

TODAY

2005 - 2006 LEGISLATURE

30538/11
LRBs0517/1

DAR RLR:cjs:j

Stays

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 993**

February 7, 2006 - Offered by Representative UNDERHEIM.

Repeal

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.

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

5 SECTION 1. 146.37 of the statutes is repealed.

6 SECTION 2. 146.38 of the statutes is repealed and recreated to read:

7 **146.38 Health care quality improvement activity. (1) DEFINITIONS.** In this
8 section:

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

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

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), credentialing, registration, approval,

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), ⁱ an ambulatory surgery
8 center ² as defined in s. 153.01 (1), ⁱ 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), ⁱ a hospice aide, as defined in s.
10 146.40 (1) (bp), ⁱ a nurse's assistant, as defined in s. 146.40 (1) (d), ⁱ an ambulance
11 service provider, as defined in s. 146.50 (1) (c), ⁱ an emergency medical technician, as
12 defined in s. 146.50 (1) (e), ⁱ a first responder, as defined in s. 146.50 (1) (hm), ⁱ or any
13 other person who is licensed, certified, or registered to provide health care services
14 including mental health services. approved,

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:

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. *accreditation, licensure, registration, certification,*

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

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

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

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

24 (b) The good faith of any person participating in a quality improvement activity
25 ~~described under sub. (3) (a) 1~~, shall be presumed in any civil action. Any person who

*to which sub. (3)
applies*

that conducts a quality improvement activity as

1 asserts that a person has not acted in good faith has the burden of proving that
2 assertion by clear and convincing evidence.

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

8 1. Records and information contained in records that are created, collected,
9 reported, aggregated, or organized by any person as part of a quality improvement
10 activity that is conducted by any person, organization, department, governing body,
11 or committee, including a committee with representatives from multiple persons,
12 organizations, departments, or governing bodies, that is any of the following:

13 a. A person, ~~other than a state agency, who is~~ required or authorized by state
14 or federal law, as a condition of accreditation, or under a bylaw, resolution, or policy
15 ~~to conduct the quality improvement activity,~~ or another person who acts on that
16 person's behalf. *This subdivision unit does not apply to a state agency.*

17 b. A person who is charged, authorized, or directed by a person described in
18 subd. 1. a. to conduct the quality improvement activity.

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

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

Subd. 1. a.

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 a 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.

INSERT
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10 (b) Subsection (3) does not prohibit disclosing that a reduction, restriction,
11 suspension, denial, revocation, or failure to renew any item under sub. (1) (a) 1. to
12 4. has occurred.

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. Subsection (3) does not apply to a record that has been
16 disclosed under this paragraph or to information in the record.

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

required state

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is

or notifies a health care entity of a proposed adverse action against the health care entity

to which sub. (3) applies

under sub. (3)(a) 1. a.

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 ~~may~~ may disclose the records and information that are confidential and privileged
5 pursuant to sub. (3). *under* *under sub. (3)(a) 1. b.*

6 (f) A person conducting a quality improvement activity pursuant to sub. (3)(a)
7 ~~may~~ 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 person that charged, authorized, or directed the person to conduct the quality
10 improvement activity. *under* *whoever* *does not apply to* *to the general public*

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

14 (h) A person 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~~ *does* 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) Any person who discloses information or releases a record in violation of
19 sub. (3), other than through a good faith mistake, is civilly liable to any person
20 harmed by the disclosure or release.

21 (6) CONSTRUCTION. This section shall be liberally construed in favor of
22 identifying records and information as confidential, privileged, and inadmissible as
23 evidence.

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

1 146.55 (7) INSURANCE. A physician who participates in an emergency medical
2 services program under this section or as required under s. 146.50 shall purchase
3 health care liability insurance in compliance with subch. III of ch. 655, except for
4 those acts or omissions of a physician who, as a medical director, reviews as defined
5 in s. 146.50 (1) (j), conducts a quality improvement activity relating to the
6 performance of emergency medical technicians or ambulance service providers, as
7 specified under s. ~~146.37 (1g)~~ 146.38 (2).

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

9 187.33 (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 5.** 187.43 (3) (a) 5. of the statutes is amended to read:

13 187.43 (3) (a) 5. Proceedings based upon a cause of action for which the
14 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
15 895.44, 895.48, 895.482, 895.51, or 895.52.

