

**2007 DRAFTING REQUEST**

**Bill**

Received: **12/18/2007**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Huebsch (608) 266-3387**

By/Representing: **Kevin Moore (aide)**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters: **pkahler  
rnelson2**

Subject: **Health - miscellaneous  
Criminal Law - miscellaneous  
Courts - evidence  
Insurance - other insurance**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Huebsch@legis.wisconsin.gov**

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

**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> |
|--------------|------------------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /?           | dkennedy<br>12/18/2007 |                 |              | _____          |                  |                 |                 |
|              | rryan<br>01/08/2008    |                 |              | _____          |                  |                 |                 |
|              | rnelson2<br>01/09/2008 |                 |              | _____          |                  |                 |                 |

| <u>Vers.</u> | <u>Drafted</u>  | <u>Reviewed</u>                                  | <u>Typed</u>           | <u>Proofed</u>                            | <u>Submitted</u>       | <u>Jacketed</u>       | <u>Required</u> |
|--------------|---|--|------------------------|---|------------------------|-----------------------|-----------------|
| /P1          | rryan<br>01/09/2008   | csicilia<br>01/11/2008                           | rschluet<br>01/11/2008 | _____                                     | mbarman<br>01/11/2008  |                       |                 |
| /P2          | pkahler<br>01/18/2008<br>rnelson2<br>01/21/2008<br>rryan<br>01/22/2008<br>rryan<br>01/30/2008 | csicilia<br>01/23/2008<br>csicilia<br>01/31/2008 | nmatzke<br>01/24/2008  | _____<br>_____<br>_____<br>_____<br>_____ | sbasford<br>01/24/2008 |                       |                 |
| /1           |   |  | jfrantze<br>01/31/2008 | _____                                     | cduerst<br>01/31/2008  |                       |                 |
| /2           | rryan<br>01/31/2008   | csicilia<br>02/01/2008                           | jfrantze<br>02/01/2008 | _____                                     | cduerst<br>02/01/2008  |                       |                 |
| /3           | rryan<br>02/04/2008   | csicilia<br>02/05/2008                           | rschluet<br>02/05/2008 | _____                                     | sbasford<br>02/05/2008 | mbarman<br>02/05/2008 |                 |

FE Sent For: N/A

<END>

## 2007 DRAFTING REQUEST

### Bill

Received: 12/18/2007

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-3387

By/Representing: Kevin Moore (aide)

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters: pkahler  
rnelson2

Subject: Health - miscellaneous  
Criminal Law - miscellaneous  
Courts - evidence  
Insurance - other insurance

Extra Copies: DAK

Submit via email: YES

Requester's email: Rep.Huebsch@legis.wisconsin.gov

Carbon copy (CC:) to: robin.ryan@legis.wisconsin.gov

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

---

### 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> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /?           | dkennedy       |                 |              | _____          |                  |                 |                 |
|              | 12/18/2007     |                 |              | _____          |                  |                 |                 |
|              | rryan          |                 |              | _____          |                  |                 |                 |
|              | 01/08/2008     |                 |              | _____          |                  |                 |                 |
|              | rnelson2       |                 |              | _____          |                  |                 |                 |
|              | 01/09/2008     |                 |              | _____          |                  |                 |                 |

| <u>Vers.</u> | <u>Drafted</u>         | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /P1          | rryan<br>01/09/2008    | csicilia<br>01/11/2008 | rschluet<br>01/11/2008 | _____          | mbarman<br>01/11/2008  |                 |                 |
| /P2          | pkahler<br>01/18/2008  | csicilia<br>01/23/2008 | nmatzke<br>01/24/2008  | _____          | sbasford<br>01/24/2008 |                 |                 |
|              | rnelson2<br>01/21/2008 | csicilia<br>01/31/2008 |                        | _____          |                        |                 |                 |
|              | rryan<br>01/22/2008    |                        |                        | _____          |                        |                 |                 |
|              | rryan<br>01/30/2008    |                        |                        | _____          |                        |                 |                 |
| /1           |                        |                        | jfrantze<br>01/31/2008 | _____          | cduerst<br>01/31/2008  |                 |                 |
| /2           | rryan<br>01/31/2008    | csicilia<br>02/01/2008 | jfrantze<br>02/01/2008 | _____          | cduerst<br>02/01/2008  |                 |                 |
| /3           | rryan<br>02/04/2008    | csicilia<br>02/05/2008 | rschluet<br>02/05/2008 | _____          | sbasford<br>02/05/2008 |                 |                 |

FE Sent For:

<END>

## 2007 DRAFTING REQUEST

### Bill

Received: 12/18/2007

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-3387

By/Representing: Kevin Moore (aide)

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters: pkahler  
rnelson2

Subject: Health - miscellaneous  
Criminal Law - miscellaneous  
Courts - evidence  
Insurance - other insurance

Extra Copies: DAK

Submit via email: YES

Requester's email: Rep.Huebsch@legis.wisconsin.gov

Carbon copy (CC:) to: robin.ryan@legis.wisconsin.gov

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

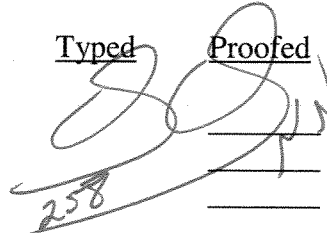
---

### 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> |
|--------------|------------------------|-----------------|---|----------------|------------------|-----------------|-----------------|
| /?           | dkennedy<br>12/18/2007 |                 |  |                |                  |                 |                 |
|              | rryan<br>01/08/2008    |                 | 258   |                |                  |                 |                 |
|              | rnelson2<br>01/09/2008 |                 |   |                |                  |                 |                 |

| <u>Vers.</u> | <u>Drafted</u>         | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /P1          | rryan<br>01/09/2008    | csicilia<br>01/11/2008 | rschluet<br>01/11/2008 | _____          | mbarman<br>01/11/2008  |                 |                 |
| /P2          | pkahler<br>01/18/2008  | csicilia<br>01/23/2008 | nmatzke<br>01/24/2008  | _____          | sbasford<br>01/24/2008 |                 |                 |
|              | rnelson2<br>01/21/2008 | csicilia<br>01/31/2008 |                        | _____          |                        |                 |                 |
|              | rryan<br>01/22/2008    |                        |                        | _____          |                        |                 |                 |
|              | rryan<br>01/30/2008    |                        |                        | _____          |                        |                 |                 |
| /1           |                        |                        | jfrantze<br>01/31/2008 | _____          | cduerst<br>01/31/2008  |                 |                 |
| /2           | rryan<br>01/31/2008    | csicilia<br>02/01/2008 | jfrantze<br>02/01/2008 | _____          | cduerst<br>02/01/2008  |                 |                 |

FE Sent For:

3 yrs 2/5/08

<END>

2007 DRAFTING REQUEST

Bill

Received: 12/18/2007

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-3387

By/Representing: Kevin Moore (aide)

