

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB993)

Received: **02/07/2006**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Randy**

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:

Confidentiality of health care review records and information

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 02/07/2006	csicilia 02/07/2006		_____			
/1			jfrantze 02/07/2006	_____	sbasford 02/07/2006	sbasford 02/07/2006	

FE Sent For:

<END>

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/?	rryan	1 cjs	2/7 06 g/7	J/C 2/17			

FE Sent For:

<END>

Ryan, Robin

From: Stanford, Matthew [mstanford@wha.org]
Sent: Monday, February 06, 2006 5:40 PM
To: Ryan, Robin; Thorson, Randy
Cc: Leitch, Laura
Subject: Quality Improvement Act - Suggestions for amendment in response to drafter's note
Attachments: memo on LRB-1965-1 response020606 1.doc

Hi Robin and Randy,

Robin had sent out a drafter's note dated Feb. 2, with comments on LRB 1965/1. Attached is a memo from WHA responding to the comments in the drafter's note and proposing language for an amendment to LRB 1965/1 based on those comments.

Please contact myself or Laura if you have questions.

Matthew

Matthew Stanford
Associate Counsel
Wisconsin Hospital Association, Inc.
PO Box 259038
5510 Research Park Drive
Madison, WI 53725-9038
608-274-1820
mstanford@wha.org

TO: Robin Ryan
Randy Thorson

FROM: Matthew Stanford
Laura Leitch

DATE: February 6, 2006

RE: Drafter's note on LRB-1965/1



Robin:

We appreciated the issues raised in your drafter's note on LRB-1965/1 to Representative Underheim. Attached to this memo is a copy of your drafter's note with our bulleted and underlined responses to each of those notes. In some responses, we suggest amendments that should be made to LRB-1965/1 in light of the issues raised in your drafter's note. Those amendments are highlighted in yellow.

In addition to the issues raised in the drafter's note, there are two other issues that should be addressed in an amendment to LRB 1965/1.

✓ The first issue involves liability for disclosures in violation of 146.38. You explain in the LRB analysis of LRB-1965/1 that the bill changes current law that makes a person who discloses records or information of a quality improvement activity in violation of the confidentiality and privilege provisions civilly liable for the disclosure. It is not intended that LRB 1965/1 change this policy. Thus, in the appropriate place in the statutory language, the following should be added:

Any person who discloses information or releases a record in violation of this section (146.38), other than through a good faith mistake, is civilly liable therefor to any person harmed by the disclosure or release.

✓ The second additional issue involves a reference to JCAHO (1)(d)6. of LRB 1965/1. Although (1)(d)6. clearly contemplates compliance with JCAHO standards and performance of activities related to JCAHO accreditation, the explicit reference to JCAHO in this provision may make other provisions less clear. Thus, please make the following (1)(d)6 that removes the explicit reference to JCAHO:

- Amend lines 11-13 on page 6 to read:
 - activities.



Stephen R. Miller
Chief

State of Wisconsin

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TO: Representative Underheim

CC: Dick Sweet
Laura Leitch
Matthew Stanford

FROM: Robin Ryan

DATE: February 2, 2006

RE: Drafter's note on LRB-1965/1

Following are my comments on LRB-1965/1 that I referenced in my drafter's note to the bill:

Proposed s. 146.38 (3) (a) 1.

1. The introduction to 1. refers to a "single or joint committee." Since a joint committee is a single committee the distinction is not clear.

- The intent of "joint" committee is to clarify that a quality improvement committee commissioned and staffed by two hospitals is protected under the statute. Committees such as the Joint Committee on Finance and the Joint Committee for Review of Administrative Rules are examples of committees commissioned and staffed by multiple organizations. To clarify the intent of the statute, the amendment below is proposed.
- Amend lines 12 and 13 on page 7 to read:
 - activity that is conducted by any person, organization, department, or committee, including a committee with representatives from multiple persons, that is any of the
 - Note to Robin: "Multiple persons" seems like an odd way of describing this. If possible, can this be drafted in a way that conveys "multiple entities" but that adheres to the statutory preference for using person rather than entity?

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2. Subdivision a. identifies “a person that has responsibility.” It is unclear whether “has responsibility” means required or means either required or authorized.

- See response to Comment 6.