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

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

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

1 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
2 rendering of medical care or services or participation in ~~peer review activities~~ a
3 quality improvement activity under s. ~~146.37~~ 146.38 within this state against a
4 health care provider or an employee of a health care provider. A person filing a claim
5 may recover from the fund only if the health care provider or the employee of the
6 health care provider has coverage under the fund, the fund is named as a party in
7 the action, and the action against the fund is commenced within the same time
8 limitation within which the action against the health care provider or employee of
9 the health care provider must be commenced.

10 2. Any person may file an action for damages arising out of the rendering of
11 medical care or services or participation in ~~peer review activities~~ a quality review
12 activity under s. ~~146.37~~ 146.38 outside this state against a health care provider or
13 an employee of a health care provider. A person filing an action may recover from
14 the fund only if the health care provider or the employee of the health care provider
15 has coverage under the fund, the fund is named as a party in the action, and the
16 action against the fund is commenced within the same time limitation within which
17 the action against the health care provider or employee of the health care provider
18 must be commenced. If the rules of procedure of the jurisdiction in which the action
19 is brought do not permit naming the fund as a party, the person filing the action may
20 recover from the fund only if the health care provider or the employee of the health
21 care provider has coverage under the fund and the fund is notified of the action
22 within 60 days of service of process on the health care provider or the employee of the
23 health care provider. The board of governors may extend this time limit if it finds

1 that enforcement of the time limit would be prejudicial to the purposes of the fund
2 and would benefit neither insureds nor claimants.

3 (END)

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 (am) Subsection (3) does not apply to the release to a state agency of records
2 or information created apart from a quality improvement activity that are
3 maintained by or for a health care entity for a purpose other than as specified under
4 par. (a), upon a showing by clear and convincing evidence that the records or
5 information are otherwise unavailable.

6 (ar) Any person who testifies during or participates in a quality improvement
7 activity ~~with records or information to which sub. (3) applies~~ may testify in any civil,
8 criminal, or other judicial or administrative proceeding as to matters within his or her
9 knowledge, but may not testify as to information obtained solely through his or her
10 participation in the quality improvement activity and may not testify as to any
11 conclusion of the quality improvement activity.

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(NOW)

State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0538/P 2
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**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2005 ASSEMBLY BILL 993**

changes pp 3+5

1 **AN ACT to repeal** 146.37; **to amend** 146.55 (7), 187.33 (3) (a) 5., 187.43 (3) (a)
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10 suspend, deny, revoke, or fail to renew any of the following:

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12 hospital or other health care entity.

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 credentialing, accreditation, licensure, registration, approval, or
6 certification of a health care entity.

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

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

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

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

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

23 (d) "Quality improvement activity" means an evaluation, review, study,
24 assessment, investigation, recommendation, monitoring, corrective action, adverse

1 action, or any other action, which may include one-time, continuous, or periodic data
2 collection, relating to any of the following subjects:

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

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

6 3. The qualification, competence, conduct, or performance of a health care
7 entity.

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

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

11 6. Compliance with credentialing, accreditation, or regulatory standards for a
12 health care entity and performance of credentialing, accreditation, or regulatory
13 activities.

14 7. The ~~accreditation~~, licensure, registration, certification, approval, or
15 credentialing of a health care entity.

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

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

23 **(2) IMMUNITY FOR ACTS OR OMISSIONS.** (a) No person acting in good faith who
24 participates in a quality improvement activity to which sub. (3) applies is liable for

1 civil damages as a result of any act or omission by the person in the course of the
2 quality improvement activity.

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

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

12 1. Records and information contained in records that are created, collected,
13 reported, aggregated, or organized by any person as part of a quality improvement
14 activity that is conducted by any person, organization, department, governing body,
15 or committee, including a committee with representatives from multiple persons,
16 organizations, departments, or governing bodies, that is any of the following:

17 a. A person that conducts a quality improvement activity as required or
18 authorized by state or federal law, as a condition of accreditation, or under a bylaw,
19 resolution, or policy; or another person who acts on that person's behalf. This subd.
20 1. a. does not apply to a state agency.

21 b. A person who is charged, authorized, or directed by a person described in
22 subd. 1. a. to conduct the quality improvement activity.