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters: pkahler  
rnelson2

Subject: Health - miscellaneous  
Criminal Law - miscellaneous  
Courts - evidence  
Insurance - other insurance

Extra Copies: DAK

Submit via email: YES

Requester's email: Rep.Huebsch@legis.wisconsin.gov

Carbon copy (CC:) to: robin.ryan@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

Instructions:

See Attached

Drafting History:

| Vers. | Drafted                | Reviewed          | Typed | Proofed | Submitted | Jacketed | Required |
|-------|------------------------|-------------------|-------|---------|-----------|----------|----------|
| /?    | dkennedy<br>12/18/2007 | 1/2 cps 2/1<br>08 |       | _____   |           |          |          |
|       | rryan<br>01/08/2008    |                   |       | _____   |           |          |          |
|       | rnelson2<br>01/09/2008 |                   |       | _____   |           |          |          |
|       |                        |                   |       | _____   |           |          |          |

| <u>Vers.</u> | <u>Drafted</u>  | <u>Reviewed</u>                                  | <u>Typed</u>           | <u>Proofed</u>                                     | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|---|--|------------------------|--|------------------------|-----------------|-----------------|
| /P1          | rryan<br>01/09/2008   | csicilia<br>01/11/2008                           | rschluet<br>01/11/2008 | _____  | mbarman<br>01/11/2008  |                 |                 |
| /P2          | pkahler<br>01/18/2008<br>rnelson2<br>01/21/2008<br>rryan<br>01/22/2008<br>rryan<br>01/30/2008 | csicilia<br>01/23/2008<br>csicilia<br>01/31/2008 | nmatzke<br>01/24/2008  | _____<br>_____<br>_____<br>_____<br>_____<br>_____ | sbasford<br>01/24/2008 |                 |                 |
| /1           |   |  | jfrantze<br>01/31/2008 | _____<br>_____                                     | cduerst<br>01/31/2008  |                 |                 |

FE Sent For:

**<END>**



2007 DRAFTING REQUEST

Bill

Received: 12/18/2007

Received By: dkennedy

Wanted: As time permits

Identical to LRB:

For: Michael Huebsch (608) 266-3387

By/Representing: Kevin Moore (aide)

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters: pkahler  
rnelson2

Subject: Health - miscellaneous  
Criminal Law - miscellaneous  
Courts - evidence  
Insurance - other insurance

Extra Copies: DAK

Submit via email: YES

Requester's email: Rep.Huebsch@legis.wisconsin.gov

Carbon copy (CC:) to: robin.ryan@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

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> |
|--------------|------------------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/?          | dkennedy<br>12/18/2007 | 1 g/s 1/31      |              |                |                  |                 |                 |
|              | rryan<br>01/08/2008    | 08              |              |                |                  |                 |                 |
|              | rnelson2<br>01/09/2008 |                 |              |                |                  |                 |                 |

| <u>Vers.</u> | <u>Drafted</u>         | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /P1          | rryan<br>01/09/2008    | csicilia<br>01/11/2008 | rschluet<br>01/11/2008 | _____          | mbarman<br>01/11/2008  |                 |                 |
| /P2          | pkahler<br>01/18/2008  | csicilia<br>01/23/2008 | nmatzke<br>01/24/2008  | _____          | sbasford<br>01/24/2008 |                 |                 |
|              | rnelson2<br>01/21/2008 |                        |                        | _____          |                        |                 |                 |
|              | rryan<br>01/22/2008    |                        |                        | _____          |                        |                 |                 |

FE Sent For:

<END>



| <u>Vers.</u> | <u>Drafted</u>      | <u>Reviewed</u>        | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>      | <u>Jacketed</u> | <u>Required</u> |
|--------------|---------------------|------------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /P1          | rryan<br>01/09/2008 | csicilia<br>01/11/2008 | rschluet<br>01/11/2008 | _____          | mbarman<br>01/11/2008 |                 |                 |

FE Sent For:

<END>

**2007 DRAFTING REQUEST**

**Bill**

Received: 12/18/2007

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Michael Huebsch (608) 266-3387**

By/Representing: **Kevin Moore (aide)**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters: **pkahler  
rnelson2**

Subject: **Health - miscellaneous  
Criminal Law - miscellaneous  
Courts - evidence  
Insurance - other insurance**

Extra Copies: **DAK**

Submit via email: **YES**

Requester's email: **Rep.Huebsch@legis.wisconsin.gov**

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Health care review records; criminal liability for health care providers; health care liability insurance coverage of a health care provider's criminal liability

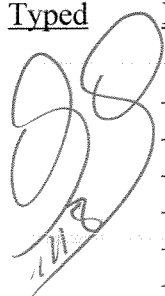

---

**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> |
|--------------|---|----------------------|---|---|------------------|-----------------|-----------------|
| /?           | dkennedy<br>12/18/2007<br>rryan<br>01/08/2008<br>rnelson2<br>01/09/2008 | PI cjs<br>V/10<br>08 |  | <br>_____<br>_____<br>_____<br>_____ |                  |                 |                 |

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

rryan

FE Sent For:

**<END>**

LAB-3671

**Kennedy, Debora**

---

**From:** Moore, Kevin  
**Sent:** Monday, December 17, 2007 1:22 PM  
**To:** Kennedy, Debora  
**Subject:** Bill Drafting Request

**Attachments:** 20071217131515235.pdf



2007121713151523  
5.pdf (246 KB)...

Good Afternoon Debora,

I have attached some drafting instructions on legislation related to peer review. The instructions do include some additional items that might not have been included in past versions of the bill. However, I would like to keep these items as part of the overall legislation.

Please feel free to contact me should you have any questions on the bill draft. I will be happy to answer them and/or get you in contact with someone who can.

Thank you in advance for your time.

Kevin Moore  
Office of Assembly Speaker Mike Huesch  
1-608-261-5683 - Direct  
1-608-266-3387 - Local  
1-888-534-0094 - Toll Free  
1-608-282-3694 - Fax  
[www.legis.state.wi.us](http://www.legis.state.wi.us)  
[www.wisconsin.gov](http://www.wisconsin.gov)

Quality Improvement Act and  
Defining Criminal Conduct  
Proposal

1. Encourage quality improvement activities.

Position: Changes in the peer review statute should be made to address specific court decisions and to encourage quality improvement activities. With these changes, health care providers would be encouraged to engage in more robust quality improvement activities and to determine and share best practices with other providers. In addition, the changes would encourage the work of organizations that publicly report health care quality information.

The proposed changes would strengthen, clarify, or provide the following protections against the use of peer review and quality improvement investigations and conclusions in civil and criminal proceedings:

- Protect quality improvement activity that takes place outside of a hospital's formal peer review committee. For example, an investigation of an individual provider by his or her supervisor or quality improvement activity conducted by an internal crosscutting quality improvement team would be protected.
- Protect quality improvement activity that takes place among related organizations. For example, health care systems could have system-wide quality improvement programs that evaluate the health care services across the different provider types.
- Protect quality improvement activity conducted by outside organizations including those organizations that publicly report health care quality information.
- Protect statistical information created solely for internal evaluation and quality improvement purposes. For example, if a hospital's quality improvement activities involve the development and analysis of statistical information but that information is not publicly reported, that information would be protected.