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3. It is unclear in subdivision a. what a “regulation” encompasses. The Wisconsin Administrative Code consists of rules. The Federal Code of Regulations consists of regulations.

- See response to Comment 6.

4. Subdivision a. refers to a condition of accreditation. It is unclear whose accreditation this refers to. Is it the accreditation of a health care entity? Similarly, subdivision a. refers to a bylaw, policy, or resolution. Should this be a bylaw, policy, or resolution of a health care entity?

- (3)(a)1.a. was written to include entities conducting quality improvement activities such as health plans, the Wisconsin Health Information Organization (WHIO), WHA Information Center, and others who have their own policy to conduct quality improvement activity. Thus, (3)(a)1.a. should not specify health care entity.

5. Subdivision a. describes the person that has responsibility by statute, regulation, etc. If a statute states that “a hospital shall do X,” and a committee of the hospital does X, is the committee’s action covered under subdivision a.? In other words, will the court read subdivision a. restrictively so that when a person other than the one specifically identified in the statute conducts the activity, the activity is not covered? Such a reading would be similar to the court determining under current law that s. 146.38 only applies when a formal peer review committee conducts a review.

- See response to Comment 6.

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6. Perhaps subdivision a. could cover quality improvement activity conducted by a person who is required or authorized by state or federal law, as a condition of accreditation of a health care entity, or under a bylaw, resolution, or policy of a health care entity to conduct the quality improvement activity or by another who acts on that person’s behalf.

- The form of this proposal would be helpful with a minor change regarding accreditation. Also agree with inclusion to address Comment 5.
- Amend lines 15 through 17 on page 7 to read:
 - a. A person, other than a state agency, who is required or authorized by state or federal law, as a condition or requirement of accreditation, or under a bylaw, resolution, or policy to conduct the quality improvement activity or by another who acts on that person’s behalf.

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7. Subdivision b. refers to a person who is “charged” by a health care entity to conduct a quality improvement activity. It is my understanding that one of the scenarios WHA wants to cover under this provision is a quality improvement activity conducted by a state agency at the request of a health care entity. I wonder whether a health care entity can

“charge” a state agency to act. A prior version of the WHA’s language referred to a person “directed” by a health care to conduct a quality improvement activity. My notes from a meeting on January 26, 2006, with WHA indicate to add “authorize.” Adding “request” would cover the situation in which a state agency conducts a quality improvement activity at the request of a health care entity.

- Adding “authorized” should address this concern.
- A second issue relating to (3)(a)I.b. has arisen that necessitates an amendment. It is intended that health plans, WHIO, WHA Information Center, and others who conduct quality improvement activity pursuant to their own policies should be able to delegate or subcontract their work that is quality improvement activity. As LRB 1965/I is written, only health care entities may subcontract their quality improvement activity. Thus, b. needs to be amended to allow health care entities, health plans, WHIO, and WHA Information Center to delegate and subcontract their quality improvement activities.
- To address the concerns raised above, the amendment below is proposed:
- Amend lines 18 and 19 on page 7 to read:
 - b. A person that is charged, authorized, or directed by a person described in subpar. a. to conduct the quality improvement activity.
- Amend line 9 on page 9 to read:
 - The person that charged, authorized, or directed the person to conduct the quality improvement

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Proposed s. 146.38 (4) (a)

8. Proposed sub. (3) makes records created, collected, etc. “as part of a quality improvement activity” confidential and privileged. Subsection (4) (a) is presented as an exception to sub. (3), but it covers records that are created “apart from the quality improvement activity,” so it does not serve as an exception to sub. (3).

- The exact language says “Subsection (3) *does not apply to records or information created apart from quality improvement activity that are [patient care records].*” This is not an exception to (3), but an important clarification that *original patient care records* are not protected. Would it be more appropriate for (4)(a) to appear as a new (3)(d)? See response to Comment 9 for more clarification and a proposed amendment.
- Also, in line 7 on page 8, “the” quality improvement activity should be struck. Use of the definitive article “the” changes the meaning of the paragraph.

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9. If a hospital conducts a quality improvement activity concerning the manner in which doctors write prescription orders, is a particular prescription order created as part of the quality improvement activity or apart from it? If the prescription order is not created apart from the quality improvement activity, then it is confidential and privileged.