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

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

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

5 (c) Records described under par. (a) 1. are not subject to inspection or copying
6 under s. 19.35 (1).

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

11 (am) Subsection (3) does not apply to the release to a state agency of records
12 or information created apart from a quality improvement activity that are
13 maintained by or for a health care entity for a purpose other than as specified under
14 par. (a), upon a showing by clear and convincing evidence that the records or
15 information are otherwise unavailable.

16 (ar) Any person who testifies during or participates in a quality improvement
17 activity may testify in any civil, criminal, or other judicial or administrative
18 proceeding as to information within his or her knowledge, but may ^{not} testify as to
19 information obtained solely through his or her participation in the quality
20 improvement activity and may not testify as to any conclusion of the quality
21 improvement activity.

22 (b) Subsection (3) does not prohibit disclosing that a reduction, restriction,
23 suspension, denial, revocation, or failure to renew any item under sub. (1) (a) 1. to
24 4. has occurred.

1 (c) A person required by state or federal law to report may disclose a record or
2 information from a record that is confidential and privileged under sub. (3), in order
3 to make the required report. Subsection (3) does not apply to a record that is
4 disclosed under this paragraph or to information in the record.

5 (d) If a person takes an adverse action against a health care entity or notifies
6 a health care entity of a proposed adverse action against the health care entity as
7 part of a quality improvement activity to which sub. (3) applies, the person shall,
8 upon request by the health care entity, disclose to the health care entity any records
9 in the person's possession relating to the adverse action or proposed adverse action.
10 Records relating to the adverse action are admissible in any criminal, civil, or other
11 judicial or administrative proceeding in which the health care entity contests the
12 adverse action. A person who has authority to take an adverse action against a
13 health care entity as part of a quality improvement activity to which sub. (3) applies
14 may at any time disclose to the health care entity records relating to a proposed
15 adverse action against the health care entity.

16 (e) A person under sub. (3) (a) 1. a. conducting a quality improvement activity
17 may disclose the records and information that are confidential and privileged under
18 sub. (3).

19 (f) A person under sub. (3) (a) 1. b. conducting a quality improvement activity
20 may disclose the records and information that are confidential and privileged under
21 sub. (3) if there is written authorization to make the disclosure from whoever
22 charged, authorized, or directed the person to conduct the quality improvement
23 activity.

24 (g) The confidentiality and privilege afforded to records under sub. (3) does not
25 apply to records that are disclosed to the general public under par. (e) or (f).

1 (h) A person planning an activity that would be a quality improvement activity
2 may in advance of the activity designate in writing that sub. (3) does not apply to the
3 records and information created, collected, reported, aggregated, or organized by any
4 person as part of the designated activity.

5 (5) Any person who discloses information or releases a record in violation of
6 sub. (3), other than through a good faith mistake, is civilly liable to any person
7 harmed by the disclosure or release.

8 (6) CONSTRUCTION. This section shall be liberally construed in favor of
9 identifying records and information as confidential, privileged, and inadmissible as
10 evidence.

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

12 146.55 (7) INSURANCE. A physician who participates in an emergency medical
13 services program under this section or as required under s. 146.50 shall purchase
14 health care liability insurance in compliance with subch. III of ch. 655, except for
15 those acts or omissions of a physician who, as a medical director, reviews as defined
16 in s. 146.50 (1) (j), conducts a quality improvement activity relating to the
17 performance of emergency medical technicians or ambulance service providers, as
18 specified under s. ~~146.37 (1g)~~ 146.38 (2).

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

20 187.33 (3) (a) 5. Proceedings based upon a cause of action for which the
21 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
22 895.44, 895.48, 895.482, 895.51, or 895.52.

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

1 187.43 (3) (a) 5. Proceedings based upon a cause of action for which the
2 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
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4 **SECTION 6.** 655.27 (1m) (b) of the statutes is amended to read:

5 655.27 (1m) (b) A health care provider who engages in the activities described
6 ~~in s. 146.37 (1g) and (3)~~ a quality improvement activity under 146.38 shall be liable
7 for not more than the limits expressed under s. 655.23 (4) or the maximum liability
8 limit for which the health care provider is insured, whichever limit is greater, if he
9 or she is found to be liable under s. ~~146.37~~ 146.38, and the fund shall pay the excess
10 amount, unless the health care provider is found not to have acted in good faith
11 during those activities and the failure to act in good faith is found by the trier of fact,
12 by clear and convincing evidence, to be both malicious and intentional.

