure to the individual's employer or the administrator of the group health plan under which the individual is covered regarding the individual's HIV status.

(6) **RULES.** The department shall promulgate rules that do all of the following:

(a) Define family income for purposes of sub. (3) (b).

(b) Establish a procedure for making payments under this section that ensures that the payments are actually used to pay premiums for continuation coverage available to individuals who satisfy sub. (3).

History: 1989 a 336.

**146.885 Acceptance of assignment for medicare.** The department shall annually provide aging units, as defined in s. 46.81 (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially

eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.

**History:** 1989 a. 294, 359; Stats. 1989 s. 146.885.

**146.89 Volunteer health care provider program. (1)** In this section, "volunteer health care provider" means an individual licensed as a physician under ch. 448, dentist under ch. 447, registered nurse under ch. 441 or optometrist under ch. 449 who receives no income from the practice of that health care profession.

**(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 to the department of administration and that department approves the application. 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 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 to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and social 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 in Brown or Racine county at that nonprofit agency.

**(b)** 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.

**(c)** The nonprofit agency may not provide emergency medical services, hospitalization or surgery.

**(d)** 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:

1. General relief under s. 49.02.
2. Medical assistance under ss. 49.45 to 49.47.
3. Medicare under 42 USC 1395-1395ccc.
4. Relief to needy Indian persons under s. 49.046.

**(4)** Volunteer health care providers who provide services under this section are state agents of the department of health and social services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

**History:** 1989 a. 206.

**146.90 State health insurance program. (1) (a)** The department, with the advice of the council on health care coverage for the uninsured, shall design a state health insurance program to provide health care coverage to uninsured persons and shall submit a plan detailing the structure, operation and management of the program to the joint committee on finance by January 1, 1987.

**(b)** The department shall conduct, directly or by contract, research and surveys that the department determines are necessary to obtain information to enable the department to design the program under par. (a).

**(c)** In designing the structure of the program under par. (a), the department shall consider inclusion of all of the following elements:

1. Providing the opportunity to enroll in the program to all medical assistance recipients.
2. Provisions designed to avoid adverse selection of enrollees.
3. Offering enrollees a choice of either catastrophic or comprehensive health care coverage under the program.
4. A payment system for the program based upon prepaid capitated payments.
5. Incorporating the use of insurance vouchers and direct payments to health care providers in the program.
6. Requiring contributions to the health care coverage costs by enrollees on an income-based progressive scale.
7. Requiring competitive bidding among prospective administrators of, or health care providers for, the program.
8. Provisions designed to avoid creating incentives for employers to cease offering health care coverage to their employees.
9. Provisions designed to obtain maximum federal funding for the program.

**(d)** In designing the operation and management of the program under par. (a), the department shall include policies and procedures concerning all of the following:

1. Informing uninsured persons of the eligibility requirements and health care coverage options available under the program.
2. Promoting the health care coverage options offered under the program.
3. Administering the program on a state and local basis.
4. Verifying eligibility and contribution requirements.
5. Selecting the agency of state government to be responsible for administering the program when the program is implemented on a statewide basis.

**(e) 1.** The department shall, in addition to designing the program under par. (a), design an alternative health care coverage program for uninsured persons for whom coverage under the program under par. (a) would not be feasible or would not be appropriate and shall submit a plan detailing the structure, operation and management of the program to the joint committee on finance by January 1, 1987.

**2.** The department shall conduct, directly or by contract, research and surveys that the department determines are necessary to obtain information to enable the department to design the program under subd. 1.

**(2) (a)** The department, with the advice of the council on health care coverage for the uninsured, shall design pilot projects to test the programs designed under sub. (1) and shall submit its recommendations for the pilot projects, including a suggested timetable, and evaluation methodology and projected costs, to the joint committee on finance by January 1, 1987.