- Prescription orders are created in the routine course of providing care. They are always created apart from quality improvement activity and the creation of a prescription order would never fall into the definition of quality improvement activity.
- Strike (4)(a) and create (3)(d) to read:

I'm wrong
OK, because records created apart from QIA could be protected because collected or reported as part of QIA

- o (d) Subsection (3)(a)1. does not include records or information created apart from quality improvement activity, including records that are maintained by or for a health care entity for the particular purpose of diagnosing, treating, or documenting care provided to an individual patient.

*- Spoke w/ Matthew
2/7 - what records collected reported aggregated under sub (3) wouldn't be exempted under modified exception
Go back to original version*

Proposed s. 146.38 (4) (b)

10. The language here is a little cumbersome. Perhaps the following would work: Sub. (3) does not prohibit disclosing that a reduction, restriction, suspension, denial, revocation, or failure to renew an item under sub. (1) (a) has occurred.

- Agree with the drafter's proposal.
- Amend lines 10-12 on page 8 to read:
 - o Subsection (3) does not prohibit disclosing that a reduction, restriction, suspension, denial, revocation, or failure to renew an item under sub. (1) (a) has occurred.

11. WHA explained that the bill can't simply state that sub. (3) does not prohibit disclosing that an adverse action has been taken, because the definition of adverse action includes a recommendation. Another alternative is to remove "recommendation" from the definition of "adverse action." "Adverse action" is used two places in the bill. First, it is used in the definition of "quality improvement activity." The term "recommendation" is already in the definition of "quality improvement activity." Second, "adverse action" is used in sub. (4) (d), which could be amended to read, "if a person takes an adverse action or makes a recommendation to take an adverse action..."

- Understand the explanation, but hospitals are comfortable with the bill with the drafter's amendment proposed above.

Proposed s. 146.38 (4) (c)

12. The second sentence of sub. (4) (c) provides that a record received by a person pursuant to this paragraph is not subject to par. (a), (b), (d), (e), (f), (g), or (h) or sub. (3). (The language provided by WHA said the records are not subject to sub. (3) or (4). Since it makes no sense to say this paragraph does not apply to a records received pursuant to this paragraph, I changed the reference to sub. (4) to exclude par. (c).)

- Makes sense. See proposed amendment below at Comment 13.

13. The broader point is that the exception only needs to apply to the confidentiality and privilege requirements under sub. (3), not to other exceptions under sub. (4). So should the second sentence instead say, Sub. (3) does not apply to a record that has been disclosed under this paragraph or to information in the record?

- Makes sense as well.
- Amend lines 15-16 on page 8 to read:
 - to make the mandated report. A record received by a person pursuant to this paragraph is not subject to sub. (3).

Proposed s. 146.38 (4) (e) and (f)

14. These paragraphs could be simpler. Since they serve as exceptions to the confidentiality and privilege provided under sub. (3), isn't it sufficient to say that a person conducting a quality improvement activity pursuant to (or "described under," for the sake of consistency) sub. (3) (a) 1. may disclose records of the quality improvement activity or records related to the quality improvement activity.

- Its not that simple. First, if Community Hospital's medical staff is required or authorized to conduct a quality improvement activity and itself conducts the quality improvement activity, then it would be true that the medical staff would be the one to decide whether to disclose the records. This is the situation described in (e). On the other hand, if Community Hospital tells one of its administrators to conduct a quality improvement activity, Community Hospital and not the administrator should be the one to decide whether to disclose the records. That is the situation described in (f). These are two different scenarios requiring different treatments.
- Second, disclosing records "related to the quality improvement activity" is different and broader than disclosing records described in the statute (in sub.(3)) as confidential and protected. Disclosing records "related to" quality improvement was not what the parties agreed to at the 01/26/06 meeting.

Proposed s. 146.38 (4) (h)

15. This paragraph refers to an activity that "would be quality improvement activity." The activity is a quality improvement activity regardless of whether a designation is made that records of the activity are not confidential or privileged. Also, should "entity" be "person"?