To accomplish:

- Ensure that incident and sentinel event reports to peer review and quality improvement reviewers and organizations are protected. Also, ensure that peer review and QIA reports and information that are shared among peer review and QIA persons and organizations are protected:

146.38(1m)

No person who participates in the review and evaluation of the services of health care providers or facilities or charges for such services may disclose any information acquired in connection with such review or evaluation, including incident reports, except as provided in sub. (3).

146.38(2)

No such record or incident report may be used in any civil action for personal injuries against the health care provider or facility; however, except for incident reports and records from other persons, organizations, or evaluators reviewing or evaluating health care providers or facilities, information, documents, or records presented during the



review or evaluation may not be construed as immune from discovery under s. 804.10(4) or use in any civil action merely because they were so presented.

“Incident report” means a written or verbal statement that notified a person, an organization, or an evaluator of an incident, practice, or other situation that became the subject of a review or evaluation of the services of a health care provider or facility or charges for such services.

- Add “person” to s. 146.38(2) to permit QIA outside a formal peer review committee structure. Also clarify that a peer review organization can include people from multiple organizations (for example, within a health system or a public reporting entity):

s. 146.38(2). All persons, organizations or evaluators reviewing or evaluating the services of health care providers for purposes described in s. 146.37(1g) shall keep a record of their investigations, inquiries, proceedings and conclusions. The persons, organizations, or evaluators can be from one or more entities.

- Amend s. 146.38(3)(d) concerning statistical reports to encourage the statistical analysis of quality and patient safety data and to permit the public reporting of that data (*Braverman*):

s. 146.38(3). Information acquired in connection with the review and evaluation of health care services shall be disclosed and the records of such review and evaluation shall be released, with the identity of any patient whose treatment is being reviewed being withheld unless the patient has granted permission to disclose identity, in the following circumstances: . . . (d) In a report in statistical form filed with a regulatory agency, accrediting agency, or person that publicly reports quality and patient safety information. The report may identify any provider or facility to which the statistics relate.

## 2. Peer review, administrative information, and other information.

### Position:

- In order to protect current quality improvement activities, peer review and any information (written or spoken) that a regulatory agency requires a health care provider or facility to produce should not be admissible in a civil or criminal action. In addition, the civil system depends on the parties participating in the discovery process. In order to encourage full participation in that process and avoid witnesses refusing to answer depositions and interrogatories out of fear of self-incrimination, discovery obtained in a civil action should be protected from use in a criminal action.

### To accomplish:

- a. Amend peer review statute to prohibit peer review records from being used in criminal actions:
  - Amend s. 146.38(2) to include criminal action. The second sentence should read:

No such record may be used in any civil or criminal action against a health care provider or facility for personal injuries against the health care provider or facility; however, information, documents or records presented during the review or evaluation may not be construed as immune from discovery under s. 804.10(4) or use in any civil or criminal action merely because they were so presented.

- Delete s. 146.38(3)(e):

~~(e) With regard to any criminal matter, to a court of record, in accordance with chs. 885 to 895 and 995 and after issuance of a subpoena;~~

- RPN
- b. Amend statute to prohibit regulatory reports and other information a regulatory agency requires a health care provider or facility to provide or disclose from being used in criminal or civil actions. Create a new provision in Chapter 904 that would provide the following:

- Any reports filed with or created by a state or federal regulatory agency could not be used as evidence in a civil or criminal action against a health care provider or facility.
- Any other information, written or spoken, acquired by a state or federal regulatory agency could not be used as evidence in a civil or criminal action against a health care provider or facility.
- Such reports and other information could be used as evidence in any administrative proceeding conducted by the agency.

### 3. Criminal conduct:

#### Position:

- Health care providers (s. 146.81 plus certified Medicaid providers) should be held criminally liable for an act or omission related to the rendering of health care services or the failure to render health care services only in specific circumstances.
- Health care providers should not be held criminally liable for an act or omission related to the rendering of health care services or the failure to render health care services unless the act or omission results in great bodily harm to or the death of the patient.

#### To accomplish:

- Add a provision to Chapter 940 that provides that any act or omission of a health care provider or an act or omission of an employee of a health care provider acting within the scope of his or her employment is not subject to a criminal charge unless the act or omission causes great bodily harm to or the death of a patient and: (1.) the act or omission is an intentional criminal act; (2.) the act or omission occurs while the health care provider or employee is intoxicated; or (3.) the act or omission recklessly causes the great bodily injury or death under circumstances that show the utter disregard for human life.
  - Amend statute (Ch. 904) to provide that depositions and answers to interrogatories obtained in a civil action are not admissible and are not subject to discovery or compulsory process in a criminal action.
- RPN

**4. Insurance coverage for medical malpractice.**

PSK  
Position: Chapter 655, concerning health care liability and the Injured Patients and Families Compensation Fund, should be amended to make sure that patients injured as a result of medical malpractice have access to adequate compensation.

To accomplish:

- Amend ch. 655 (at s. 655.23 or .24?) to require that any underlying medical malpractice policy issued under ch. 655 covers injuries that result from conduct determined to be criminal except for the criminal conduct excluded from Fund coverage in s. 655.27(1).
- Amend s. 655.27(1) to include a more appropriate cross-reference for "intentional crime."



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3671?

RLR, RPN & PJK:.....

Wanted by Friday 1/11/08

CS

PMR

PI

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen Cat

admissibility of depositions and interrogatory answers; health care liability insurance coverage of criminal liability of health care providers and their employees

1 AN ACT...; relating to: disclosure of health care review records, criminal liability  
2 of health care providers and employees of health care providers for reckless  
3 homicide, batter, reckless injury, and abuse

as evidence

use of information regarding health care providers

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided

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

4 SECTION 1. 146.38 (1) (bm) of the statutes is created to read:  
5 146.38 (1) (bm) "Incident report" means a a written or oral statement that  
6 notifies a person, an organization, or an evaluator of an incident, practice, or other  
7 situation that becomes the subject of a review or evaluation of the services of health  
8 care providers or facilities or of charges for such services.

\*\*\*\*NOTE: This definition of "incident report" could cover a statement that a provider makes to a patient regarding the care given, a lab report, or a summary of an office visit. Is it your intent that the patient cannot use the statement, report, or summary against the provider in a civil suit regarding the care. Should the definition cover only notice to the reviewer of the incident?

?

1 SECTION 2. 146.38 (1m) of the statutes is amended to read:

2 146.38 (1m) No person who participates in the review or evaluation of the  
3 services of health care providers or facilities or charges for such services may disclose  
4 any information acquired in connection with such review or evaluation, including an  
5 incident report, except as provided in sub. (3).