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

14 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
15 rendering of medical care or services or participation in ~~peer review activities~~ a
16 quality improvement activity under s. ~~146.37~~ 146.38 within this state against a
17 health care provider or an employee of a health care provider. A person filing a claim
18 may recover from the fund only if the health care provider or the employee of the
19 health care provider has coverage under the fund, the fund is named as a party in
20 the action, and the action against the fund is commenced within the same time
21 limitation within which the action against the health care provider or employee of
22 the health care provider must be commenced.

23 2. Any person may file an action for damages arising out of the rendering of
24 medical care or services or participation in ~~peer review activities~~ a quality review
25 activity under s. ~~146.37~~ 146.38 outside this state against a health care provider or

1 an employee of a health care provider. A person filing an action may recover from
2 the fund only if the health care provider or the employee of the health care provider
3 has coverage under the fund, the fund is named as a party in the action, and the
4 action against the fund is commenced within the same time limitation within which
5 the action against the health care provider or employee of the health care provider
6 must be commenced. If the rules of procedure of the jurisdiction in which the action
7 is brought do not permit naming the fund as a party, the person filing the action may
8 recover from the fund only if the health care provider or the employee of the health
9 care provider has coverage under the fund and the fund is notified of the action
10 within 60 days of service of process on the health care provider or the employee of the
11 health care provider. The board of governors may extend this time limit if it finds
12 that enforcement of the time limit would be prejudicial to the purposes of the fund
13 and would benefit neither insureds nor claimants.

14 (END)

Kennedy, Debora

From: Thorson, Randy
Sent: Wednesday, February 15, 2006 10:17 AM
To: Kennedy, Debora
Subject: Redraft Sub to AB 993 (hopefully for the last time)

Debora,

Here is language from Eric Callisto that we hope is the triple dog dare last change to AB 993 (don't hold your breath).

We have one additional request, p.5, lines 16-17: "Any person who testifies during or participates in a quality improvement activity to which sub. (3) applies may testify in any civil, criminal"

This would address my recurring concern that the language of the exceptions make clear that they only apply in situations where the confidentiality and privilege otherwise would attach.

Please redraft the sub. I have called the page staff to return the stripes.

Any questions, please call or email

Randy



3:00 TODAY, please
State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0538/2
DAK&RLR:cjs:pg

3

ASSEMBLY SUBSTITUTE AMENDMENT, slays
TO 2005 ASSEMBLY BILL 993

change on
p. 5

Repeal

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.

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

5 SECTION 1. 146.37 of the statutes is repealed.

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

7 146.38 Health care quality improvement activity. (1) DEFINITIONS. In this
8 section:

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

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

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 credentialing, accreditation, licensure, registration, approval, or
6 certification of a health care entity.

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

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

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

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

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

23 (d) "Quality improvement activity" means an evaluation, review, study,
24 assessment, investigation, recommendation, monitoring, corrective action, adverse

1 action, or any other action, which may include one-time, continuous, or periodic data
2 collection, relating to any of the following subjects:

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

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

6 3. The qualification, competence, conduct, or performance of a health care
7 entity.

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

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

11 6. Compliance with credentialing, accreditation, or regulatory standards for a
12 health care entity and performance of credentialing, accreditation, or regulatory
13 activities.

14 7. The accreditation licensure, registration, certification, approval, or
15 credentialing of a health care entity.

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

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

23 **(2) IMMUNITY FOR ACTS OR OMISSIONS.** (a) No person acting in good faith who
24 participates in a quality improvement activity to which sub. (3) applies is liable for

1 civil damages as a result of any act or omission by the person in the course of the
2 quality improvement activity.

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

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

12 1. Records and information contained in records that are created, collected,
13 reported, aggregated, or organized by any person as part of a quality improvement
14 activity that is conducted by any person, organization, department, governing body,
15 or committee, including a committee with representatives from multiple persons,
16 organizations, departments, or governing bodies, that is any of the following:

17 a. A person that conducts a quality improvement activity as required or
18 authorized by state or federal law, as a condition of accreditation, or under a bylaw,
19 resolution, or policy; or another person who acts on that person's behalf. This subd.
20 1. a. does not apply to a state agency.

