

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3240/1dn  
DAK:cs:pg

November 8, 2005

To Representative Underheim:

1. This is an item left over from the Drafter's Note for 05-3240/P3; my notes do not indicate that the group addressed it: There may be a conflict between ss. 20.515 (1) (r) (which refers only to contracting) and 153.05 (2r) (which seems to imply that DETF would be expending moneys for the contract *or* for DHFS to perform the data organization's functions). Is it your intent that DETF be authorized to expend moneys for DHFS' performance under s. 153.455 (4) (i.e., if the contract with the data organization fails)?

2. As requested, I have in this draft changed s. 153.05 (1) (c) to authorize, rather than require, DHFS to collect health care claims information from insurers and administrators if the contract with the data organization falls through; please note that I also changed the rest of the last sentence in s. 153.05 (1) (c), to authorize, rather than require, DHFS to perform or contract for the performance of other duties (analysis and dissemination of data) of the data organization. In accordance with these changes, I have also changed ss. 153.05 (5) (c), (8) (c), and (12) (c), 153.10 (1), and 153.455 (4); please review these provisions to make sure that I've captured your intent.

3. With respect to Dick Sweet's proposed changes concerning HIPAA requirements in his e-mail of October 21, 2005, and after talking with Dick, I have done all of the following:

a. Created a definition of "public health authority" in s. 153.01 (8m) that is similar to the definition in the HIPAA regulations under 45 CFR 164.501; I did this to ensure that use of the term is not confused with the definition of "public health authority" that is in current law under s. 250.01 (6g), stats., which serves a different purpose. Note that this definition applies to DHFS, the data organization, *and* the Wisconsin Hospitals Association.

b. Not drafted the phrase "in its capacity as a public health authority" in s. 20.435 (1) (hg), stats., since the language is already included under s. 153.05 (2r). I did, however, include the phrase, rather than language proposed, under s. 153.01 (3g), the definition of the data organization.

c. Not drafted as restrictions on sharing data under s. 153.50 (4) (c) references to current statutes that deal with confidentiality, because those statutes apply regardless

of whether they are referenced or not, and clearly it is not your intent that they not apply. However, Dick suggested prohibiting the data organization from sharing health care claims data unless the sharing complies with HIPAA, which I think is a good change.

4. Since the decision of the group at the October 5, 2005, meeting was that DHFS, if the contract fails, would revert to collecting health care information under existing rules, I have deleted from the bill amendments or repeals of the following numerous statutes that referenced the rules: ss. 153.05 (5) (a) and (8) (a), 153.45 (1) (intro.), (b) (intro.) and 10., (1m), (3), and (5), 153.50 (4) (b), 153.85, and 153.90 (1) and (2), and the third treatment of s. 153.60 (1). However, please note that the Wisconsin Hospital Association's suggested language for s. 153.05 (1) (b) ("to the extent that the rules are consistent with this chapter") now might inadvertently be read to release the Association from the rules, during their suspension during the period of the contract with the data organization. Please carefully review.

5. In accordance with the information received from Nancy Nankivil Bennett, this draft contains no changes to s. 153.50 (6), stats.

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