\*\*\*NOTE: Do you want to prevent disclosure of the actual incident report,  
information in the report, or both?

History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315.

6 SECTION 3. 146.38 (2) of the statutes is amended to read:

7 146.38 (2) All persons, organizations, or evaluators reviewing or evaluating,  
8 whether from one or more entities, who review or evaluate the services of health care  
9 providers for a purpose described in s. 146.37 (1g) shall keep a record of their  
10 investigations, inquiries, proceedings and conclusions. No such record may be  
11 released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3).  
12 No such record may be used in any civil or criminal action ~~for personal injuries~~  
13 ~~against the a health care provider or facility; however, except for records from other~~  
14 persons, organizations, or evaluators reviewing or evaluating health care providers  
15 or facilities, information, documents or records presented during the review or  
16 evaluation may not be construed as immune from discovery under s. 804.10 (4) or use  
17 in any civil or criminal action merely because they were so presented. Any person  
18 who testifies during or participates in the review or evaluation may testify in any  
19 civil or criminal action as to matters within his or her knowledge, but may not testify  
20 as to information obtained through his or her participation in the review or  
21 evaluation, nor as to any conclusion of such review or evaluation.

\*\*\*NOTE: 1. The bill treats incidents reports in a new subsection because they are  
not records created by a reviewer during a review, and hence do not fit with "such records".

2. Do you want to affirmatively state that records of other evaluators may not be  
used in a suit, instead of just saying that they shall not be construed as immune from

discovery just because they were presented during a review. Perhaps, "No such records may be used in any civil or criminal action against the health care provider or facility or any other health care provider or facility; however, information, documents or records presented during a review or evaluation may not be construed as immune from discovery under s. 804.10 (4) or use in in any civil or criminal action merely because they were so presented."

3. The bill adds "criminal" whenever civil actions are referenced throughout sub. (2), ok?

4. Instead of referencing "a purpose described in s. 146.37 (1g), the bill should specify the purposes. Presumably the purposes are: to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities, and to determine the reasonable charges for such services. Should obtaining information for reporting under ch.153 also be one of the purposes.

History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315.

**SECTION 4.** 146.38 (2m) of the statutes is created to read:

146.38 (2m) An incident report may not be used in any civil or criminal action against a health care provider or facility.

**SECTION 5.** 146.38 (3) (d) of the statutes is amended to read:

146.38 (3) (d) In a report in statistical form that is filed with a regulatory agency, accrediting agency, or person that publicly reports quality and patient safety information. The report may identify any provider or facility to which the statistics relate;

History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315.

**SECTION 6.** 146.38 (3) (e) of the statutes is repealed.

**SECTION 7.** 940.06 (1) of the statutes is amended to read:

940.06 (1) Whoever Except as provided in sub. (3), whoever recklessly causes the death of another human being is guilty of a Class D felony.

History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

**SECTION 8.** 940.06 (2) of the statutes is amended to read:

940.06 (2) Whoever Except as provided in sub. (3), whoever recklessly causes the death of an unborn child is guilty of a Class D felony.

History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

**SECTION 9.** 940.06 (3) of the statutes is created to read:

5. Do you want the first sentence to refer to revisions of "facilities" in addition to providers, for consistency with the rest of the section and s. 146.37?

use 4 HHA note component but delete the characters "PJK" NOTE: "

Smart PJK

insert 29

JMS RR 3-9

1           940.06 (3) A health care provider or employee of a health care provider who  
2 recklessly causes the death of another human being is not guilty of a violation under  
3 sub. (1), and a health care provider or employee of a health care provider who  
4 recklessly causes the death of an unborn child is not guilty of a violation under sub.  
5 (2), if all of the following apply:

      \*\*\*NOTE: Do you want to define "health care provider"?

6           (a) The health care provider or employee was acting within the scope of his or  
7 her practice or employment when he or she caused the death.

8           (b) The health care provider or employee was not intoxicated when he or she  
9 caused the death.

      \*\*\*NOTE: Do you want intoxication to cover drugs as well as alcohol? Look, for  
example, at the definition of "Under the influence of an intoxicant" in s. 939.22 (42). ✓

10          (c) The health care provider or employee did not cause the death under  
11 circumstances that show utter disregard for human life.

12          **SECTION 10.** 940.19 (1) of the statutes is amended to read:

13           940.19 (1) ~~Whoever~~ Except as provided in sub. (7), whoever causes bodily harm  
14 to another by an act done with intent to cause bodily harm to that person or another  
15 without the consent of the person so harmed is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483; 2001 a. 109.

16          **SECTION 11.** 940.19 (2) of the statutes is amended to read:

17           940.19 (2) ~~Whoever~~ Except as provided in sub. (7), whoever causes substantial  
18 bodily harm to another by an act done with intent to cause bodily harm to that person  
19 or another is guilty of a Class I felony.

History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483; 2001 a. 109.

20          **SECTION 12.** 940.19 (6) (intro.) of the statutes is amended to read:

21           940.19 (6) (intro.) ~~Whoever~~ Except as provided in sub. (7), whoever  
22 intentionally causes bodily harm to another by conduct that creates a substantial

1 risk of great bodily harm is guilty of a Class H felony. A rebuttable presumption of  
2 conduct creating a substantial risk of great bodily harm arises:

3 History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483; 2001 a. 109.

3 SECTION 13. 940.19 (7) of the statutes is created to read:

4 940.19 (7) (a) A health care provider or employee of a health care provider who  
5 causes bodily harm to another is not guilty of a violation under sub. (1) or (7), and  
6 a health care provider or causes substantial bodily harm to another is not guilty of  
7 a violation under sub. (2), if the health care provider or employee was acting within  
8 the scope of his or her practice or employment when he or she caused the harm. ✓

9 SECTION 14. 940.23 (2) (a) of the statutes is amended to read:

10 940.23 (2) (a) ~~Whoever~~ Except as provided in par. (c), whoever recklessly causes  
11 great bodily harm to another human being is guilty of a Class F felony.

12 History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

12 SECTION 15. 940.23 (2) (b) of the statutes is amended to read:

13 940.23 (2) (b) ~~Whoever~~ Except as provided in par. (c), whoever recklessly causes  
14 great bodily harm to an unborn child is guilty of a Class F felony.

15 History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

15 SECTION 16. 940.23 (2) (c) of the statutes is created to read:

16 940.23 (2) (c) A health care provider or employee of a health care provider who  
17 recklessly causes great bodily harm to another human being is not guilty of a  
18 violation under par. (a), and a health care provider or employee of a health care  
19 provider who recklessly causes great bodily harm to an unborn child is not guilty of  
20 a violation under par. (b), if all of the following apply:

21 1. The health care provider or employee was acting within the scope of his or  
22 her practice or employment when he or she caused the great bodily harm.