21 b. A person who is charged, authorized, or directed by a person described in
22 subd. 1. a. to conduct the quality improvement activity.

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

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

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

5 (c) Records described under par. (a) 1. are not subject to inspection or copying
6 under s. 19.35 (1).

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

11 (am) Subsection (3) does not apply to the release to a state agency of records
12 or information created apart from a quality improvement activity that are
13 maintained by or for a health care entity for a purpose other than as specified under
14 par. (a), upon a showing by clear and convincing evidence that the records or
15 information are otherwise unavailable.

16 (ar) Any person who testifies during or participates in a quality improvement
17 activity may testify in any civil, criminal, or other judicial or administrative
18 proceeding as to information within his or her knowledge, but may not testify as to
19 information obtained solely through his or her participation in the quality
20 improvement activity and may not testify as to any conclusion of the quality
21 improvement activity.

22 (b) Subsection (3) does not prohibit disclosing that a reduction, restriction,
23 suspension, denial, revocation, or failure to renew any item under sub. (1) (a) 1. to
24 4. has occurred.

to which sub. (3)
applies ✓

1 (c) A person required by state or federal law to report may disclose a record or
2 information from a record that is confidential and privileged under sub. (3), in order
3 to make the required report. Subsection (3) does not apply to a record that is
4 disclosed under this paragraph or to information in the record.

5 (d) If a person takes an adverse action against a health care entity or notifies
6 a health care entity of a proposed adverse action against the health care entity as
7 part of a quality improvement activity to which sub. (3) applies, the person shall,
8 upon request by the health care entity, disclose to the health care entity any records
9 in the person's possession relating to the adverse action or proposed adverse action.
10 Records relating to the adverse action are admissible in any criminal, civil, or other
11 judicial or administrative proceeding in which the health care entity contests the
12 adverse action. A person who has authority to take an adverse action against a
13 health care entity as part of a quality improvement activity to which sub. (3) applies
14 may at any time disclose to the health care entity records relating to a proposed
15 adverse action against the health care entity.

16 (e) A person under sub. (3) (a) 1. a. conducting a quality improvement activity
17 may disclose the records and information that are confidential and privileged under
18 sub. (3).

19 (f) A person under sub. (3) (a) 1. b. conducting a quality improvement activity
20 may disclose the records and information that are confidential and privileged under
21 sub. (3) if there is written authorization to make the disclosure from whoever
22 charged, authorized, or directed the person to conduct the quality improvement
23 activity.

24 (g) The confidentiality and privilege afforded to records under sub. (3) does not
25 apply to records that are disclosed to the general public under par. (e) or (f).

1 (h) A person planning an activity that would be a quality improvement activity
2 may in advance of the activity designate in writing that sub. (3) does not apply to the
3 records and information created, collected, reported, aggregated, or organized by any
4 person as part of the designated activity.

5 (5) Any person who discloses information or releases a record in violation of
6 sub. (3), other than through a good faith mistake, is civilly liable to any person
7 harmed by the disclosure or release.

8 (6) CONSTRUCTION. This section shall be liberally construed in favor of
9 identifying records and information as confidential, privileged, and inadmissible as
10 evidence.

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

12 146.55 (7) INSURANCE. A physician who participates in an emergency medical
13 services program under this section or as required under s. 146.50 shall purchase
14 health care liability insurance in compliance with subch. III of ch. 655, except for
15 those acts or omissions of a physician who, as a medical director, reviews as defined
16 in s. 146.50 (1) (j), conducts a quality improvement activity relating to the
17 performance of emergency medical technicians or ambulance service providers, as
18 specified under s. ~~146.37 (1g)~~ 146.38 (2).

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

20 187.33 (3) (a) 5. Proceedings based upon a cause of action for which the
21 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
22 895.44, 895.48, 895.482, 895.51, or 895.52.

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

1 187.43 (3) (a) 5. Proceedings based upon a cause of action for which the
2 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
3 895.44, 895.48, 895.482, 895.51, or 895.52.

