

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 services.
- (2) “Secretary” means the secretary of health services.

History: 1973 c. 323; 1985 a. 120; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

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

- (a) “Controlled substance” has the meaning given in s. 961.01 (4).
- (b) “Controlled substance analog” has the meaning given in s. 961.01 (4m).

(2) **TESTING.** Any hospital employee who provides health care, social worker or intake worker under ch. 48 may refer an infant or an expectant mother of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily fluids of the infant or expectant mother for controlled substances or controlled substance analogs if the hospital employee who provides health care, social worker or intake worker suspects that the infant or expectant mother has controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother because of the use of controlled substances or controlled substance analogs by the mother while she was pregnant with the infant or by the expectant mother while she is pregnant with the unborn child. The physician may test the infant or expectant mother to ascertain whether or not the infant or expectant mother has controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother, if the physician determines that there is a serious risk that there are controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother because of the use of controlled substances or controlled substance analogs by the mother while she was pregnant with the infant or by the expectant mother while she is pregnant with the unborn child and that the health of the infant, the unborn child or the child when born may be adversely affected by the controlled substances or controlled substance analogs. If the results of the test indicate that the infant does have controlled substances or controlled substance analogs in the infant’s bodily fluids, the physician shall make a report under s. 46.238. If the results of the test indicate that the expectant mother does have controlled substances or controlled substance analogs in the expectant mother’s bodily fluids, the physician may make a report under

s. 46.238. Under this subsection, no physician may test an expectant mother without first receiving her informed consent to the testing.

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

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

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

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

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

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

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

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

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

146.15 Information. State officials, physicians of mining, manufacturing and other companies or associations, officers and agents of a company incorporated by or transacting business under the laws of this state, shall when requested furnish, so far as practicable, the department any information required touching the public health; and for refusal shall forfeit \$10.

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

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

146.17 Limitations. Nothing in the statutes shall be construed to authorize interference with the individual’s right to select his or her own physician or mode of treatment, nor as a limi-

tation upon the municipality to enact measures in aid of health administration, consistent with statute and acts of the department.

History: 1993 a. 482.

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.

146.25 Required implanting of microchip prohibited.

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

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

History: 2005 a. 482.

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

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

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

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

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

146.33 Blood donors. Any person who is 17 years old or older may donate blood in any voluntary and noncompensatory blood program, and any person who is 16 years old may donate blood in such a program if his or her parent or legal guardian consents to the donation.

History: 1971 c. 228; 1983 a. 21; 2007 a. 103.

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

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

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

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

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

(e) “Legal custodian” means a person other than a parent or guardian or an agency to whom the legal custody of a minor has

been transferred by a court under ch. 48 or 938, but does not include a person who has only physical custody of a minor.

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

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

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

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

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

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

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

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

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

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

1. That the minor is the most acceptable donor who is available.
2. That no medically preferable alternatives to a bone marrow transplant exist for the brother or sister.

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

1. The minor is physically able to withstand removal of bone marrow.
2. The medical risks of removing the bone marrow from the minor and the long-term medical risks for the minor are minimal.

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

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

(4) CONSENT TO DONATION OF BONE MARROW BY A MINOR 12 YEARS OF AGE OR OVER. (a) A minor who has attained the age of 12 years may, if the medical condition of a brother or sister of the

minor requires that the brother or sister receive a bone marrow transplant, give written consent to be a donor if:

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

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

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

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

(5) HEARING ON PROHIBITION OF CONSENT OR PERFORMANCE.

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

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

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

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

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

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

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

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

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

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

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

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

146.343 Donation of newborn umbilical cord blood.

(1) In this section:

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

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

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

History: 2005 a. 56.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) “Health care provider” includes an ambulance service provider, as defined in s. 256.01 (3), and an emergency medical technician, as defined in s. 256.01 (5), and a first responder, as defined in s. 256.01 (9).

(b) “Medical director” has the meaning specified in s. 256.01 (11).

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

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

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

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

History: 1975 c. 187; 1979 c. 221; 1981 c. 323; 1983 a. 27; 1985 a. 29 s. 3202 (27); 1985 a. 340; 1987 a. 27, 399; 1989 a. 102; 1997 a. 175; 1999 a. 56; 2007 a. 130.