- That makes sense.
- Amend line 14 on page 9 to read:
 - (h) A person planning an activity that would be a quality improvement activity

Ryan, Robin

From: Stanford, Matthew [mstanford@wha.org]
Sent: Tuesday, February 07, 2006 8:28 AM
To: Ryan, Robin
Cc: Leitch, Laura
Subject: QIA amendment

Robin,
One amendment failed to get in the memo sent late yesterday.

Please amend line 12, page 9 to read:
sub. (3) is waived for records that are publicly disclosed under par. (e) or (f) to persons

The intent is to make sure that this waiver is for broad distribution to the public at large only, not just distribution to a few people. If there is better, more precise language than that suggested here, please amend as needed.

Matthew

*Call from Matthew
wants "governing body"
back " (3) (a) 1.*



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs05177

RLR:.....

Wanted Today

hjs

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2005 ASSEMBLY BILL 993**

SA ✓

RMNR

Gen Cat

1

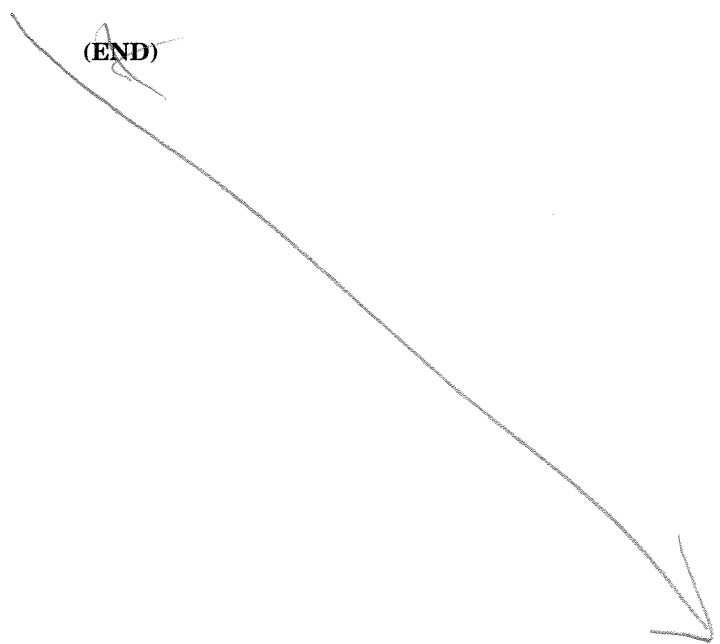
AN ACT ...; relating to: ???

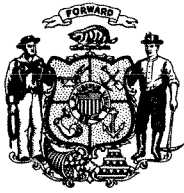
Ins Rel. Clause from bill

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

(END)





2005 ASSEMBLY BILL 993

February 7, 2006 - Introduced by Representatives UNDERHEIM, GIELOW, MOULTON, KRAWCZYK, HAHN, WIECKERT, HUNDERTMARK, ALBERS, STRACHOTA, VRUWINK and SHILLING, cosponsored by Senators KANAVAS, ROESSLER, DARLING, COWLES and ERPENBACH. Referred to Committee on Health.

1 AN ACT *to repeal* 146.37; *to amend* 146.55 (7), 187.33 (3) (a) 5., 187.43 (3) (a)
2 5., 655.27 (1m) (b) and 655.27 (5) (a) 1. and 2.; and *to repeal and recreate*
3 146.38 of the statutes; **relating to:** confidentiality of health care review records
4 and immunity.

Analysis by the Legislative Reference Bureau

Current law confidentiality and peer review provisions

Under current law a person who participates in a review or evaluation of the services of a health care provider (a review or evaluation) may not disclose any information acquired in connection with the review or evaluation. Further, records that an organization or evaluator keeps of investigations, inquiries, proceedings and conclusions in connection with a review or evaluation are confidential and may not be used in a civil action for personal injuries against the health care provider. (An "evaluator" is defined as a medical director or registered nurse who coordinates review of an emergency medical services program. "Organization" is not defined. Current law specifies that three particular types of providers are "health care providers," but does not otherwise define "health care provider.")

Current law provides several exceptions to the confidentiality provisions for records and information related to reviews or evaluations, which allow release of information or records to the health care provider who is the subject of the review; to others if the subject of the review or evaluation consents to release; and to the person who requested the review, for use for certain purposes, including improving

Use
in Sub.