23 2. The health care provider or employee was not intoxicated when he or she  
24 caused the great bodily harm.

or employee of a health care provider who



1 (c) The health care provider or employee did not cause the great bodily harm  
2 under circumstances that show utter disregard for human life.

3 SECTION 17. 940.285 (2) (a) (intro.) of the statutes is amended to read:

4 940.285 (2) (a) (intro.) Any Except as provided in par. (c), any person, other than  
5 a person in charge of or employed in a facility under s. 940.29 or in a facility or  
6 program under s. 940.295 (2), who does any of the following may be penalized under  
7 par. (b):

8 History: 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109; 2005 a. 264, 388.

8 SECTION 18. 940.285 (2) (c) of the statutes is created to read:

9 940.285 (2) (c) A health care provider or employee of a health care provider is  
10 not guilty of a violation under par. (a) for subjecting an individual at risk to abuse  
11 if the health care provider or employee of a health care provider was acting within  
12 the scope of his or her practice or employment when he or she subjected the  
13 individual at risk to abuse and one of the following applies:

- 14 1. The abuse <sup>did</sup> ~~does~~ not cause death <sup>or</sup> great bodily harm.
- 15 2. The abuse <sup>caused</sup> ~~causes~~ death or great bodily harm and all of the following apply:
  - 16 a. The health care provider or employee did not intend to cause death or great
  - 17 bodily harm.
  - 18 b. The health care provider or employee did not cause the death or great bodily
  - 19 harm under circumstances that show utter disregard for human life ⊙
  - 20 c. The health care provider or employee was not intoxicated when he or she
  - 21 subjected the individual at risk to abuse.

22 SECTION 19. 940.295 (3) (a) (intro.) of the statutes is amended to read:



-2- + 3-9:1  
insert

1 evaluation may not be construed as immune from discovery under s. 804.10 (4) or use  
2 in any civil or criminal action merely because they were so presented. Any person  
3 who testifies during or participates in the review or evaluation may testify in any  
4 civil action as to matters within his or her knowledge, but may not testify as to  
5 information obtained through his or her participation in the review or evaluation,  
6 nor as to any conclusion of such review or evaluation.

7 **SECTION 2861p.** 146.38 (3) (d) of the statutes is amended to read:

8 146.38 (3) (d) In a report in statistical form that is filed with a regulatory  
9 agency, accrediting agency, or person that publicly reports quality and patient safety  
10 information. The report may identify any provider or facility to which the statistics  
11 relate;

12 **SECTION 2861q.** 146.38 (3) (e) of the statutes is repealed.”.

13 **2.** Page 1534, line 17: after that line insert:

autonumber  
not  
hard number

14 **SECTION 3778r.** 904.16 of the statutes is created to read:

15 **904.16 Health care reports.** Any reports that a state or federal regulatory  
16 agency requires a health care provider, as defined in s. 146.81 (1), to give or disclose  
17 to that state or federal regulatory agency and other information obtained by the state  
18 or federal regulatory agency regarding a health care provider may not be used as  
19 evidence in a civil or criminal action brought against the health care provider, except  
20 that <sup>such</sup> those reports and information may be used as evidence in any administrative  
21 proceeding conducted by the state regulatory agency.”.

22 (END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3671/?insrn  
RPN :.....

INSERT 3-9:2

1  
2  
3  
4  
5  
6  
7  
8

insert 3-9:  
(from b0730/1)

~~insert 3-9:2~~

\*\*\*NOTE: This bill does not define a "regulatory agency," so this section could be interpreted as prohibiting the use of information received by the department of justice or the department of health and family services in a criminal action when the information received has to do with medical assistance fraud, such as overcharging by a doctor or clinic. Is that your intent, or is this language too broad? \*

SECTION #. 904.17 of the statutes is created to read:

904. **Depositions and answers to interrogatories.** (1) Any deposition or answers to interrogatories obtained in a civil action [brought against a health care provider, as defined in s. 146.81 (1),] are not admissible or subject to discovery or compulsory process in a criminal action [in which the health care provider is the defendant].

(B)

\*\*\*NOTE: The suggested language did not include the bracketed language, but I thought that the bill was related to health care providers. If the bracketed language is not included, the language would apply to all causes of action against all persons, which would be a major change in current court procedures.

end insert 3-9

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3671/?ins  
PJK:.....

INSERT PJK

X  
1 SECTION 1. 655.23 (4) (cm) of the statutes is created to read: X

2 655.23 (4) (cm) Every policy of health care liability insurance under this section  
3 shall provide coverage for a health care provider's or a health care provider's  
4 employee's liability for injury or death caused by an act or omission that constitutes  
5 a crime, as defined in s. 939.12, except for an act or omission that was committed with  
6 criminal intent, as described under s. 939.23.

7 SECTION 2. 655.27 (1) of the statutes is amended to read: X

8 655.27 (1) FUND. There is created an injured patients and families  
9 compensation fund for the purpose of paying that portion of a medical malpractice  
10 claim which is in excess of the limits expressed in s. 655.23 (4) or the maximum  
11 liability limit for which the health care provider is insured, whichever limit is  
12 greater, paying future medical expense payments under s. 655.015, and paying  
13 claims under sub. (1m). The fund shall provide occurrence coverage for claims  
14 against health care providers that have complied with this chapter, and against  
15 employees of those health care providers, and for reasonable and necessary expenses  
16 incurred in payment of claims and fund administrative expenses. The coverage  
17 provided by the fund shall begin July 1, 1975. The fund shall not be liable for  
18 damages for injury or death caused by an intentional crime, as defined under s.  
19 939.12 act or omission that constitutes a crime, as defined in s. 939.12, and that was  
20 committed with criminal intent, as described under s. 939.23, committed by a health

① XXXX NOTE: Do you want to limit this to acts or omissions on or after the effective date?

*Ins PJK contd*

1 care provider or an employee of a health care provider, whether or not the criminal  
2 conduct is the basis for a medical malpractice claim.

**History:** 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65; 2003 a. 111; 2005 a. 36, 410; 2007 a. 20.

(END OF INSERT PJK)

INSERT 7-18 PJK

3 **SECTION 3. Initial applicability.** ✓

4 <sup>#</sup> (1) HEALTH CARE LIABILITY INSURANCE. The treatment of section 655.23 (4) (cm)  
5 of the statutes first applies to health care liability insurance policies issued or  
6 renewed on the first day of the 4th month beginning after the effective date of this  
7 subsection. ✓

(END OF INSERT 7-18)

1

**INS RR 3-9**

\*\*\*NOTE: The instructions regarding liability for crimes under ch. 940 appear to call for adding new elements for crimes if they are committed by a health care provider or employee of a health care provider. The added elements are not relevant to most of the crimes under ch. 940, so this draft adds the elements only where relevant. Please review homicide by negligent operation of vehicle under s. 940.10. If an ambulance driver is a health care provider or an employee of a health care provider, you may wish to add to s. 940.10 elements that are similar to those in the draft under s. 940.285 (2) (c). ✓

2

3

4

5

**Ins 7-18 (after PJK insert) RLR**

6

# CRIMES. The treatment of sections 940.06 (1), (2), and (3), 940.19, (1), (2), (6)

7

(intro.), and (7), 940.23 (2) (a), (b), and (c), and 940.285 (2) (a) (intro.) and (c), and 940.295 (3) (a) (intro.) and (c) of the statutes first applies to acts or omissions committed on the effective date of this subsection.