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

When a 3rd party becomes an integral part of the ongoing medical services review, its actions are eligible for immunity from civil liability under this section. It would defeat the purpose of this section if the participation of an outside entity enlisted by a reviewing committee to perform an assessment of the abilities of a physician to perform effectively while on call is not eligible for immunity simply because the outside entity is not part of a formal “peer review program.” *Rechsteiner v. Hazelden*, 2008 WI 97 ___ Wis. 2d ___, ___ N.W.2d ___, 06–1521.

When a 3rd party’s diagnosis of the condition of the doctor subject to review was indistinguishable from the employing hospital’s review, evaluation, and analysis of the doctor’s ability to perform as an on-call surgeon, the diagnosis was the essence of the peer review process initiated by the hospital. Even if the diagnosis was negligent, it was immune because it was central to the peer review process. However, this case does not mean that the peer review statute will immunize medical negligence in all situations, irrespective of the circumstances. *Rechsteiner v. Hazelden*, 2008 WI 97 ___ Wis. 2d ___, ___ N.W.2d ___, 06–1521.

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

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

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

(b) “Health care provider” includes an ambulance service provider, as defined in s. 256.01 (3), an emergency medical technician, as defined in s. 256.01 (5), and a first responder, as defined in s. 256.01 (9).

(c) “Medical director” has the meaning specified in s. 256.01 (11).

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

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

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

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

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

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

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

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

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

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

(4) Any person who discloses information or releases a record in violation of this section, other than through a good faith mis-

take, is civilly liable therefor to any person harmed by the disclosure or release.

(5) This section does not apply to s. 256.25.

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

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

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

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

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

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

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

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

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

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

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

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

(aw) "Feeding assistant" means an individual who has completed a state-approved training and testing program, as specified by the department by rule, to perform one nursing-related duty, as defined by the department by rule.

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

(bo) "Hospice" means a hospice that is licensed under subch. IV of ch. 50.

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

(bt) "Intermediate care facility for persons with mental retardation" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

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

(d) "Nurse aide" 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 aide" does not mean a feeding assistant, an individual who is licensed, permitted, certified, or registered under ch. 441, 448, 449, 450, 451, 455, 459, or 460, or an individual whose duties primarily involve skills that are different than those taught in instructional programs for nurse aides approved under sub. (3) or evaluated by competency evaluation programs for nurse aides approved under sub. (3m).

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

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

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

(2) A hospital, nursing home, intermediate care facility for persons with mental retardation, home health agency, or hospice

may not employ or contract for the services of an individual as a nurse aide, regardless of the title under which the individual is employed or contracted for, unless one of the following is true:

(a) The individual has successfully completed instruction in an instructional program for nurse aides that is approved under sub. (3) and has successfully completed a competency evaluation program that is approved under sub. (3m).

(c) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities persons with mental retardation that are certified providers of medical assistance, the individual is enrolled in an instructional program for nurse aides that is approved under sub. (3) and is employed or under contract as a nurse's assistant, home health aide or hospice aide fewer than 120 calendar days by the hospital, nursing home, home health agency, hospice or intermediate care facility for the mentally retarded. All of the following applies to an individual specified under this paragraph:

1. He or she may perform only services for which he or she has received training and has been found proficient by an instructor under the instructional program.

2. The hospital, nursing home, home health agency, hospice, or intermediate care facility for persons with mental retardation may not include the individual in meeting or complying with a requirement for nursing care staff and functions, including a minimum nursing staff requirement.

(d) For hospitals, nursing homes, home health agencies, or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with mental retardation that are certified providers of medical assistance, the individual has successfully completed an instructional program and a competency evaluation program for nurse aides that is certified in another state that meets criteria for acceptance in this state as specified by the department by rule.

(e) For hospitals, home health agencies, or hospices, whether or not certified providers of medical assistance, nursing homes that are not certified providers of medical assistance and intermediate care facilities for persons with mental retardation 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 aides that is approved by the department under sub. (3m).

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

(g) For hospitals, nursing homes, home health agencies, or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with mental retardation 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 a competency evaluation program for nurse aides that is approved by the department under sub. (3m).

(2m) A nursing home or intermediate care facility for persons with mental retardation, whether or not the nursing home or intermediate care facility is a certified provider of medical assistance, may not employ or contract for the services of an individual as a feeding assistant, regardless of the title under which the individual is employed or contracted for, unless the individual has successfully completed a state-approved training and testing program, as specified by the department by rule.

