

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3313/P1dn
PJK & RPN;jlg:mrc

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This draft is the bill form of LRBb1287/1, with the change to s. 609.39 noted below. Let us know what changes you would like to this bill draft.

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Under current law (see chapter 655) a person who is injured or dies as a result of medical malpractice may sue the health care provider that committed the malpractice. Medical malpractice is defined by the courts to mean the mistakes made in the diagnosis or treatment, or both, of a person. Section 655.002 includes HMOs as health care providers. In *McEvoy v. Group Health Cooperative*, 213 Wis. 2d 507 (1997), the Wisconsin supreme court held that a patient of an HMO can recover damages for the denial of benefits by that HMO, based on the common law tort of bad faith. This draft does not change the current law regarding medical malpractice but does codify the *McEvoy* decision. See the creation of s. 609.39 in this draft. I am not clear if this is your intent, so please advise me if changes are needed in the draft.

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