

2005 DRAFTING REQUEST

Assembly Amendment (AA-ASA2-AB993)

Received: 03/01/2006

Received By: rryan

Wanted: Today

Identical to LRB:

For: Gregg Underheim (608) 266-2254

By/Representing: Dick Sweet (Leg Counsel)

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Health - miscellaneous

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to: Richard.Sweet@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Health care review records

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 03/01/2006	wjackson 03/01/2006		_____			
/1	rryan 03/01/2006	wjackson 03/01/2006	pgreensl 03/01/2006	_____	lnorthro 03/01/2006	lnorthro 03/01/2006	
/2			pgreensl 03/01/2006	_____	lnorthro 03/01/2006	lnorthro 03/01/2006	

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/1		1/2 Wjz/1	pgreensl 03/01/2006	_____	Inorthro 03/01/2006	Inorthro 03/01/2006	

FE Sent For:

<END>

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/?	rryan						
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1/1/03/11

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PS

3/1/03
Sweet

FE Sent For:

<END>

2590/1

Wanted Today - Now

ASSEMBLY AMENDMENT 1,
TO ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2005 ASSEMBLY BILL 993

RMMR

February 28, 2006 - Offered by COMMITTEE ON HEALTH.

At the locations indicated, amend the substitute amendment as follows:

- 1. Page 4, line 11: delete that line and substitute "civil or administrative action or proceeding".
- 2. Page 5, line 3: delete "(c)" and substitute "(cm)".
- 3. Page 5, line 11: delete lines 11 to 15 and substitute:
 "(an) Subsection (3) does not apply to the release to or inspection by a state agency of records or information created apart from a quality improvement activity that are maintained by or for a health care entity for a purpose other than as specified under par. (a) if the records or information are not otherwise available. A state agency may introduce such records or information into evidence in a civil or administrative action or proceeding."
- 4. Page 5, line 17: delete ", criminal, or other judicial".

INS 1-1

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2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa2590/lins
RLR:.....

1 **Ins 1-1:**

2 √ **1.** Page 4, line 7: after "(4)" insert "and in criminal proceedings".

3

4

5 **Ins 2-8:**

6 not A law enforcement or other governmental agency may introduce records or
7 information received under this paragraph into evidence in a civil or administrative
8 action or proceeding and may disclose such records or information to another law
9 enforcement or other governmental agency. ✓/0

Ryan, Robin

From: Sweet, Richard
Sent: Wednesday, March 01, 2006 1:27 PM
To: Ryan, Robin
Cc: Hermes, Ron; Welsh, Diane; Callisto, Eric - DRL; Berndt, Michael; Rep.Underheim; Richards, Mike; 'EBorgerding@wha.org'; 'LLeitch@wha.org'; 'mstanford@wha.org'; Thorson, Randy
Subject: RE: LRB 05a2559 Topic: Access to health care review recordsfor criminal investigations and proceedi

Robin,

Randy asked me to have you prepare an amendment to ASA2 to AB993 that would have (3) (a) and (4) (cm) read as follows:

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

(4) (cm) A person required by state or federal law to report records or information or make records or information accessible to a law enforcement or other governmental agency may report or make accessible records or information to which sub. (3) (a) or (b) applies to comply with the reporting or access requirement. Such a law enforcement or other governmental agency may introduce records or information received under this subparagraph into evidence in a civil or administrative action or proceeding and may disclose such records or information to another law enforcement or other governmental agency.

Since the new amendment will take the place of AA1 to ASA2, it should also fold in the other items in AA1 (except items 1 and 6). AA1 would then be tabled on the floor.

Thanks for your help.

Dick

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

From: Sweet, Richard
Sent: Wednesday, March 01, 2006 10:20 AM
To: Hermes, Ron; Welsh, Diane; Callisto, Eric - DRL; Berndt, Michael; Rep.Underheim; Richards, Mike; EBorgerding@wha.org; LLeitch@wha.org; mstanford@wha.org; Thorson, Randy; Ryan, Robin
Subject: RE: LRB 05a2559 Topic: Access to health care review recordsfor criminal investigations and proceedi

I think the following language (replacing page 4, lines 7 to 11) might address the criminal issue:

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

Do you want to take a look at this and see if it addresses your objective of allowing records and information to be used in criminal proceedings?

Thanks.

Dick

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

From: Hermes, Ron
Sent: Tuesday, February 28, 2006 5:56 PM
To: Welsh, Diane; Callisto, Eric - DRL; Berndt, Michael; Rep.Underheim; Richards, Mike; Sweet, Richard; EBorgerding@wha.org; LLeitch@wha.org; mstanford@wha.org
Subject: RE: LRB 05a2559 Topic: Access to health care review recordsfor criminal investigations and proceedi

Our goal is to insure that the bill will not protect bad actors from criminal prosecution. So, whatever language is necessary to meet that goal is what the Dept. would prefer.