(3) Except as provided in sub. (4d), the department shall approve instructional programs for nurse aides that apply for, and satisfy standards for, approval that are promulgated by rule by the department. The department shall review the curriculum of each

approved instructional program at least once every 24 months following the date of approval to determine whether the program continues to satisfy the standards for approval. Under this subsection, the department may, after providing notice, suspend or revoke the approval of an instructional program or impose a plan of correction on the program if the program fails to satisfy the standards for approval or operates under conditions that are other than those contained in the application approved by the department.

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

(4) A competency evaluation program approved under sub. (3m) shall notify the department to include an individual on the registry under sub. (4g) (a) 1. after the individual has successfully completed the competency examination.

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

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

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

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

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

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

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

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

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

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

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

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

4. A brief statement, if any, of an individual about whom the department is notified under sub. (4) and who disputes the depart-

ment's findings under sub. (4r) (b) or the hearing officer's findings under sub. (4r) (d).

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

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

(4m) An instructional program under sub. (3) for which the department has suspended or revoked approval or imposed a plan of correction or a competency evaluation program under sub. (3m) for which the department has suspended or revoked approval or imposed a plan of correction may contest the department's action by sending, within 10 days after receipt of notice of the contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent. This subsection does not apply to a revocation of approval under sub. (4d) (d).

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

(am) 1. An entity shall report to the department any allegation of misappropriation of the property of a client or of neglect or abuse of a client by any individual employed by or under contract with the entity if the individual is under the control of the entity.

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

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

(d) If the person specified in the report received under par. (a) or (am) timely notifies the division of hearings and appeals created under s. 15.103 (1) that he or she contests the listings in the registry under par. (b), the division of hearings and appeals shall hold a hearing under the requirements of ch. 227. If after presentation of evidence a hearing officer finds that there is no reasonable cause to believe that the person specified in the report

received under par. (a) or (am) performed an action alleged under par. (a) or (am), the hearing officer shall dismiss the proceeding. If after presentation of evidence a hearing officer finds that there is reasonable cause to believe that the person specified in the report received under par. (a) or (am) performed an action alleged under par. (a) or (am), the hearing officer shall so find and shall cause the name of the person specified in the report received under par. (a) or (am) to be entered under sub. (4g) (a) 2. and the hearing officer's findings about the person specified in the report received under par. (a) or (am) to be entered under sub. (4g) (a) 3.

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

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

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

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

(5) (a) The department shall promulgate rules specifying standards for approval in this state of instructional programs and competency evaluation programs for nurse aides. The standards shall include specialized training in providing care to individuals with special needs.

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

1. If the other state certifies instructional programs and competency evaluation programs for nurse 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 aides, that state's requirements are such that one of the following applies:

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

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

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

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

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74; 2007 a. 20 ss. 2862, 9121 (6) (a); 2007 a. 45, 153.

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

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

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

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

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

(2) (a) Subject to 1995 Wisconsin Act 27, section 9159 (2) (k), the board shall negotiate and enter into a contractual services

agreement with the authority that meets the requirements under s. 233.04 (4) and shall comply with s. 233.04 (4m) (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If a regulated release is subject to 15 USC 2601 to 2629 and to any other federal requirement in the coordinated framework, both departments shall be reviewing departments and shall enter

into a memorandum of understanding designating one of them to be the lead reviewing department.

(3) NOTIFICATION. (a) Except as provided under sub. (7), no person may commence a regulated release unless the person 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 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 services in reviewing the proposed regulated release.

(5) MEMORANDUM OF UNDERSTANDING. Within 6 months after June 13, 1989, the department of natural resources shall enter into

a memorandum of understanding with the department of agriculture, trade and consumer protection setting forth the procedures and responsibilities of the departments in the administration of this section. The memorandum shall establish procedures that minimize the duplication of effort between the departments and for the person providing information under sub. (3).

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

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

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

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

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

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

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

3. Either of the departments determines that:

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

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

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

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

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

1. Drug.
2. Cosmetic.

3. Medical device.
4. Biological product.

(b) A reviewing department may waive part or all of the requirements under sub. (3) for a specified regulated release if the reviewing department determines that the satisfaction of that requirement is not necessary to protect the public health or the environment.

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

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

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

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

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

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

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

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

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

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

History: 1989 a. 15; 1993 a. 213; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2001 a. 109; 2007 a. 20 s. 9121 (6) (a).

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

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

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

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

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

department shall review the report and may forgive all or part of the loan.