10

# DISCLOSURE AND RELEASE OF RECORDS OR INFORMATION. The treatment of

11

sections 146.38 (1m), (2), and (3) (d) and (e) of the statutes first applies to disclosures or releases occurring on the effective date of this subsection.

13

# USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and (2m)

14

of the statutes first applies to use of records or information on the effective date of this subsection. received

16

# EVIDENCE. The treatment of sections 904.16 and 940.17 of the statutes first

17

applies to depositions, and answers to interrogatories, and health care reports created, and information obtained, on the effective date of this subsection. obtained provider

18

health care provider

## Kahler, Pam

---

**From:** Ryan, Robin  
**Sent:** Thursday, January 17, 2008 4:59 PM  
**To:** Kahler, Pam; Nelson, Robert P.  
**Subject:** LRB-3671

Pam,

Hosp. association just wants private insurers to have to cover the same liability for injury and death that the comp fund does. They were concerned that the treatment of 655.23 (4) (cm) requires coverage for acts and omissions that take place outside the scope of a provider's employment/practice.

Bob,  
Laura added that for your ch. 904 provision, the protection only needs to apply to records created by the Division of Quality Assurance at DHFS and records recorded by the Dept. of Reg. and Licensing.

I will leave the bill on one of my chairs since I won't be in on Friday. They want this next week. It can be another p-draft.

Also, Huebsch and Erpenbach do know that they are working together.

robin



**Kahler, Pam**

---

**From:** Ryan, Robin  
**Sent:** Thursday, January 17, 2008 1:56 PM  
**To:** Nelson, Robert P.; Kahler, Pam  
**Subject:** Huebsch and LRB-3671/P1

Kevin in Huebsch's office called and said that the hospital association has some questions on the draft we did last week. Laura Leitch is going to call me this afternoon, and I will send her to you if her questions pertain to your pieces. Kevin waives confidentiality for us to talk to hospital association.

**Nelson, Robert P.**

---

**From:** Ryan, Robin  
**Sent:** Thursday, January 17, 2008 4:59 PM  
**To:** Kahler, Pam; Nelson, Robert P.  
**Subject:** LRB-3671

Pam,

Hosp. association just wants private insurers to have to cover the same liability for injury and death that the comp fund does. They were concerned that the treatment of 655.23 (4) (cm) requires coverage for acts and omissions that take place outside the scope of a provider's employment/practice.

Bob,  
Laura added that for your ch. 904 provision, the protection only needs to apply to records created by the Division of Quality Assurance at DHFS and records recorded by the Dept. of Reg. and Licensing.

I will leave the bill on one of my chairs since I won't be in on Friday. They want this next week. It can be another p-draft.

Also, Huebsch and Erpenbach do know that they are working together.

robin

1/18/08

LRB-3671

meeting w/ Laura Leitch &amp; Paul Merline

from /PI

§1 Yes - incident report only notice  
to the renewers

§2 cover both report and info in report  
- though not if info obtained  
from other source

§3. Note 2: just don't want to lose  
protection b/c sent to another entity

3. Keep "criminal" on p. 3, & 7, but not  
on line 9

4. yes - want all purposes - so will be  
exactly same as 146.37

5. - yes, add faculty

§7 renewal date - new provisions

for ch. 904

just protect records  
of Div. of Equal Assurance (DEA)  
& Examining Boards from  
use in criminal cases



LRB-3671  
 Mtg. 11/8/08  
 cont.

Ch. 940 - don't want all the  
 comes in bill

Just exception for negl. within scope  
 of employ practice for  
 940.08 & 940.24

Also use HFS 13 def. of abuse for  
 940.285 & 940.295 - that

def. has exception for negligence  
 (change applies for all actors, not just h.care  
 providers)

Call from Lana 11/21/08  
 Eliminate §§ on patient's comp. fund

Note - exception for 940.08(2) and 940.24(2)  
 overlaps in part w/ exception  
 related to abortion under 939.75(2)(b)2.





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-3671/P1  
RLR/RPN/PJK/cs:rs

Wanted thus.

LRB-3671/P2  
RLR/RPN/PJK/cs:rs  
misrun  
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV

repeal

1 AN ACT *to repeal* 146.38 (3) (e); *to amend* 146.38 (1m), 146.38 (2), 146.38 (3) (d),  
2 655.27 (1), 940.06 (1), 940.06 (2), 940.19 (1), 940.19 (2), 940.19 (6) (intro.),  
3 940.23 (2) (a), 940.23 (2) (b), 940.285 (2) (a) (intro.) and 940.295 (3) (a) (intro.);  
4 and *to create* 146.38 (1) (bm), 146.38 (2m), 655.23 (4) (cm), 904.16, 904.17,  
5 940.06 (3), 940.19 (7), 940.23 (2) (c), 940.285 (2) (c) and 940.295 (3) (c) of the  
6 statutes; **relating to:** disclosure of health care review records; criminal  
7 liability of health care providers and employees of health care providers for  
8 reckless homicide, battery, reckless injury, and abuse; use as evidence of  
9 information regarding health care providers; admissibility of depositions and

and

1 interrogatory answers; and health care liability insurance coverage of criminal  
2 liability of health care providers and their employees.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

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

3 **SECTION 1.** 146.38 (1) (bm) of the statutes is created to read:

4 146.38 (1) (bm) "Incident report" means a a written or oral statement that  
5 notifies a person, an organization, or an evaluator of an incident, practice, or other  
6 situation that becomes the subject of a review or evaluation of the services of health  
7 care providers or facilities or charges for such services.

8 **\*\*\*\*NOTE:** This definition of "incident report" could cover a statement that a  
provider makes to a patient regarding the care given, a lab report, or a summary of an  
office visit. Is it your intent that the patient cannot use the statement, report, or  
summary against the provider in a civil suit regarding the care? Should the definition  
cover only notice to the reviewer of the incident?

9 **SECTION 2.** 146.38 (1m) of the statutes is amended to read:

10 146.38 (1m) No person who participates in the review or evaluation of the  
11 services of health care providers or facilities or charges for such services may disclose  
12 any information acquired in connection with such review or evaluation, including an  
incident report, except as provided in sub. (3).

13 **\*\*\*\*NOTE:** Do you want to prevent disclosure of the actual incident report,  
information in the report, or both?

