

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **richard.sweet@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005	csicilia 11/08/2005	rschluet 11/08/2005	_____	lemery 11/08/2005		
	rryan 12/22/2005	csicilia 01/04/2006		_____			
/P2			chaugen 01/04/2006	_____	mbarman 01/04/2006		
/P3	rryan	csicilia	jfrantze	_____	lnorthro		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/12/2006	01/13/2006	01/13/2006	_____	01/13/2006		
/P4	rryan 01/19/2006	csicilia 01/19/2006	pgreensl 01/19/2006	_____	sbasford 01/19/2006		
	rryan 01/25/2006	csicilia 01/25/2006		_____			
/P5			rschluet 01/25/2006	_____	lnorthro 01/25/2006		
/1	rryan 02/01/2006		rschluet 02/01/2006	_____	lnorthro 02/01/2006	lnorthro 02/02/2006	

FE Sent For:

<END>

*none
needed*

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **richard.sweet@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005	csicilia 11/08/2005	rschluet 11/08/2005	_____	lemery 11/08/2005		
	rryan 12/22/2005	csicilia 01/04/2006		_____			
/P2			chaugen 01/04/2006	_____	mbarman 01/04/2006		
/P3	rryan	csicilia	jfrantze	_____	lnorthro		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/12/2006	01/13/2006	01/13/2006 _____		01/13/2006		
/P4	rryan 01/19/2006	csicilia 01/19/2006	pgreensl 01/19/2006 _____		sbasford 01/19/2006		
	rryan 01/25/2006	csicilia 01/25/2006	_____				
/P5			rschluet 01/25/2006 _____		lnorthro 01/25/2006		
/1	rryan 02/01/2006		rschluet 02/01/2006 _____		lnorthro 02/01/2006		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **richard.sweet@legis.state.wi.us**

Pre Topic:

No specific pre topic given

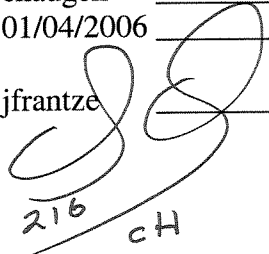
Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005 rryan 12/22/2005	csicilia 11/08/2005 csicilia 01/04/2006	rschluet 11/08/2005	_____	lemery 11/08/2005		
/P2			chaugen 01/04/2006	_____	mbarman 01/04/2006		
/P3	rryan	csicilia	jfrantze	 216 cH		lnorthro	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/12/2006	01/13/2006	01/13/2006	_____	01/13/2006		
/P4	rryan 01/19/2006	csicilia 01/19/2006	pgreensl 01/19/2006	_____	sbasford 01/19/2006		
	rryan 01/25/2006	csicilia 01/25/2006		_____ _____			
/P5			rschlue 01/25/2006	_____ _____	lnorthro 01/25/2006		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **richard.sweet@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005	csicilia 11/08/2005	rschluet 11/08/2005	_____	lemery 11/08/2005		
	rryan 12/22/2005	csicilia 01/04/2006		_____			
/P2			chaugen 01/04/2006	_____	mbarman 01/04/2006		
/P3	rryan	csicilia	jfrantze	_____	lnorthro		

Handwritten signatures and initials, including '1256' and 'UN'.

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/12/2006	01/13/2006	01/13/2006	_____	01/13/2006		
/P4	rryan 01/19/2006	csicilia 01/19/2006	pgreensl 01/19/2006	_____	sbasford 01/19/2006		

FE Sent For:

1 PS jcs 1/25
06

<END>

2005 DRAFTING REQUEST

Bill

Received: 02/01/2005

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing: Randy Thorson

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Health - miscellaneous

Extra Copies: DAK

Submit via email: YES

Requester's email: Rep.Underheim@legis.state.wi.us

Carbon copy (CC:) to: richard.sweet@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005	csicilia 11/08/2005	rschluet 11/08/2005	_____	lemery 11/08/2005		
	rryan 12/22/2005	csicilia 01/04/2006		_____			
/P2			chaugen 01/04/2006	_____	mbarman 01/04/2006		
/P3	rryan	csicilia	jfrantze	_____	lnorthro		
			1/19 PG	1/19 P81K			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/12/2006	01/13/2006	01/13/2006	_____	01/13/2006		

FE Sent For:

<END>

1/24 cjs 1/19
of

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **richard.sweet@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005	csicilia 11/08/2005	rschluet 11/08/2005	_____	lemery 11/08/2005		
	rryan 12/22/2005	csicilia 01/04/2006		_____			
/P2			chaugen 01/04/2006	_____	mbarman 01/04/2006		

Handwritten notes:
/P3 gjs 1/13
06 1/13
JH/RS 1/13

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to: **richard.sweet@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rryan 10/05/2005	csicilia 11/08/2005	rschluet 11/08/2005	_____	lemery 11/08/2005		

FE Sent For:

Handwritten notes:
P2 g/s 1/4 ch 1-4
05
ch 1-4
P5 1-4
<END>

2005 DRAFTING REQUEST

Bill

Received: **02/01/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Randy Thorson**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given


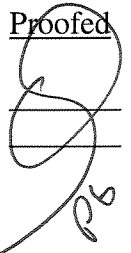
Topic:

Health care quality review

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan	PI 1/18 05 js		 PB			
FE Sent For:			1185	<END>			

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: RLR) (Date: 2 / 2 / 06)



Please transfer the drafting file for

2003 LRB -4322 to the drafting file

for 2005 LRB -1965

The final version of the 2003 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2003 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2003 draft was incorporated into a 2005 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the 2005 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--- OR ---

Please copy the drafting file for

2005 LRB _____ / _____ (include the version) and place it in the

drafting file for 2005 LRB _____

For research purposes, because the original 2005 draft was incorporated into another 2005 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the new 2005 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

WISCONSIN HOSPITAL ASSOCIATION, INC.



January 26, 2005

Pamela J. Kahler
Senior Legislative Attorney
Legislative Reference Bureau
One East Main Street
Suite 200
Madison, WI 53701-2037

Dear Ms. Kahler:

Thank you for your efforts to improve the organization of the 146.38 draft. Your work has resulted in a draft that is easier to read and comprehend. Upon receipt of your draft, we presented it to our work group of health care attorneys and administrators that formulated the original draft. The work group reviewed and analyzed your draft and notes, and was generally supportive of the changes and suggestions made in your draft. The group does, however, request that some changes be made to your draft to provide the utmost clarity to certain key provisions of the draft and the overall context of the draft. Those changes appear as redline edits to your version of the draft in the attached document.

Thank you again for your help in creating the preliminary draft. We would be pleased to discuss the draft with you at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Laura Leitch', is written over a horizontal line.

Laura Leitch
Vice President and General Counsel

146.38 - Health care quality review; confidentiality of information; immunity.

(1m) Findings and Purpose. The State recognizes the need for a culture of quality and safety among the health care community in order to promote the highest quality, lowest cost, and safest health care for its citizens. It is declared to be the public policy of this State to encourage activities that help create, while at the same time discouraging activities that inhibit, a culture of quality and safety in the health care community. The State finds that public reporting activity--which increases public awareness of health care quality--and quality review activity--through which the health care community identifies and learns from successes and adverse events--encourages a culture of quality and safety. The State therefore declares that the following Wisconsin statute should be liberally construed in identifying and protecting quality review activity and public reporting activity. These findings and declarations are premised upon the following:

- (a) Effective quality review requires that all who participate are able to candidly and objectively communicate in writing and orally and that all related products of quality review activity are afforded protection from discovery in litigation and elsewhere;
- (b) Effective quality review is hampered without statutory and judicial assurances of confidentiality and immunity from liability, due also as to the fear of involuntary future participation in litigation arising from good faith review;
- (c) Fear of future involvement in litigation in the absence of statutory confidentiality and immunity also lessens the willingness of individuals to participate in the process;
- (d) Judicial decisions in Wisconsin contain some inconsistencies, having been premised upon narrowly construing existing statutory immunities and restrictions upon access to quality review information for discovery purposes; and
- (e) Legislation is needed to provide clear and consistent assurances that quality review activity defined in the following statute be confidential and be immune from both discovery and admissibility in litigation; and that assurances are provided that involuntary participation in judicial proceedings will not be required of those who participate in quality review activity.