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

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

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

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

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

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

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

146.68 Grant for colposcopies and other services.

From the appropriation under s. 20.435 (5) (dg), the department shall provide \$100,000 in fiscal year 2007–08 and \$75,000 in each subsequent fiscal year to an entity that satisfies the following criteria to provide colposcopic examinations and to provide services to medical assistance recipients or persons who are eligible for medical assistance:

(1) The entity is located in the western or northern public health region of the state, as determined by the department.

(2) The entity provides Papanicolaou tests, and at least 50 percent of the persons for whom the entity provides Papanicolaou tests are recipients of medical assistance or are eligible for medical assistance.

History: 2007 a. 20.

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

History: 1981 c. 134.

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

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

(1) “Health care provider” means any of the following:

(a) A nurse licensed under ch. 441.

(b) A chiropractor licensed under ch. 446.

(c) A dentist licensed under ch. 447.

(d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

(dg) A physical therapist licensed under subch. III of ch. 448.

(dr) A podiatrist licensed under subch. IV of ch. 448.

(em) A dietitian certified under subch. V of ch. 448.

(eq) An athletic trainer licensed under subch. VI of ch. 448.

(es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

(f) An optometrist licensed under ch. 449.

(fm) A pharmacist licensed under ch. 450.

(g) An acupuncturist certified under ch. 451.

(h) A psychologist licensed under ch. 455.

(hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

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

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

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

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

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

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

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

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

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

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

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

(b) The type of information to be disclosed.

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

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

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

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

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

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

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

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

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

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

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89; 2005 a. 262, 387; 2007 a. 108.

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

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

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

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

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

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

History: 1981 c. 214.

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

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

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

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

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

History: 1987 a. 27, 399, 403.

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

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

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

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

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

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

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

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

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

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

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

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

(b) A hospital approved under s. 50.35.

(c) A hospice licensed under s. 50.92.

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

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

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

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

146.82 Confidentiality of patient health care records.

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

informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 253.12 (2), 255.40, or 979.01; testimony authorized under s. 905.04 (4) (h); or releases made for purposes of health care operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164, subpart E.

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

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

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. 256.15, including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

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

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

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

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

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

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

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

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

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

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

transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 54.10 or s. 880.33, 2003 stats.

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

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

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

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

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

11. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 (7).

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

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

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

13. To persons and entities under s. 940.22.

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

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

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

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

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

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

home, residential care center for children and youth, or juvenile correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.

19. To a procurement organization, as defined in s. 157.06 (2) (p), for the purpose of conducting an examination to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift under s. 157.06.

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

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

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

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

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

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

(4) RELEASE OF A PORTION OF A RECORD TO CERTAIN PERSONS.

(a) In this subsection:

1. "Immediate family" has the meaning given in s. 350.01 (8m).

2. "Incapacitated" has the meaning given in s. 50.94 (1) (b).

(b) Notwithstanding sub. (1), a health care provider may release a portion, but not a copy, of a patient health care record, to the following, under the following circumstances:

1. Any person, if the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release of that portion.

2. Any of the following, as applicable, if the patient and person authorized by the patient are incapacitated or are not physically available, or if an emergency makes it impracticable to obtain an agreement from the patient or from the person autho-

rized by the patient, and if the health care provider determines, in the exercise of his or her professional judgment, that release of a portion of the patient health care record is in the best interest of the patient:

a. A member of the patient's immediate family, another relative of the patient, a close personal friend of the patient, or an individual identified by the patient, that portion that is directly relevant to the involvement by the member, relative, friend, or individual in the patient's care.

b. Any person, that portion that is necessary to identify, locate, or notify a member of the patient's immediate family or another person that is responsible for the care of the patient concerning the patient's location, general condition, or death.

(5) REDISCLOSURE. (a) In this subsection, "covered entity" has the meaning given in 45 CFR 160.103.

(b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5), a covered entity may redisclose a patient health care record it receives under this section without consent by the patient or person authorized by the patient if the redisclosure of the patient health care record is a release permitted under this section.

(c) Notwithstanding sub. (1), an entity that is not a covered entity may redisclose a patient health care record it receives under this section only under one of the following circumstances:

1. The patient or a person authorized by the patient provides informed consent for the redisclosure.

2. A court of record orders the redisclosure.

3. The redisclosure is limited to the purpose for which the patient health care record was initially received.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130.

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

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now s. 49.22] may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. *State v. Allen*, 200 Wis. 2d 301, 546 N.W.2d 517 (1996), 95–0792.

