

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Public Reporting Activity.

The main concept behind public reporting activity provisions in the WHA draft seems to be that when a health care entity or reviewer provides quality review records or information to a 3rd party to aggregate or organize the records or information, the records or information do not lose their protected status, and the product of the aggregation or organization is also protected. Rather than labelling this as a separate concept, the bill specifies that records and information do not lose their protected status when disclosed and also specifies that the product of aggregation or organization is itself protected. Each health care entity that contributes information to a public reporting entity has to authorize disclosure of any report on the aggregated information. I'm not sure if WHA wants to require each health care entity to provide authorization, but I think the WHA draft requires such authorization, because the exception under the definition of quality review records for public reporting documents requires that such documents have been presented with "proper authority."

Permitted disclosure.

The main function of the permitted disclosure provisions in the WHA draft is to require that if a reviewer is not independent of a health care entity, the reviewer must obtain written authorization from the health care entity before making any disclosure of quality review records or information concerning the health care entity that is not mandated by law (or required under one of the of the other exceptions to confidentiality). The WHA draft lists instances in which such a reviewer may disclose quality review records upon receiving written authorization. It is not necessary to list the scenarios in the bill, because the health care entity can control the purposes for which information may be released in its authorization. This bill simply provides as an exception to confidentiality, that if a person has written authorization from a health care entity, it may disclose records and information concerning the health care entity.

Application to government agencies.

I took regulatory and licensing agencies out of the definition of quality review entity so that the draft does not cover licensing and investigatory functions of the Department of Health and Family Services or the Department of Regulation and Licensing and its examining boards.

I added a provision specifying that if a state agency conducts a review at the request of a health care entity, records related to the review are confidential and are not subject to inspection and copying as public records.

Quality review records.

This draft covers all of the components of the definition of quality review records in the WHA draft (items a. through i. in the WHA draft).

Item a. is covered in sub. 2 (a) 1. and 2.

Item b. reported or presented records are covered under sub. (2) (a) 3.

Item c. anything requested and collected is covered as collected under sub. (2) (a) 1. and 2. The actual request is covered under sub. (2) (a) 4.

Item d. is covered under sub. (2) (a) 1. and 2. because such records are created or collected by a reviewer in the context of a review.

Item e. is covered under sub. (2) (a) 1. and 2.

Item f.: sub. (2) (c) provides that records don't lose protected status if shared.

Item g. is covered under sub. (2) (a) 6. — see note on public reporting.

Item i. is covered under sub. (2) (a) 5.

Confidentiality provisions.

I do not understand the restatement in WHA's (3) (a) 3. of the idea that the protections under par. (a) apply in any criminal, civil, or other judicial or administrative proceeding. What is the concern about different treatment of confidentiality and privilege?

Quality review entity definition.

I didn't separately define the quality review entity, because whether an entity is a quality review entity depends in part on who it is reviewing.

The WHA definition covers reviews conducted by persons who have no connection to a health care entity and act independently of the health care entity. For example, if a professor or consumer organization conducts a study of resident satisfaction at a nursing home by sending surveys to all the residents, under the WHA bill the information the residents send to the reviewer is confidential, cannot be published or shared without the permission of the nursing home, and cannot be used in any court proceedings. Is this an intended result? Is one of WHA's goals to assure that reviews conducted by an employee or agent of a health care entity are covered regardless of whether the the health care entity formally authorizes the review — I think this is covered in my language. (Also, I think that defining a quality review by the subject of the review rather than the purpose would help, because then the motivation of the reviewer is not relevant.)

Adverse action and health care entity.

I have not had time to revisit the definitions of “adverse action” and “health care entity” in light of Matthew’s notes and therefore have made no changes from the /P1. I will review the definitions and comments before our next meeting.

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