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

5 655.27 (1m) (b) A health care provider who engages in the activities described
6 in s. ~~146.37 (1g) and (3)~~ a quality improvement activity under 146.38 shall be liable
7 for not more than the limits expressed under s. 655.23 (4) or the maximum liability
8 limit for which the health care provider is insured, whichever limit is greater, if he
9 or she is found to be liable under s. ~~146.37~~ 146.38, and the fund shall pay the excess
10 amount, unless the health care provider is found not to have acted in good faith
11 during those activities and the failure to act in good faith is found by the trier of fact,
12 by clear and convincing evidence, to be both malicious and intentional.

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

14 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
15 rendering of medical care or services or participation in ~~peer review activities~~ a
16 quality improvement activity under s. ~~146.37~~ 146.38 within this state against a
17 health care provider or an employee of a health care provider. A person filing a claim
18 may recover from the fund only if the health care provider or the employee of the
19 health care provider has coverage under the fund, the fund is named as a party in
20 the action, and the action against the fund is commenced within the same time
21 limitation within which the action against the health care provider or employee of
22 the health care provider must be commenced.

23 2. Any person may file an action for damages arising out of the rendering of
24 medical care or services or participation in ~~peer review activities~~ a quality review
25 activity under s. ~~146.37~~ 146.38 outside this state against a health care provider or

1 an employee of a health care provider. A person filing an action may recover from
2 the fund only if the health care provider or the employee of the health care provider
3 has coverage under the fund, the fund is named as a party in the action, and the
4 action against the fund is commenced within the same time limitation within which
5 the action against the health care provider or employee of the health care provider
6 must be commenced. If the rules of procedure of the jurisdiction in which the action
7 is brought do not permit naming the fund as a party, the person filing the action may
8 recover from the fund only if the health care provider or the employee of the health
9 care provider has coverage under the fund and the fund is notified of the action
10 within 60 days of service of process on the health care provider or the employee of the
11 health care provider. The board of governors may extend this time limit if it finds
12 that enforcement of the time limit would be prejudicial to the purposes of the fund
13 and would benefit neither insureds nor claimants.

14 (END)

Barman, Mike

From: Barman, Mike
Sent: Wednesday, February 15, 2006 1:34 PM
To: Rep.Underheim
Subject: LRBs0538/3 (attached - ~~reuested~~ by Randy)

Attachments: 05s0538/3

requested



05s05383.pdf (33
KB)

Kennedy, Debora

From: Thorson, Randy
Sent: Wednesday, February 15, 2006 4:02 PM
To: Kennedy, Debora
Subject: FW: Assembly Bill 993 Final Draft?

Debora,

Here it is and thank you for your help.

RAT

PS-Stripes are on the way.

From: Sweet, Richard
Sent: Wednesday, February 15, 2006 3:39 PM
To: Thorson, Randy; Callisto, Eric - DRL
Subject: RE: Assembly Bill 993 Final Draft?

Good catch, Eric. There needs to be a comma there.

Dick

From: Thorson, Randy
Sent: Wednesday, February 15, 2006 3:35 PM
To: Callisto, Eric - DRL; Rep.Underheim; Sweet, Richard; Leitch, Laura; Stanford, Matthew
Cc: Berndt, Michael; Martin, Larry - DRL; Gloe, Steve
Subject: RE: Assembly Bill 993 Final Draft?

Dick,

Could you check on the comma for me?

Thanks
Randy Thorson
Health Committee Clerk

From: Callisto, Eric - DRL
Sent: Wednesday, February 15, 2006 3:34 PM
To: Rep.Underheim; Sweet, Richard; Leitch, Laura; Stanford, Matthew
Cc: Berndt, Michael; Martin, Larry - DRL; Gloe, Steve
Subject: RE: Assembly Bill 993 Final Draft?

I have not read it through to do a side-by-side with the last version. However, it does contain the three last corrections and suggestions made by WHA and/or DRL. I note that there appears to be a missing comma at page 3, line 14, after the word "accreditation". Assuming no other changes were made to the text, I am fine with this version.

Thanks to all who pitched in.

-----Original Message-----

From: Rep.Underheim [<mailto:Gregg.Underheim@legis.state.wi.us>]
Sent: Wednesday, February 15, 2006 2:00 PM
To: Sweet, Richard; Leitch, Laura; Stanford, Matthew; Callisto, Eric - DRL

Subject: Assembly Bill 993 Final Draft?