**(b)** The recommendations under par. (a) shall include at least one pilot project to be conducted in each of the following areas:



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1. A county without a city of the 1st, 2nd or 3rd class.
2. A city of the 2nd or 3rd class.
3. All or part of a city of the 1st class.

(c) The recommendations under par. (a) shall provide that in each county in which a pilot project is conducted the county board, or in a county with a county executive or county administrator the county executive or county administrator, shall appoint a local advisory committee to assist in the implementation of the pilot projects, provide information and advice regarding developing the pilot projects to address local needs and evaluate the effectiveness of the pilot projects. The recommendations shall provide that the committee consist of at least the following members:

1. Three elected county or local officials.
2. Six local public members, each representing one of the following interests:
  - a. The business community.
  - b. Labor.
  - c. The insurance industry.
  - d. Consumers.
  - e. Hospitals.
  - f. Other health care providers.

(3) The joint committee on finance, after receipt of the plan under sub. (1) and the recommendations under sub. (2), shall hold hearings and, by July 1, 1987, determine whether to approve, approve with modifications or disapprove the pilot project recommendations for inclusion in the 1987-89 biennial budget. If the joint committee approves the pilot project recommendations, it shall direct the department to conduct the activities under sub. (4), in accordance with any modifications it has made.

(4) The department shall, by January 1, 1991, do all of the following:

(a) Conduct the pilot projects specified in sub. (4m) and submit a detailed evaluation of the pilot projects to the joint committee on finance.

(b) Submit to the joint committee a revised plan for a state health insurance program under sub. (1) (a) that is designed in accordance with sub. (1) (c) and (d) and a revised plan for an alternative health care coverage program under sub. (1) (e), each of which incorporates the results of the evaluation of the pilot projects under par. (a) and includes detailed cost estimates of implementing the programs on a statewide basis and operating them for a 10-year period beginning July 1, 1991.

(c) Submit specific recommendations to the joint committee regarding all of the following:

1. The advisability of implementing the programs on a statewide basis.
2. The most expedient method of implementing the programs on a statewide basis.
3. The most expedient method of generating the general program revenues necessary to achieve implementation on a statewide basis.

(d) Promulgate rules necessary for implementing the programs.

(4m) (a) The department, with the advice of the council on pilot projects for the uninsured, shall conduct in the manner described in the department's plan and recommendations submitted under subs. (1) and (2) to the joint committee on finance on December 29, 1986, the following pilot projects:

1. The group plan subsidy pilot project which will provide subsidies for low-income persons for the purpose of purchasing group health insurance offered by the person's employer.
2. The employed individual pilot project which will provide subsidies for low-income persons employed by firms not

offering group health insurance for the purpose of purchasing health insurance if the person's employer decides to offer group health insurance.

3. The alternative health care coverage pilot project which will provide subsidies for certain persons for whom coverage under the program under sub. (1) (a) would not be feasible or appropriate because of the person's existing health condition or disability, for the purpose of contributing to the cost of obtaining health care coverage through the medical assistance program under ss. 49.45 to 49.47.

(am) Notwithstanding the requirement under par. (a) that the pilot projects be conducted in the manner described in the department's plan and recommendations submitted under subs. (1) and (2) to the joint committee on finance on December 29, 1986, the department shall expand the pilot project described in par. (a) 2 to provide subsidies for low-income persons employed by firms not offering health insurance for the purpose of purchasing health insurance if the person's employer decides to offer individual health insurance that satisfies all of the following conditions:

1. The policy form for the individual health insurance has been filed with and approved by the commissioner of insurance under s. 631.20.

2. The individual health insurance policy provides coverage of nervous and mental disorders and alcoholism and other drug abuse problems at least to the same extent as group policies are required under s. 632.89, and the policy provides maternity coverage at least to the same extent as group policies are required under s. 632.895 (7).

3. The total annual liability of insureds for any deductibles and copayments under the individual health insurance policy is limited to no more than \$1,000 per individual or \$2,500 per family.