(1) Definitions. In this section:

- (a) "Adverse quality review action" means any action or recommendation based on quality review activity or anticipated quality review activity to reduce, restrict, suspend, deny, revoke or fail to renew any of the following:
 - 1. A health care entity's membership, clinical privileges, clinical practice authority, or professional certification in a hospital, medical staff, or other health care entity.
 - 2. A health care entity's participation on a provider panel.
 - 3. A health care entity's accreditation, licensure, or certification.
- (b) "Health care entity" means any of the following:
 - 1. A health care provider.
 - 2. A person that provides or arranges for health care services, including mental health services.
 - 3. A person that furnishes the services of health care providers to another health care entity.
- (c) "Health care provider" has the meaning given in s. 146.81(1).
- (d) "Public reporting activity" means receiving, aggregating, or organizing quality review records, patient information, or health care data of one or more health care entities or quality review entities if a purpose of such activity includes any of the following:
 - 1. Presenting, at some contemplated time in the future, the received, aggregated, or organized items to health care entities, quality review entities, consumers of health care, purchasers of health care, businesses, or the general public to inform health care entities, quality review

- entities, consumers, purchasers, businesses, or the general public about the quality, cost, utilization, or safety of health care.
2. Presenting, at some contemplated time in the future, the received, aggregated, or organized items to one or more other public reporting entities.
- (e) "Public reporting document" means a document, report, or any other communication containing aggregated or reorganized quality review records, patient information, or health care data of one or more health care entities or quality review entities that is with proper authority presented and communicated to the general public for the purpose of informing patients about the quality, cost, utilization, or safety of health care.
- (f) "Public reporting entity" means a person that undertakes public reporting activity.
- (g) "Quality review activity" means ~~any monitoring of, or study, review, evaluation, investigation, recommendation, action, or process relating to, one or more health care entities that is conducted for any of the following purposes:~~ means any of the following when conducted for a quality review purpose.
1. The monitoring of:
 - a. One or more health care entities, or
 - b. The structure, process or outcome of health care provided by the health care entity or its personnel.
 2. Any continuous, periodic, or single data collection, study, review, investigation, evaluation, recommendation, corrective or other action, or process relating to:
 - a. One or more health care entities, or
 - b. The structure, process or outcome of health care provided by the health care entity or its personnel.
- (gm) "Quality review purpose" means any of the following purposes:
1. To maintain or improve the quality of care or those services having an impact on care.
 2. To reduce morbidity or mortality.
 3. To pursue or enforce or improve standards of qualification, competence, conduct, or performance.
 4. To maintain or improve the appropriate or cost-effective use of health care services and resources.
 5. ~~To Comply with or~~ pursue compliance with applicable legal, ethical, or behavioral standards.
 6. ~~To Comply with or~~ pursue compliance with credentialing, accreditation, or regulatory activities, requirements, or standards, including periodic performance review and related activities ~~by for~~ the Joint Commission on Accreditation of Healthcare Organizations.
 7. To credential, or approve the credentialing of, health care entities.
 8. To address the health or performance of individuals who are health care entities.
 9. To measure progress toward or compliance with goals and standards used to further the purposes described in (gm) 1.-8. ~~foregoing criteria,~~ such as through quality improvement studies, morbidity and mortality studies, or utilization management studies.
 10. To aggregate or organize quality review records, patient information, or health care data.
- (h) "Quality review entity" means any of the following:
1. A person, ~~including department or committee, that~~ who is given responsibility by a health care entity or a quality review entity for conducting quality review activity. A person includes departments or committees.
 2. A person with which a Health Care Entity or Quality Review Entity contracts or arranges to perform or assist in performing Quality Review Activity.