Good Afternoon,

Here is the latest in the AB 993 modifications (incorporates errors pointed out by WHA and request by DRL):

<< File: 05s0538/3 >>

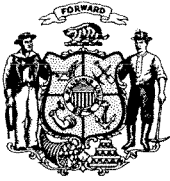
Please look over the draft and let me know if it is ready to be moved forward.

Thank you for your attention to this matter.

I am not holding my breath, but I do have my fingers crossed.

Have a nice afternoon.

Randy



THURSDAY
State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0538/S 4
DAK&RLR:cjs:pg

T
stays

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 993

Only change
p. 3

Repeal cat.

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.

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

5 SECTION 1. 146.37 of the statutes is repealed.

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

7 **146.38 Health care quality improvement activity. (1) DEFINITIONS.** In this
8 section:

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

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

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 credentialing, accreditation, licensure, registration, approval, or
6 certification of a health care entity.

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

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

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

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

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

23 (d) "Quality improvement activity" means an evaluation, review, study,
24 assessment, investigation, recommendation, monitoring, corrective action, adverse

1 action, or any other action, which may include one–time, continuous, or periodic data
2 collection, relating to any of the following subjects:

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

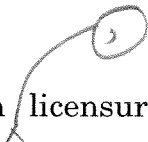
5 2. Morbidity or mortality related to a health care entity.

6 3. The qualification, competence, conduct, or performance of a health care
7 entity.

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

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

11 6. Compliance with credentialing, accreditation, or regulatory standards for a
12 health care entity and performance of credentialing, accreditation, or regulatory
13 activities.

14 7. The accreditation , licensure, registration, certification, approval, or
15 credentialing of a health care entity.

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

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

23 **(2) IMMUNITY FOR ACTS OR OMISSIONS.** (a) No person acting in good faith who
24 participates in a quality improvement activity to which sub. (3) applies is liable for

1 civil damages as a result of any act or omission by the person in the course of the
2 quality improvement activity.

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

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

12 1. Records and information contained in records that are created, collected,
13 reported, aggregated, or organized by any person as part of a quality improvement
14 activity that is conducted by any person, organization, department, governing body,
15 or committee, including a committee with representatives from multiple persons,
16 organizations, departments, or governing bodies, that is any of the following:

17 a. A person that conducts a quality improvement activity as required or
18 authorized by state or federal law, as a condition of accreditation, or under a bylaw,
19 resolution, or policy; or another person who acts on that person's behalf. This subd.
20 1. a. does not apply to a state agency.

21 b. A person who is charged, authorized, or directed by a person described in
22 subd. 1. a. to conduct the quality improvement activity.

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

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

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

5 (c) Records described under par. (a) 1. are not subject to inspection or copying
6 under s. 19.35 (1).

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

11 (am) Subsection (3) does not apply to the release to a state agency of records
12 or information created apart from a quality improvement activity that are
13 maintained by or for a health care entity for a purpose other than as specified under
14 par. (a), upon a showing by clear and convincing evidence that the records or
15 information are otherwise unavailable.

16 (ar) Any person who testifies during or participates in a quality improvement
17 activity to which sub. (3) applies may testify in any civil, criminal, or other judicial
18 or administrative proceeding as to information within his or her knowledge, but may
19 not testify as to information obtained solely through his or her participation in the
20 quality improvement activity and may not testify as to any conclusion of the quality
21 improvement activity.

22 (b) Subsection (3) does not prohibit disclosing that a reduction, restriction,
23 suspension, denial, revocation, or failure to renew any item under sub. (1) (a) 1. to
24 4. has occurred.

1 (c) A person required by state or federal law to report may disclose a record or
2 information from a record that is confidential and privileged under sub. (3), in order
3 to make the required report. Subsection (3) does not apply to a record that is
4 disclosed under this paragraph or to information in the record.

5 (d) If a person takes an adverse action against a health care entity or notifies
6 a health care entity of a proposed adverse action against the health care entity as
7 part of a quality improvement activity to which sub. (3) applies, the person shall,
8 upon request by the health care entity, disclose to the health care entity any records
9 in the person's possession relating to the adverse action or proposed adverse action.
10 Records relating to the adverse action are admissible in any criminal, civil, or other
11 judicial or administrative proceeding in which the health care entity contests the
12 adverse action. A person who has authority to take an adverse action against a
13 health care entity as part of a quality improvement activity to which sub. (3) applies
14 may at any time disclose to the health care entity records relating to a proposed
15 adverse action against the health care entity.