4. Dependent coverage is available under the individual health insurance policy.

5. If a person who is employed by the firm offering the individual health insurance policy is determined to be uninsurable, coverage under the individual health insurance is offered to the person's dependents who are insurable, or, if the policy does not include coverage for these dependents, the policy is revised before September 1, 1990, to include coverage for these dependents.

6. The firm's payments for the individual health insurance are deductible for federal income tax purposes under section 162 of the internal revenue code, as defined under s. 71.01 (6), 71.22 (4) or 71.42 (2).

(b) With respect to the pilot projects conducted under pars. (a) and (am), the department shall establish all of the following:

1. Income eligibility criteria that limit eligibility for a subsidy to persons with a net family income not greater than 175% of the federal poverty line, as defined under 42 USC 9902 (2).

2. A subsidy schedule according to an income-based progressive scale.

(c) The department, with the advice of the council on pilot projects for the uninsured, shall by rule specify the criteria for selecting from the locations described in its plan and recommendations submitted under subs. (1) and (2) the location for each of the pilot projects conducted under pars. (a) and (am), and any conditions governing participation in and the receipt of benefits under the pilot projects, including but not limited to all of the following:

1. Eligibility requirements, including the income eligibility criteria required under par. (b) 1.

2. The subsidy schedule required under par. (b) 2.

3. The types of health care benefits available under each pilot project and the conditions, if any, concerning copayments or deductibles.

(d) The department may transfer from the appropriation under s. 20.435 (1) (fa) to the appropriation under s. 20.435 (1) (b) funds for the purpose specified in par. (a) 3.

(e) The department shall, before implementing the pilot projects, conduct a survey in each area where a pilot project under par. (a) or (am) will be implemented to determine the number of persons residing in those areas who have health insurance coverage and certain social and economic characteristics of the persons residing in those areas.

(5) The joint committee on finance shall decide, during the deliberations on the 1991-93 biennial budget, whether and in what manner the programs should be implemented on a statewide basis.

**History:** 1985 a. 29; 1987 a. 27, 413; 1989 a. 336.

**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 employe 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.

**146.93 Primary health care program.** (1) (a) From the appropriation under s. 20.435 (1) (gp), the department shall maintain a program for the provision of primary health care services based on the primary health care program in existence on June 30, 1987. The department may promulgate rules necessary to implement the program.

(c) The department shall seek to obtain a maximum of donated or reduced-rate health care services for the program and shall seek to identify and obtain a maximum of federal funds for the program.

(2) The program under sub. (1) (a) shall provide primary health care, including diagnostic laboratory and X-ray services, prescription drugs and nonprescription insulin and insulin syringes.

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(3) The program under sub. (1) (a) shall be implemented in those counties with high unemployment rates and within which a maximum of donated or reduced-rate health care services can be obtained.

(4) The health care services of the program under sub. (1) (a) shall be provided to any individual residing in a county under sub. (3) who meets all of the following criteria:

(a) The individual is either unemployed or is employed less than 25 hours per week.

(b) The individual's family income is not greater than 150% of the federal poverty line, as defined under 42 USC 9902 (2).

(c) The individual does not have health insurance or other health care coverage and is unable to obtain health insurance or other health care coverage.

**History:** 1985 a. 29; 1987 a. 27; 1989 a. 31.

**146.99 Assessments.** The department shall, within 90 days after the commencement of each fiscal year, estimate the total amount of expenditures and the department shall assess the estimated total amounts under s. 20.435 (1) (gp) and (gq) to hospitals, as defined in s. 50.33 (2), 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 appropriations under s. 20.435 (1) (gp) and (gq).

**History:** 1985 a. 29; 1987 a. 27; 1989 a. 31.

**146.995 Reporting of gunshot and suspicious wounds.** (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. 140.86 (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 wounds shall report in accordance with par. (b):

1. A gunshot wound.

2. Any other wound if the person has reasonable cause to believe that the wound 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 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 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.