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

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

In the event of a release of confidential health information in violation of HIPAA or this section, the proper remedy is not suppression of the released information. Neither HIPAA nor this section provides for suppression of evidence as a remedy for a violation. Suppression is warranted only when evidence has been obtained in violation of a defendant's constitutional rights or if a statute specifically provides for suppression as a remedy. *State v. Strahler*, 2008 WI App 14, ___ Wis. 2d ___, 745 N.W.2d 431, 07–0822.

This section does not reach beyond protection of health care records. A nurse's verbal statements based upon her observations are not protected by this section. *State v. Strahler*, 2008 WI App 14, ___ Wis. 2d ___, 745 N.W.2d 431, 07–0822.

Disclosure of patient health care records in Wisconsin. *Lehner*, WBB Aug. 1984. Confidentiality of Medical Records. *Meili*. Wis. Law. Feb. 1995.

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

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

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

146.83 Access to patient health care records.

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

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

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

(c) Receive a copy of the health care provider's X-ray reports or have the X-rays referred to another health care provider of the

patient's choice upon payment of fees, as established by rule under sub. (3m).

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

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

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

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

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

1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies.
2. The varying cost of retrieval of records, based on the different media on which the records are maintained.
3. The cost of separating requested patient health care records from those that are not requested.
4. The cost of duplicating requested patient health care records.
5. The impact on costs of advances in technology.

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

Cross Reference: See also ch. DHS 117, Wis. adm. code.

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

- (a) Intentionally falsify a patient health care record.
- (b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent.
- (c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

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

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

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

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.41 (4) (b) or 767.451 (4) may not have the rights of a parent

or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

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

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

History: 1999 a. 78.

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

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

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

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

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

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

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

(c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than \$100,000 or imprisoned not more than 3 years and 6 months, or both.

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

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

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

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

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

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

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

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

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

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

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

(e) “Prescription order” has the meaning given in s. 450.01 (21).

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

(a) Require that a practitioner include his or her federal registration number on a prescription order for a drug or device that is not a controlled substance.

(b) Disclose a practitioner’s federal registration number without the practitioner’s consent for any purpose other than complying with or enforcing federal or state law related to controlled substances.

(c) Use a federal registration number to identify or monitor the prescribing practices of a practitioner, except for the purpose of complying with or enforcing federal or state law related to controlled substances.

(3) A person who violates this section may be required to forfeit not more than \$10,000 for each violation.

History: 2003 a. 272.

146.89 Volunteer health care provider program. (1) In this section:

(d) “Governing body” means the governing body of any of the following:

1. A charter school, as defined in s. 115.001 (1).
2. A private school, as defined in s. 115.001 (3r), that participates in the Milwaukee Parental Choice Program under s. 119.23.

(g) “School” means any of the following:

1. A public elementary school.
2. A charter school, as defined in s. 115.001 (1).
3. A private school, as defined in s. 115.001 (3r), that participates in the Milwaukee Parental Choice Program under s. 119.23.

(h) “School board” has the meaning given in s. 115.001 (7).

(r) “Volunteer health care provider” means an individual who is licensed as a physician under ch. 448, dentist or dental hygienist under ch. 447, registered nurse, practical nurse, or nurse–midwife under ch. 441, optometrist under ch. 449, or physician assistant under ch. 448, or pharmacist under ch. 450, who is certified as a dietitian under subch. V of ch. 448, or who is a nurse practitioner, as defined in s. 255.06 (1) (d), or who performs functions described for pharmacy technicians in rules promulgated by the pharmacy examining board, and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency or school specified under sub. (3).

(2) (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency, school board, or governing body to the department of administration and that department approves the application. If the volunteer health care provider submits a joint application with a school board or governing body, the application shall include a statement by the school board or governing body that certifies that the volunteer health care provider has received materials that specify school board or governing body policies concerning the provision of health care services to students and has agreed to comply with the policies. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board’s recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency, school board, or governing body of the department’s decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency, school board, or governing body to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub. (2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par. (b) without charge, except as provided in sub. (3m), at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub. (2) (a).

(b) Under this section, the nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider; and dental hygiene services, performed by a dental hygienist who is a volunteer health provider.

(c) Under this section, the nonprofit agency may not provide emergency medical services, hospitalization, or surgery, except as provided in par. (b) 8.