16 (e) A person under sub. (3) (a) 1. a. conducting a quality improvement activity
17 may disclose the records and information that are confidential and privileged under
18 sub. (3).

19 (f) A person under sub. (3) (a) 1. b. conducting a quality improvement activity
20 may disclose the records and information that are confidential and privileged under
21 sub. (3) if there is written authorization to make the disclosure from whoever
22 charged, authorized, or directed the person to conduct the quality improvement
23 activity.

24 (g) The confidentiality and privilege afforded to records under sub. (3) does not
25 apply to records that are disclosed to the general public under par. (e) or (f).

1 (h) A person planning an activity that would be a quality improvement activity
2 may in advance of the activity designate in writing that sub. (3) does not apply to the
3 records and information created, collected, reported, aggregated, or organized by any
4 person as part of the designated activity.

5 (5) Any person who discloses information or releases a record in violation of
6 sub. (3), other than through a good faith mistake, is civilly liable to any person
7 harmed by the disclosure or release.

8 (6) CONSTRUCTION. This section shall be liberally construed in favor of
9 identifying records and information as confidential, privileged, and inadmissible as
10 evidence.

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

12 146.55 (7) INSURANCE. A physician who participates in an emergency medical
13 services program under this section or as required under s. 146.50 shall purchase
14 health care liability insurance in compliance with subch. III of ch. 655, except for
15 those acts or omissions of a physician who, as a medical director, reviews as defined
16 in s. 146.50 (1) (j), conducts a quality improvement activity relating to the
17 performance of emergency medical technicians or ambulance service providers, as
18 specified under s. ~~146.37 (1g)~~ 146.38 (2).

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

20 187.33 (3) (a) 5. Proceedings based upon a cause of action for which the
21 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
22 895.44, 895.48, 895.482, 895.51, or 895.52.

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

1 187.43 (3) (a) 5. Proceedings based upon a cause of action for which the
2 volunteer is immune from liability under s. 146.31 (2) and (3), ~~146.37~~ 146.38 (2),
3 895.44, 895.48, 895.482, 895.51, or 895.52.

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

5 655.27 (1m) (b) A health care provider who engages in the activities described
6 in ~~s. 146.37 (1g) and (3)~~ a quality improvement activity under 146.38 shall be liable
7 for not more than the limits expressed under s. 655.23 (4) or the maximum liability
8 limit for which the health care provider is insured, whichever limit is greater, if he
9 or she is found to be liable under s. ~~146.37~~ 146.38, and the fund shall pay the excess
10 amount, unless the health care provider is found not to have acted in good faith
11 during those activities and the failure to act in good faith is found by the trier of fact,
12 by clear and convincing evidence, to be both malicious and intentional.

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

14 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the
15 rendering of medical care or services or participation in ~~peer review activities~~ a
16 quality improvement activity under s. ~~146.37~~ 146.38 within this state against a
17 health care provider or an employee of a health care provider. A person filing a claim
18 may recover from the fund only if the health care provider or the employee of the
19 health care provider has coverage under the fund, the fund is named as a party in
20 the action, and the action against the fund is commenced within the same time
21 limitation within which the action against the health care provider or employee of
22 the health care provider must be commenced.

23 2. Any person may file an action for damages arising out of the rendering of
24 medical care or services or participation in ~~peer review activities~~ a quality review
25 activity under s. ~~146.37~~ 146.38 outside this state against a health care provider or

1 an employee of a health care provider. A person filing an action may recover from
2 the fund only if the health care provider or the employee of the health care provider
3 has coverage under the fund, the fund is named as a party in the action, and the
4 action against the fund is commenced within the same time limitation within which
5 the action against the health care provider or employee of the health care provider
6 must be commenced. If the rules of procedure of the jurisdiction in which the action
7 is brought do not permit naming the fund as a party, the person filing the action may
8 recover from the fund only if the health care provider or the employee of the health
9 care provider has coverage under the fund and the fund is notified of the action
10 within 60 days of service of process on the health care provider or the employee of the
11 health care provider. The board of governors may extend this time limit if it finds
12 that enforcement of the time limit would be prejudicial to the purposes of the fund
13 and would benefit neither insureds nor claimants.

14 (END)