3. Joint committees of 2 or more health care entities or quality review entities when performing quality review activity.
 4. A person that performs quality review activity for or with respect to a health care entity that is the subject of the quality review activity, including an accreditation entity, licensure entity, or regulatory entity.
 5. The governing body and committees of the governing body of a health care entity when engaging in quality review activity.
 6. The officers, directors, employees, committee or department members, agents, consultants, attorneys and staff of a quality review entity or any other person with which a health care entity or quality review entity contracts or arranges to perform or assist in performing quality review activity ~~when engaging or assisting in Quality Review Activity.~~
 - (i) 1. Except as provided in subd. 2., and regardless of the type of communications medium or form, including oral communications, and whether in statistical form or otherwise, "quality review records" means any medium used for communication, including oral communication, whether in statistical form or otherwise, the all minutes, files, notes, records, reports, statements, memoranda, data bases, proceedings, findings, work product, images, and or any other records, that are:
 - a. Collected or developed by a health care entity for the purpose of reporting to a quality review entity for quality review activity;
 - b. Reported to a quality review entity for quality review activity;
 - c. Requested by a quality review entity, including the contents of such request, for quality review activity;
 - d. Reported to a health care entity by a quality review entity for quality review activity;
 - e. Collected or developed by a quality review entity for quality review activity;
 - f. Reported among quality review entities after obtaining authorization;
 - g. Received by a public reporting entity;
 - h. A product of public reporting activity; or
 - i. Information related to oversight, monitoring, corrective actions, or other activities taken in response to quality review activity.
 2. "Quality review records" does not include any of the following:
 - a. Records maintained by or for a health care entity for the particular purpose of diagnosing, treating, or documenting the care provided to an individual patient and available from a source other than a quality review entity.
 - b. Public reporting documents.
- (2) Immunity for Acts or Omissions.
- (a) Any person acting in good faith that participates in quality review activity shall not be liable in damages as a result of any act or omission by the person in the course of quality review activity. Acts or omissions to which this subsection applies include acts or omissions by quality review entities in censuring, reprimanding, limiting or revoking hospital staff privileges, notifying the medical examining board or podiatrists affiliated credentialing board under s. 50.36, or taking any other disciplinary action against a health care entity.
 - (b) The good faith of any person specified in par. (a) shall be presumed in any civil action. Any person who asserts that a person has not acted in good faith has the burden of proving that assertion by clear and convincing evidence.
 - (c) In determining whether a person has acted in good faith under par. (a), the court shall consider whether the individual or entity has sought to prevent the health care entity that is the subject of the quality review activity or its counsel from examining the documents and records used in the quality review activity, from presenting witnesses, establishing pertinent

facts and circumstances, questioning or refuting testimony and evidence, or confronting and cross-examining adverse witnesses, or from receiving a copy of the final report or recommendation of the quality review entity.

(d) Any person that reports information to a public reporting entity shall not be liable in damages as a result of any act or omission by the person in the course of the reporting.

(3) Quality Review Records.

(a) Confidentiality.

1. Except as otherwise provided in subd. 4., all quality review records are privileged and confidential and are not subject to discovery, subpoena or other means of legal compulsion for their release to any person, and are not admissible as evidence in any criminal, civil, or other judicial or administrative proceeding. A state regulatory, licensing, or certifying body or a state agency may not compel the disclosure of or access to quality review records. Information contained in quality review records is not admissible or discoverable.
2. Quality review records or summaries are not public records subject to subch. II of ch. 19. No person that receives quality review records or summaries of the records under this subsection may further disclose the records unless otherwise authorized to do so under par. (b) or required to do so under par. (c).
3. Except as provided in subd. 4., the protections under this paragraph (a) apply in any criminal, civil, or other judicial or administrative proceeding. The protections afforded to quality review records under this paragraph (a) are not waived or destroyed by any disclosure, whether authorized or unauthorized, of quality review records to any person, including any disclosure under par. (b) or (c).
4. Subdivision 1. does not apply in any state or federal criminal, civil, or other judicial or administrative proceeding in which a health care entity contests an adverse quality review action against the health care entity by a quality review entity, but the discovery, use, and introduction of quality review records in such a proceeding does not constitute a waiver of subd. 1. or 2. with respect to any subsequent publication, release, use, discovery, subpoena or other means of legal compulsion, or admissibility of the records.

(b) Permitted disclosure.

1. Subject to par. (d) 1., a quality review entity may, but unless par. (c) 1. or 2. applies is not required to, disclose quality review records to any person for purposes of quality review activity or public reporting activity.
2. Subject to par. (d) 1., a quality review entity may, but unless par. (c) 2. applies is not required to, furnish quality review records, summaries, or information to, or act as a witness and furnish testimony before, quality review entities, state or federal governmental agencies, or national accrediting bodies.
3. Subject to par. (d) 1. quality review records that are not related to adverse quality review action may be, but unless par. (c) 1. or 2. applies are not required to be, disclosed by a quality review entity to the any health care entity that is the a subject of the quality review activity contained in the quality review record.

(c) Required Disclosure.

1. When a quality review entity gives a health care entity notice stating that an adverse quality review action is proposed to be taken against the health care entity, the quality review entity shall, upon request, disclose to the affected health care entity and, if requested, to the health care entity's attorneys, agents, or representatives the quality review records relating to the adverse quality review action that are possessed by the quality review entity conducting the adverse quality review action. At any time prior to such a notice a quality review entity may, but is not required to, disclose to the affected health care entity and its attorneys, agents, or

representatives any or all of the quality review records relating to the adverse quality review action that are possessed by the quality review entity conducting the adverse quality review action.