ASSEMBLY BILL 993

or deny a health care entity's ability to serve as a health care entity is not confidential or privileged information.

The bill allows a person who has a responsibility to conduct a quality improvement activity to release records of the activity. Also, a person who is charged by a health care entity to conduct a quality improvement activity may release records of the activity if the health care entity provides written authorization for release. Further, the bill provides that if records are widely distributed under these two exceptions to persons who are not health care providers, the records are no longer confidential or privileged.

Finally, the bill provides that if a person planning to conduct a quality improvement activity waives confidentiality and privilege for records of the quality improvement activity before initiating the activity, then the records are not confidential or privileged.

The bill does not make a person who discloses records or information of a quality improvement activity in violation of the confidentiality and privilege provisions civilly liable for the disclosure.

Immunity provisions

Under current law, a person acting in good faith is immune from civil liability for acts or omissions taken while participating in a review or evaluation of the services of health care providers or facilities or of charges for services if the review or evaluation is conducted in connection with a program organized and operated to help improve the quality of health care, to avoid improper utilization of services, or to determine reasonable charges.

The bill provides that a person is immune from civil liability for good faith acts or omissions taken while participating in a quality review activity described above.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 146.37 of the statutes is repealed.

2 **SECTION 2.** 146.38 of the statutes is repealed and recreated to read:

3 **146.38 Health care quality improvement activity. (1) DEFINITIONS.** In this
4 section:

5 (a) "Adverse action" means any action or recommendation to reduce, restrict,
6 suspend, deny, revoke, or fail to renew any of the following:

7 1. A health care entity's clinical privileges or clinical practice authority at a
8 hospital or other health care entity.

ASSEMBLY BILL 993

1 2. A health care entity's membership on a medical staff that is organized under
2 by-laws or in another health care entity.

3 3. A health care entity's participation in a defined network plan, as defined in
4 s. 609.01 (1b).

5 4. The accreditation, licensure, or certification of a health care entity.

6 (b) "Health care entity" means any of the following:

7 1. A health care provider, as defined in s. 146.81 (1), an ambulatory surgery
8 center as defined in s. 153.01 (1), a home health agency, as defined in s. 50.49 (1) (a),
9 a home health aide, as defined in s. 146.40 (1) (bm), a hospice aide, as defined in s.
10 146.40 (1) (bp), a nurse's assistant, as defined in s. 146.40 (1) (d), an ambulance
11 service provider, as defined in s. 146.50 (1) (c), an emergency medical technician, as
12 defined in s. 146.50 (1) (e), a first responder, as defined in s. 146.50 (1) (hm), or any
13 other person who is licensed, certified, or registered to provide health care services
14 including mental health services.

15 2. An individual who is enrolled in an education or training program that the
16 individual must complete in order to obtain credentials required of an individual
17 under subd. 1.

18 3. A person who is certified as a provider of medical assistance under s. 49.45
19 (2) (a) 11.

20 4. A parent organization, subsidiary, or affiliate of a person described under
21 subd. 1. or 3.

22 (d) "Quality improvement activity" means an evaluation, review, study,
23 assessment, investigation, recommendation, monitoring, corrective action, adverse
24 action, or any other action, which may include one-time, continuous, or periodic data
25 collection, relating to any of the following subjects:

ASSEMBLY BILL 993

SECTION 2

1 1. The quality of care provided by a health care entity or the quality of services
2 provided by a health care entity that have an impact on care.

3 2. Morbidity or mortality related to a health care entity.

4 3. The qualification, competence, conduct, or performance of a health care
5 entity.

6 4. The cost or use of health care services and resources of a health care entity.

7 5. Compliance with applicable legal, ethical, or behavioral standards for a
8 health care entity.

9 6. Compliance with credentialing, accreditation, or regulatory standards for a
10 health care entity and performance of credentialing, accreditation, or regulatory
11 activities, including compliance with or performance of periodic performance
12 reviews and related activities for the Joint Commission on Accreditation of
13 Healthcare Organizations.

14 7. The approval or credentialing of a health care entity.

15 (e) "Records" includes minutes, files, notes, reports, statements, memoranda,
16 databases, findings, work products, and images, regardless of the type of
17 communications medium or form, including oral communications, and whether in
18 statistical form or otherwise.

