

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

LRB-3240/P1dn

DAK:cs:rs

June 27, 2005

To Representative Underheim:

I have drafted this document in bill form; I believe it is easier for you to read it that way, and it will be relatively easy to convert it to amendment form when and if you wish to do so with respect to the budget bill. The bill is preliminary; I have interspersed \*\*\*\*NOTES in the body of the bill at points for which I had questions; I would appreciate your reviewing these as well as the following:

1. With respect to the material proposed by Laura Leitch of the Wisconsin Hospitals Association, among other things I have drafted s. 153.50 (1) (b) 1m., as proposed, which changes the current definition of "patient-identifiable data" to make that definition inapplicable to calculated variables that are created from patient-identifiable data. I also have drafted an amendment to s. 153.50 (4) (a) 1. b., stats., as proposed, which allows WHA to create the calculated variables. (I also have drafted s. 153.01 (2g), a definition of the term "calculated variable" that is derived from the definition in HFS 120.31 (1) (a), Wis. Admin. Code.) I have not drafted a provision proposed that expressly declares that WHA is not prohibited from creating a calculated variable; since the amendment to s. 153.50 (4) (a) 1. b., stats., permits this action, such a prohibition is unnecessary. Ms. Leitch has indicated to me that a calculated variable contains patient-identifiable information and that the legislation changes that I have mentioned are necessary to, among other things, permit analysis of hospital readmissions. I am, however, concerned that it is not clear, under the language proposed and drafted, what precise use the WHA will make of the created calculated variables, i.e., whether WHA will possibly disseminate the calculated variables as part of other data it disseminates. A blanket exception for calculated variables to the restrictions currently in place for use of patient-identifiable information may be a lesser standard than is acceptable under HIPAA.

2. Do you wish to eliminate or otherwise affect the interagency coordinating council in DOA?

3. The instructions at the June 22, 2005, meeting were to eliminate "the boards." I have repealed the provisions dealing with both the Board on Health Care Information and the Independent Review Board, as of January 1, 2007; is this your intent?

4. The key provisions in this draft concerning the phase-out of DHFS' responsibilities and phase-in of the data organization's responsibilities, and the ability of DHFS to

resume data collection, analysis, and dissemination if the contract does not work out, are in s. 153.455. Please review.

5. The document provided at the June 22, 2005, meeting says “The general framework does not anticipate that administrative rule-making will be required because the POVd replacement system expectations are described in the law (budget) and detailed in a contract.” I have repealed the current rules, contingent on s. 153.455 (1) (see Drafter’s Note 4., above), because, if DHFS determines that the data organization is not functioning adequately, you have indicated that DHFS should resume the program without use of rules.

6. How do you intend for me to affect the provisions in s. 153.05 (14) in the budget bill that were created by the Joint Committee on Finance?

7. I was unsure if you wanted the data organization to be subject to requirements under s. 153.50, stats. (protection of patient confidentiality). If so, what specific provisions should apply or be modified to apply?

8. Although I have repealed s. 153.75 (2) (d), stats., I have not affected ss. 153.05 (6r) and 153.60 (3), stats.; these statutes concern reports from health care plans that voluntarily agree to supply health care data. Should these be left alone, or repealed?

9. I understand from the instructions that your intent is to eliminate requirements under DHFS rules if DHFS resumes the collection and dissemination of health care information if the contract does not work out; I have, therefore, repealed the requirements for many rules under s. 153.75, stats., effective on the date specified in s. 153.455 (1) (when DHFS determines that the data organization has begun collection health care information). I also have provided, in s. 153.455 (2), that, if DHFS resumes the program, it shall be done without rules. Is this done as you wish?

10. Should s. 153.05 (6) and (6m), stats., be affected by this bill?

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