(d) Under this section, the nonprofit agency shall provide health care services primarily to low–income persons who are uninsured and who are not recipients of any of the following:

2. Except as provided in sub. (3m), Medical Assistance under subch. IV of ch. 49.

3. Medicare under 42 USC 1395–1395ccc.

(3m) A volunteer health care provider who is a dentist may provide dental services or a volunteer health care provider who is a dental hygienist may provide dental hygiene services, to persons who are recipients of Medical Assistance, if all of the following apply:

(a) The nonprofit agency’s fees for these services apply to the recipients and to persons who are not recipients of Medical Assistance.

(b) The agency accepts discounted payments, based on ability to pay, from the persons who are not Medical Assistance recipients.

(c) The volunteer health care provider is certified under s. 49.45 (2) (a) 11. a., the department has waived the requirement for certification, or the volunteer health care provider is not required to be certified under s. 49.45 (2) (a) 11. a.

(3r) All of the following apply to a volunteer health care provider whose joint application with a school board or relevant governing body is approved under sub. (2):

(a) Before first providing health care services in a school, the volunteer health care provider shall provide to the school board or relevant governing body proof of satisfactory completion of any competency requirements that are relevant to the volunteer health care provider, as specified by the department of public instruction by rule, and shall consult with the school nurse, if any, of the school.

(b) Under this subsection, the volunteer health care provider may provide only to students from 4-year-old kindergarten to grade 6 the following health care services:

1. Except as specified in par. (c), the health care services specified in sub. (3) (b) 1. to 5. and 7., other than referrals to reproductive health care specialists, and in sub. (3) (b) 8.

2. First aid for illness or injury.

3. Except as specified in par. (c), the administration of drugs, as specified in s. 118.29 (2) (a) 1. to 3.

4. Health screenings.

5. Any other health care services designated by the department of public instruction by rule.

(c) Under this subsection, the volunteer health care provider may not provide any of the following:

1. Hospitalization.

2. Surgery, except as provided in par. (b) 2. and 5.

3. A referral for abortion, as defined in s. 48.375.

4. A contraceptive article, as defined in s. 450.155 (1) (a).

5. A pregnancy test.

(d) Any health care services provided under par. (b) shall be provided without charge at the school and shall be available to all students from 4-year-old kindergarten to grade 6 regardless of income.

(e) Under this subsection, a volunteer health care provider may provide instruction in human growth and development if the instructional program is in compliance with requirements of s. 118.019, except that the volunteer health care provider may not provide instruction on a topic specified under s. 118.019 (2) (e).

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

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23; 2003 a. 92; 2005 a. 188; 2007 a. 20 s. 9121 (6) (a); 2007 a. 201.

146.905 Reduction in fees prohibited. (1) Except as provided in sub. (2), a health care provider, as defined in s. 146.81 (1), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

146.91 Long-term care insurance. (1) In this section, “long-term care insurance” means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long-term care insurance, the office of the commissioner of insurance, the board on aging and long-term care and the department of

employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long-term care insurance, based on the purchasers’ ability to pay.

(b) Reinsuring by the state of policies issued in this state by long-term care insurers.

(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).

(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; 2007 a. 20.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) “Health care provider” has the meaning given in s. 155.01 (7).

(b) “Inpatient health care facility” has the meaning given in s. 252.14 (1) (d).

(c) “Treatment facility” has the meaning given in s. 51.01 (19).

(2) PATIENT-DESIGNATED VISITORS. (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par. (b), no inpatient health care facility may deny visitation during the inpatient health care facility’s regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109.

146.99 Assessments. The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in s. 50.33 (2), a total of \$1,500,000, in proportion to each hospital’s respective gross private-pay patient revenues during the hospital’s most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under s. 20.435 (4) (gp).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1999 a. 9.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) “Department” means the department of workforce development.

(b) “Disciplinary action” has the meaning given in s. 230.80 (2).

(c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.50, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.
5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.
12. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
13. A massage therapist or bodyworker issued a certificate under ch. 460.
14. An emergency medical technician licensed under s. 256.15 (5) or a first responder.
15. A partnership of any providers specified under subs. 1. to 14.
16. A corporation or limited liability company of any providers specified under subs. 1. to 14. that provides health care services.
17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.
18. A hospice licensed under subch. IV of ch. 50
19. A rural medical center, as defined in s. 50.50 (11).
20. A home health agency, as defined in s. 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.
2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or

standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard-setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.54 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12

months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form

approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

History: 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105; 2003 a. 33; 2005 a. 22; 2007 a. 20 s. 9121 (6) (a); 2007 a. 130.

Wisconsin Health Care Workers: Whistleblowers Protection. Neuser. Wis. Law. March 2004.