19 (f) "State agency" means a department, board, examining board, affiliated
20 credentialing board, commission, independent agency, council, or office in the
21 executive branch of state government.

22 **(2) IMMUNITY FOR ACTS OR OMISSIONS.** (a) No person acting in good faith who
23 participates in a quality improvement activity described under sub. (3) (a) 1. is liable
24 for civil damages as a result of any act or omission by the person in the course of the
25 quality improvement activity.

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Including a committee with representatives from multiple persons, organizations, departments, or governing bodies

1 (b) The good faith of any person participating in a quality improvement activity
2 described under sub. (3) (a) 1. shall be presumed in any civil action. Any person who
3 asserts that a person has not acted in good faith has the burden of proving that
4 assertion by clear and convincing evidence.

5 (3) CONFIDENTIALITY AND PRIVILEGE. (a) Except as provided in sub. (4), all of the
6 following are confidential and privileged; are not subject to discovery, subpoena, or
7 any other means of legal compulsion requiring release or permitting inspection,
8 including compulsion by a state agency; and are not admissible as evidence in any
9 civil, criminal, or other judicial or administrative proceeding:

10 1. Records and information contained in records that are created, collected,
11 reported, aggregated, or organized by any person as part of a quality improvement
12 activity that is conducted by any person, organization, department, single or joint
13 committee, governing body, or committee of a governing body that is any of the
14 following:

JWS 7-14

15 a. A person that has responsibility by statute, regulation, condition of
16 accreditation, bylaw, policy, or resolution to conduct the quality improvement
17 activity, except for a state agency.

18 b. A person that is charged by a health care entity to conduct the quality
19 improvement activity.

20 2. A request for records or information made as part of a quality improvement
21 activity described under subd. 1. by a person conducting the quality improvement
22 activity.

23 3. Notice to a health care entity that the entity is or will be the subject of a
24 quality improvement activity described under subd. 1.

ASSEMBLY BILL 993

SECTION 2

1 (b) Except as provided in sub. (4) (c) and(g), the confidentiality and privilege
2 afforded to records and information under par. (a) is not waived by unauthorized or
3 authorized disclosure of records or information.

4 (c) Records relating to a quality improvement activity described under par. (a)
5 1. are not subject to inspection or copying under s. 19.35 (1).

6 (4) EXCEPTIONS TO CONFIDENTIALITY AND PRIVILEGE. (a) Subsection (3) does not
7 apply to records or information created apart from the quality improvement activity
8 that are maintained by or for a health care entity for the particular purpose of
9 diagnosing, treating, or documenting care provided to an individual patient.

INS 8-9 →

10 (b) Subsection (3) does not apply to the fact of the failure to renew or the
11 reduction, restriction, suspension, denial, or revocation of any thing described under
12 sub. (1) (a) 1. to 4.

INS 8-15

13 (c) A person mandated by Wisconsin or federal law to report may disclose a
14 record or information from a record that is confidential and privileged under sub. (3)
15 to make the mandated report. A record received by a person pursuant to this
16 paragraph is not subject to par. (a), (b), (d), (e), (f), (g), or (h) or sub. (3).

17 (d) If a person takes an adverse action against a health care entity as part of
18 a quality improvement activity described under sub. (3) (a) 1., or notifies the health
19 care entity of a proposed adverse action, the person shall, upon request by the health
20 care entity, disclose to the health care entity any records in the person's possession
21 relating to the adverse action or proposed adverse action. Records relating to the
22 adverse action are admissible in any criminal, civil, or other judicial or
23 administrative proceeding in which the health care entity contests the adverse
24 action. A person who has authority to take an adverse action against a health care
25 entity as part of a quality improvement activity described under sub. (3) (a) 1. may

ASSEMBLY BILL 993

1 at any time disclose to the health care entity records relating to a proposed adverse
2 action against the health care entity.

3 (e) A person conducting a quality improvement activity pursuant to sub. (3) (a)
4 1. a. may disclose the records and information that are confidential and privileged
5 pursuant to sub. (3).

6 (f) A person conducting a quality improvement activity pursuant to sub. (3) (a)
7 1. b. may disclose the records and information that are confidential and privileged
8 pursuant to sub. (3) if there is written authorization to make the disclosure from the
9 health care entity that charged the person to conduct the quality improvement
10 activity.