14 **SECTION 3.** 146.38 (2) of the statutes is amended to read:

15 146.38 (2) All persons, organizations, or evaluators reviewing or evaluating,  
16 whether from one or more entities, who review or evaluate the services of health care  
17 providers for a purpose described in s. 146.37 (1g) shall keep a record of their  
investigations, inquiries, proceedings and conclusions. No such record may be

INS  
2-3

an incident report or

INS  
2-15

the PLAIN

or any other health care provider or facility

1 released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3).  
 2 No such record may be used in any civil or criminal action for personal injuries  
 3 against the a health care provider or facility; however, except for records from other  
 4 persons, organizations, or evaluators reviewing or evaluating health care providers  
 5 or facilities, information, documents or records presented during the review or  
 6 evaluation may not be construed as immune from discovery under s. 804.10 (4) or use  
 7 in any civil or criminal action merely because they were so presented. Any person  
 8 who testifies during or participates in the review or evaluation may testify in any  
 9 civil or criminal action as to matters within his or her knowledge, but may not testify  
 10 as to information obtained through his or her participation in the review or  
 11 evaluation, nor as to any conclusion of such review or evaluation.

JNS  
3-11

\*\*\*\*NOTE: 1. The bill treats incidents reports in a new subsection because they are not records created by a reviewer during a review, and hence do not fit with "such records".

2. Do you want to affirmatively state that records of other evaluators may not be used in a suit, instead of just saying that they shall not be construed as immune from discovery just because they were presented during a review. Perhaps, "No such records may be used in any civil or criminal action against the health care provider or facility or any other health care provider or facility; however, information, documents or records presented during a review or evaluation may not be construed as immune form discovery under s. 804.10 (4) or use in in any civil or criminal action merely because they were so presented."

3. The bill adds "criminal" whenever civil actions are referenced throughout sub. (2), OK?

4. Instead of referencing "a purpose described in s. 146.37 (1g)," the bill should specify the purposes. Presumably the purposes are: to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities, and to determine the reasonable charges for such services. Should obtaining information for reporting under ch. 153 also be one of the purposes?

5. Do you want the first sentence to refer to reviews of "facilities" in addition to providers, for consistency with the rest of the section and s. 146.37?

12 SECTION 4. 146.38 (2m) of the statutes is created to read:  
 13 146.38 (2m) An incident report may not be used in any civil or criminal action  
 14 against a health care provider or facility.

15 SECTION 5. 146.38 (3) (d) of the statutes is amended to read:

1 146.38 (3) (d) In a report in statistical form that is filed with a regulatory  
2 agency, accrediting agency, or person that publicly reports quality and patient safety  
3 information. The report may identify any provider or facility to which the statistics  
4 relate;

5 SECTION 6. 146.38 (3) (e) of the statutes is repealed.

6 SECTION 7. 655.23 (4) (cm) of the statutes is created to read:

7 655.23 (4)(cm) Every policy of health care liability insurance under this section  
8 shall provide coverage <sup>→ as the fund</sup> for a health care provider's or a health care provider's  
9 employee's liability for injury or death caused by an act or omission that constitutes  
10 a crime, as defined in s. 939.12, except for an act or omission that was committed with  
11 criminal intent, as described under s. 939.23. <sup>→, subject to the policy limits</sup>

\*\*\*NOTE: Do you want to limit this to acts or omissions on or after the effective date?

12 SECTION 8. 655.27 (1) of the statutes is amended to read:

13 655.27 (1) FUND. There is created an injured patients and families  
14 compensation fund for the purpose of paying that portion of a medical malpractice  
15 claim which is in excess of the limits expressed in s. 655.23 (4) or the maximum  
16 liability limit for which the health care provider is insured, whichever limit is  
17 greater, paying future medical expense payments under s. 655.015, and paying  
18 claims under sub. (1m). The fund shall provide occurrence coverage for claims  
19 against health care providers that have complied with this chapter, and against  
20 employees of those health care providers, and for reasonable and necessary expenses  
21 incurred in payment of claims and fund administrative expenses. The coverage  
22 provided by the fund shall begin July 1, 1975. The fund shall not be liable for  
23 damages for injury or death caused by an intentional crime, as defined under s.



1 939.12 act or omission that constitutes a crime, as defined in s. 939.12, and that was  
 2 committed with criminal intent, as described under s. 939.23, committed by a health  
 3 care provider or an employee of a health care provider, whether or not the criminal  
 4 conduct is the basis for a medical malpractice claim.

5 SECTION 9. 904.16 of the statutes is created to read:

Insert  
5-6

6 **904.16 Health care reports.** No reports that a state or federal regulatory  
 7 agency requires a health care provider, as defined in s. 146.81 (1), to give or disclose  
 8 to that state or federal regulatory agency and no other information obtained by the  
 9 state or federal regulatory agency regarding a health care provider may be used as  
 10 evidence in a civil or criminal action brought against the health care provider, except  
 11 that such reports and information may be used as evidence in any administrative  
 12 proceeding conducted by the state regulatory agency.

\*\*\*NOTE: This bill does not define a "regulatory agency," so this section could be interpreted as prohibiting the use of information received by the department of justice or the department of health and family services in a criminal action when the information received has to do with medical assistance fraud, such as overcharging by a doctor or clinic. Is that your intent, or is this language too broad?

13 SECTION 10. 904.17 of the statutes is created to read:

14 **904.17 Depositions and answers to interrogatories.** (1) <sup>No</sup> Any deposition  
 15 or answers to interrogatories obtained in a civil action <sup>is</sup> brought against a health care  
 16 provider, as defined in s. 146.81 (1), <sup>is</sup> are not admissible or subject to discovery or  
 17 compulsory process in a criminal action <sup>is</sup> in which the health care provider is the  
 18 defendant.

\*\*\*NOTE: The suggested language did not include the bracketed language, but I thought that the bill was related to health care providers. If the bracketed language is not included, the language would apply to all causes of action against all persons, which would be a major change in current court procedures.

\*\*\*NOTE: The instructions regarding liability for crimes under ch. 940 appear to call for adding new elements for crimes if they are committed by a health care provider or employee of a health care provider. The added elements are not relevant to most of the crimes under ch. 940, so this draft adds the elements only where relevant. Please review

**SECTION 10**

homicide by negligent operation of vehicle under s. 940.10. If an ambulance driver is a health care provider or an employee of a health care provider, you may wish to add to s. 940.10 elements that are similar to those in the draft under s. 940.285 (2) (c).

1       **SECTION 11.** 940.06 (1) of the statutes is amended to read:

2       940.06 (1) ~~Whoever~~ Except as provided in sub. (3), whoever recklessly causes  
3 the death of another human being is guilty of a Class D felony.

4       **SECTION 12.** 940.06 (2) of the statutes is amended to read:

5       940.06 (2) ~~Whoever~~ Except as provided in sub. (3), whoever recklessly causes  
6 the death of an unborn child is guilty of a Class D felony.