>>> "Leitch, Laura" <LLeitch@wha.org> 02/28/06 03:54PM >>>

The language looks fine, but I believe it amplifies a problem with the amendment from this morning in the below language from page 2:

If a health care provider provides a state agency or law enforcement with access to a record or information, the way the above is drafted, the document is no longer protected at all -- (3)(a) and (b) no longer apply. A provider that would normally provide access to a record to a state agency might object to the release knowing that releasing to a state agency would pull the record out of the (3)(a) protections -- causing unnecessary conflict. Under current law, documents disclosed do not lose their protection, so the amendment goes farther than current law -- providing less protection than the current statute.

Matthew put together the below language that would resolve the problem:

"(cm) A person required by state or federal law to report records or information or make records or information accessible to a law enforcement or other governmental agency may report or make accessible records or information to which sub. (3) (a) or (b) applies to comply with the reporting or access requirement. Such a law enforcement or other governmental agency may introduce records or information received under this subparagraph into evidence in a civil or administrative action or proceeding and may disclose such records or information to another law enforcement or other governmental agency. Once a record or information is reported or made accessible under this paragraph, sub. (3) (a) and (b) no longer apply to the record or information."<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

last sentence, might to be red-lined

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

From: Richards, Mike [mailto:Mike.Richards@legis.state.wi.us]
Sent: Tuesday, February 28, 2006 2:55 PM
To: Rep.Underheim; Welsh, Diane; Hermes, Ron; Leitch, Laura; Stanford, Matthew; Borgerding, Eric; Callisto, Eric - DRL; Berndt, Michael
Subject: RE: LRB 05a2559 Topic: Access to health care review records for criminal investigations and proceedings

Yes, and could we know as soon as possible tomorrow to ensure that the calendars in the respective houses can schedule these bills.

From: Rep.Underheim
Sent: Tuesday, February 28, 2006 2:54 PM
To: Welsh, Diane; Hermes, Ron; Richards, Mike; 'Leitch, Laura'; Stanford, Matthew; 'Borgerding Eric (E-mail)'; Callisto, Eric - DRL; Berndt, Michael
Subject: FW: LRB 05a2559 Topic: Access to health care review records for criminal investigations and proceedings

Good afternoon,

Here is the draft for the change requested by DHFS. I hope you can take a look at it and

let us know if this gets us where we need to be.

Randy Thorson
Committee Clerk
Assembly Committee on Health

From: Northrop, Lori
Sent: Tuesday, February 28, 2006 2:40 PM
To: Rep.Underheim
Subject: LRB 05a2559 Topic: Access to health care review records for criminal investigations and proceedings

The attached proposal has been jacketed for introduction.

A copy has also been sent to: <mailto:Richard.Sweet@legis.state.wi.us>
Richard.Sweet@legis.state.wi.us;

<< File: LRB a2559_1 >>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBa2590/1
RLR:cjs&wlj:pg

2
↑
stays
RMNR

ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2005 ASSEMBLY BILL 993

#. Page 4, line 100 after agency or administrative action or proceeding insert in any civil proceeding

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 4, line 7: after "(4)" insert "and in criminal proceedings".
- 3 **2.** Page 4, line 11: delete that line and substitute "civil or administrative action
- 4 or proceeding:".
- 5 **3.** Page 5, line 3: delete "(c)" and substitute "(cm)".
- 6 **4.** Page 5, line 11: delete lines 11 to 15 and substitute:
- 7 "(an) Subsection (3) does not apply to the release to or inspection by a state
- 8 agency of records or information created apart from a quality improvement activity
- 9 that are maintained by or for a health care entity for a purpose other than as specified
- 10 under par. (a) if the records or information are not otherwise available. A state

1 agency may introduce such records or information into evidence in a civil or
2 administrative action or proceeding.”.

3 **5.** Page 5, line 17: delete “, criminal, or other judicial”.

4 **6.** Page 5, line 18: after “administrative” insert “action or”.

5 **7.** Page 6, line 1: delete lines 1 to 4 and substitute:

6 “(cm) A person required by state or federal law to report records or information
7 or make records or information accessible to a law enforcement or other
8 governmental agency may report or make accessible records or information to which
9 sub. (3) (a) or (b) applies to comply with the reporting or access requirement. A law
10 enforcement or other governmental agency may introduce records or information
11 received under this paragraph into evidence in a civil or administrative action or
12 proceeding and may disclose such records or information to another law enforcement
13 or other governmental agency.”.

14 **8.** Page 6, line 10: delete “criminal, civil, or other” and substitute “civil or”.

15 **9.** Page 6, line 11: delete “judicial or administrative” and substitute
16 “administrative action or”.

17 (END)