11 (g) The confidentiality and privilege afforded to records and information under
12 sub. (3) is waived for records that are widely disclosed under par. (e) or (f) to persons
13 that are not health care entities.

14 (h) An entity planning an activity that would be a quality improvement activity
15 under sub. (3) (a) 1. may in advance of the activity designate in writing that sub. (3)
16 shall not apply to the records and information created, collected, reported,
17 aggregated, or organized by any person as part of the designated activity.

18 (5) CONSTRUCTION. This section shall be liberally construed in favor of
19 identifying records and information as confidential, privileged, and inadmissible as
20 evidence.

21 SECTION 3. 146.55 (7) of the statutes is amended to read:

22 146.55 (7) INSURANCE. A physician who participates in an emergency medical
23 services program under this section or as required under s. 146.50 shall purchase
24 health care liability insurance in compliance with subch. III of ch. 655, except for
25 those acts or omissions of a physician who, as a medical director, reviews as defined

person

A person

publicly

authorized, or directed

INS 9-17

(6) (5)

(B)

ASSEMBLY BILL 993**SECTION 3**

1 in s. 146.50 (1) (j), conducts a quality improvement activity relating to the
2 performance of emergency medical technicians or ambulance service providers, as
3 specified under s. ~~146.37 (1g)~~ 146.38 (2).

4 **SECTION 4.** 187.33 (3) (a) 5. of the statutes is amended to read:

5 187.33 (3) (a) 5. Proceedings based upon a cause of action for which the
6 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
7 895.44, 895.48, 895.482, 895.51, or 895.52.

8 **SECTION 5.** 187.43 (3) (a) 5. of the statutes is amended to read:

9 187.43 (3) (a) 5. Proceedings based upon a cause of action for which the
10 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
11 895.44, 895.48, 895.482, 895.51, or 895.52.

12 **SECTION 6.** 655.27 (1m) (b) of the statutes is amended to read:

13 655.27 (1m) (b) A health care provider who engages in ~~the activities described~~
14 ~~in s. 146.37 (1g) and (3)~~ a quality improvement activity under 146.38 shall be liable
15 for not more than the limits expressed under s. 655.23 (4) or the maximum liability
16 limit for which the health care provider is insured, whichever limit is greater, if he
17 or she is found to be liable under s. ~~146.37~~ 146.38, and the fund shall pay the excess
18 amount, unless the health care provider is found not to have acted in good faith
19 during those activities and the failure to act in good faith is found by the trier of fact,
20 by clear and convincing evidence, to be both malicious and intentional.

21 **SECTION 7.** 655.27 (5) (a) 1. and 2. of the statutes are amended to read:

22 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
23 rendering of medical care or services or participation in ~~peer review activities~~ a
24 quality improvement activity under s. ~~146.37~~ 146.38 within this state against a
25 health care provider or an employee of a health care provider. A person filing a claim

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1 may recover from the fund only if the health care provider or the employee of the
2 health care provider has coverage under the fund, the fund is named as a party in
3 the action, and the action against the fund is commenced within the same time
4 limitation within which the action against the health care provider or employee of
5 the health care provider must be commenced.

6 2. Any person may file an action for damages arising out of the rendering of
7 medical care or services or participation in ~~peer review activities~~ a quality review
8 activity under s. ~~146.37~~ 146.38 outside this state against a health care provider or
9 an employee of a health care provider. A person filing an action may recover from
10 the fund only if the health care provider or the employee of the health care provider
11 has coverage under the fund, the fund is named as a party in the action, and the
12 action against the fund is commenced within the same time limitation within which
13 the action against the health care provider or employee of the health care provider
14 must be commenced. If the rules of procedure of the jurisdiction in which the action
15 is brought do not permit naming the fund as a party, the person filing the action may
16 recover from the fund only if the health care provider or the employee of the health
17 care provider has coverage under the fund and the fund is notified of the action
18 within 60 days of service of process on the health care provider or the employee of the
19 health care provider. The board of governors may extend this time limit if it finds
20 that enforcement of the time limit would be prejudicial to the purposes of the fund
21 and would benefit neither insureds nor claimants.

22

(END)

