

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1965/P1dn

RLR:cjs:rs

November 8, 2005

Representative Underheim:

Attached is the draft on confidentiality of health care quality review records for the Wisconsin Hospital Association (WHA). The draft is different from the WHA proposed language because I placed the substance of the draft in requirements and prohibitions rather than definitions. If this draft does not accomplish what WHA desires, I would be happy to work on it further; however I would like to work from this draft, rather than the language supplied by WHA, because I believe it is clearer.

This draft amends s. 146.38 but not 146.37, because many of the changes to s. 146.37 requested by WHA are contingent upon changes in terminology made in 146.38. Once you and WHA are satisfied with the treatment of 146.38, I can incorporate the changes into s. 146.37.

I could not determine from the WHA proposed language whether and to what extent the confidentiality provisions should apply to records created by government agencies, such as DHFS. This draft does not affect records created by government agencies.

I do not understand the provisions in the WHA draft concerning "public reporting activity," "public reporting entities," and "public reporting documents." Apparently, public reporting activity refers to projects conducted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Centers for Medicare and Medicaid Services (CMS), and others to communicate quality and cost information about hospitals to consumers. However, the definitions in the draft apply equally to mandated reporting under ch. 153. If the WHA's intent is to allow an exception to confidentiality for the purpose of reporting projects such as those conducted by JCAHO and CMS, isn't it sufficient to give a health care entity power to control release of records?

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