2. ~~A person authorized to disclose quality review records under this subsection shall disclose in an authorized manner those Quality Review Records that person reasonably believes are specifically required by Wisconsin or federal law to be disclosed by that person. A person mandated by Wisconsin or federal law to report may disclose information from quality review records necessary to make the mandated report.~~

(d) Authorization needed for permitted disclosure.

1. If a quality review entity making a disclosure under par. (3)(b) has been formed by or has a contract or arrangement with a health care entity to perform quality review activity, the quality review entity must receive written authorization from that health care entity before making a disclosure that is permitted under this subsection unless the health care entity has made a specific written waiver of its right to authorize such disclosures.
2. If a public reporting entity has been formed by or has a contract or arrangement with a health care entity to perform public reporting activity, the public reporting entity may, but unless par. (c)2. applies is not required to, disclose quality review records containing information relating to that health care entity to one or more health care entities, quality review entities, or public reporting entities, but the public reporting entity may make the disclosure only if the public reporting entity receives written authorization from that health care entity before making the disclosure unless that health care entity has made a specific written waiver of its right to authorize such a disclosure.

***Note: All other sections of your version of the draft are adequate, except the group suggested the following change to Section 3.

146.55(7) of the statutes is amended to read:

146.55 (7) INSURANCE. A physician who participates in an emergency medical services program under this section or as required under s. 146.50 shall purchase health care liability insurance in compliance with subch. III of ch. 655, except for those acts or omissions of a physician who, as a medical director, reviews the performance of emergency medical technicians or ambulance service providers pursuant to s. 146.38.



Stephen R. Miller
Chief

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

One East Main Street, Suite 200
P.O. Box 2037
Madison, WI 53701-2037
www.legis.state.wi.us/lrb/

Legal Section: (608) 266-3561
Legal Fax: (608) 264-6948
Library Circulation: (608) 266-7040
Reference Section: (608) 266-0341
Reference Fax: (608) 266-5648

TO: Representative Underheim

FROM: Robin Ryan, Attorney *RR*
Legislative Reference Bureau

RE: Health care quality review and immunity bill request

DATE: April 25, 2005

I would like to you meet with you to discuss the health care quality review and immunity bill you requested. The Wisconsin Hospital Association provided the drafting instructions for the bill. I have attached a copy of the Association's proposed language.

There are some difficulties with the draft provided by the Association. I met with representatives of the Association to discuss the difficulties. The Association does not share my concerns with their proposed language and does not welcome any significant changes.

The problems I find with the bill include:

1. Many of the substantive provisions are buried in the definitions so it is difficult for readers of the bill, including legislators, the courts, and the people who must comply with the bill, to understand what the bill requires. Further, placing substantive provisions in definitions may not accomplish the Association's purpose. For example, one of the subparts of the definition of a "quality review entity" provides that a quality review entity is "Joint committees of 2 or more health care entities or quality review entities when performing quality review activity." I did understand until speaking with representatives of the Association, that this definition is intended to cover instances in which 2 entities share records. It is much clearer to state in a substantive provision that the confidentially provision for quality review records apply to records shared between two entities.
2. The definitions contain many examples, and the bill includes a couple of redundancies. I do not think that examples are always inappropriate, but because the examples are extensive, courts may find that the legislature intended to exclude things that are not included in the examples. Courts may also find that when material is repeated, the legislature intends the two statements to mean something different.
3. Some of the terms in the bill are unclear, such as the "structure of health care." Also, I think a couple of the terms are inappropriate, such as "public reporting activity," which covers activities related to material that may or may not be released to the public.

4. The Association's language includes a statement of legislative intent – essentially that the purpose of the bill is to provide confidentiality and immunity for quality review activities so that providers and others will be encouraged to participate in quality review, which in turn will lead to improvements in the provision of health care. The statement of intent is unnecessary if the bill is clear, and we no longer draft statements of legislative intent unless they are in support of the constitutionality of an issue. Further, there is no need to spell out the intent, because the courts have already demonstrated that they understand the intent of the current quality review statute.

I would like to discuss with you some changes to the proposed language that will make is clearer and ensure that the draft carries out your intent.

attch.

146.38 CASES

Maroney, Ct. App., 1985

Mallow, Ct. App, 1988

Franzen, ct. app, 1992

Ollman, Ct. App., 1993

Mallon, ct. app, 1993

Braverman, CT App II, April 2001

Hofflander, SCT July, 2003

Phelps, Ct. App, April 2004

+ SCT

2005 w/ 85
June 2005