7       **SECTION 13.** 940.06 (3) of the statutes is created to read:

8       940.06 (3) A health care provider or employee of a health care provider who  
9 recklessly causes the death of another human being is not guilty of a violation under  
10 sub. (1), and a health care provider or employee of a health care provider who  
11 recklessly causes the death of an unborn child is not guilty of a violation under sub.  
12 (2), if all of the following apply:

      \*\*\*NOTE: Do you want to define "health care provider"?

13       (a) The health care provider or employee was acting within the scope of his or  
14 her practice or employment when he or she caused the death.

15       (b) The health care provider or employee was not intoxicated when he or she  
16 caused the death.

      \*\*\*NOTE: Do you want intoxication to cover drugs as well as alcohol? Look, for  
example, at the definition of "Under the influence of an intoxicant" in s. 939.22 (42).

17       (c) The health care provider or employee did not cause the death under  
18 circumstances that show utter disregard for human life.

19       **SECTION 14.** 940.19 (1) of the statutes is amended to read:

1           940.19 (1) ~~Whoever~~ Except as provided in sub. (7), whoever causes bodily harm  
2 to another by an act done with intent to cause bodily harm to that person or another  
3 without the consent of the person so harmed is guilty of a Class A misdemeanor.

4           **SECTION 15.** 940.19 (2) of the statutes is amended to read:

5           940.19 (2) ~~Whoever~~ Except as provided in sub. (7), whoever causes substantial  
6 bodily harm to another by an act done with intent to cause bodily harm to that person  
7 or another is guilty of a Class I felony.

8           **SECTION 16.** 940.19 (6) (intro.) of the statutes is amended to read:

9           940.19 (6) (intro.) ~~Whoever~~ Except as provided in sub. (7), whoever  
10 intentionally causes bodily harm to another by conduct that creates a substantial  
11 risk of great bodily harm is guilty of a Class H felony. A rebuttable presumption of  
12 conduct creating a substantial risk of great bodily harm arises:

13           **SECTION 17.** 940.19 (7) of the statutes is created to read:

14           940.19 (7) (a) A health care provider or employee of a health care provider who  
15 causes bodily harm to another is not guilty of a violation under sub. (1) or (7), and  
16 a health care provider or employee of a health care provider who causes substantial  
17 bodily harm to another is not guilty of a violation under sub. (2), if the health care  
18 provider or employee was acting within the scope of his or her practice or employment  
19 when he or she caused the harm.

20           **SECTION 18.** 940.23 (2) (a) of the statutes is amended to read:

21           940.23 (2) (a) ~~Whoever~~ Except as provided in par. (c), whoever recklessly causes  
22 great bodily harm to another human being is guilty of a Class F felony.

23           **SECTION 19.** 940.23 (2) (b) of the statutes is amended to read:

24           940.23 (2) (b) ~~Whoever~~ Except as provided in par. (c), whoever recklessly causes  
25 great bodily harm to an unborn child is guilty of a Class F felony.

**SECTION 20**

1           **SECTION 20.** 940.23 (2) (c) of the statutes is created to read:

2           940.23 (2) (c) A health care provider or employee of a health care provider who  
3 recklessly causes great bodily harm to another human being is not guilty of a  
4 violation under par. (a), and a health care provider or employee of a health care  
5 provider who recklessly causes great bodily harm to an unborn child is not guilty of  
6 a violation under par. (b), if all of the following apply:

7           1. The health care provider or employee was acting within the scope of his or  
8 her practice or employment when he or she caused the great bodily harm.

9           2. The health care provider or employee was not intoxicated when he or she  
10 caused the great bodily harm.

11           (c) The health care provider or employee did not cause the great bodily harm  
12 under circumstances that show utter disregard for human life.

13           **SECTION 21.** 940.285 (2) (a) (intro.) of the statutes is amended to read:

14           940.285 (2) (a) (intro.) Any Except as provided in par. (c), any person, other than  
15 a person in charge of or employed in a facility under s. 940.29 or in a facility or  
16 program under s. 940.295 (2), who does any of the following may be penalized under  
17 par. (b):

18           **SECTION 22.** 940.285 (2) (c) of the statutes is created to read:

19           940.285 (2) (c) A health care provider or employee of a health care provider is  
20 not guilty of a violation under par. (a) for subjecting an individual at risk to abuse  
21 if the health care provider or employee of a health care provider was acting within  
22 the scope of his or her practice or employment when he or she subjected the  
23 individual at risk to abuse and one of the following applies:

24           1. The abuse did not cause death or great bodily harm.

25           2. The abuse caused death or great bodily harm and all of the following apply:

1 a. The health care provider or employee did not intend to cause death or great  
2 bodily harm.

3 b. The health care provider or employee did not cause the death or great bodily  
4 harm under circumstances that show utter disregard for human life.

5 c. The health care provider or employee was not intoxicated when he or she  
6 subjected the individual at risk to abuse.

7 **SECTION 23.** 940.295 (3) (a) (intro.) of the statutes is amended to read:

8 940.295 (3) (a) (intro.) Any Except as provided in par. (c), any person in charge  
9 of or employed in any facility or program under sub. (2) who does any of the following,  
10 or who knowingly permits another person to do so, may be penalized under par. (b):

11 **SECTION 24.** 940.295 (3) (c) of the statutes is created to read:

12 940.295 (3) (c) A health care provider or employee of a health care provider is  
13 not guilty of a violation under par. (a) for abusing a patient or resident if the health  
14 care provider or employee of a health care provider was acting within the scope of his  
15 or her practice or employment when he or she abused the patient or resident and one  
16 of the following applies:

17 1. The abuse did not cause death or great bodily harm.

18 2. The abuse caused death or great bodily harm and all of the following apply:

19 a. The health care provider or employee did not intend to cause death or great  
20 bodily harm.

21 b. The health care provider or employee did not cause the death or great bodily  
22 harm under circumstances that show utter disregard for human life.

23 c. The health care provider or employee was not intoxicated when he or she  
24 abused the patient or resident.

25 **SECTION 25. Initial applicability.**

INS 9-24

1 (1) HEALTH CARE LIABILITY INSURANCE. The treatment of section 655.23 (4) (cm)  
 2 of the statutes first applies to health care liability insurance policies issued or  
 3 renewed on the first day of the 4th month beginning after the effective date of this  
 4 subsection.

5 (2) CRIMES. The treatment of sections 940.06 (1), (2), and (3), 940.19 (1), (2), (6)  
 6 (intro.), and (7), 940.23 (2) (a), (b), and (c), 940.285 (2) (a) (intro.) and (c), and 940.295  
 7 (3) (a) (intro.) and (c) of the statutes first applies to acts or omissions committed on  
 8 the effective date of this subsection.

9 (3) DISCLOSURE AND RELEASE OF RECORDS OR INFORMATION. The treatment of  
 10 section 146.38 (1m), (2), and (3) (d) and (e) of the statutes first applies to disclosures  
 11 or releases occurring on the effective date of this subsection.

12 (4) USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and  
 13 (2m) of the statutes first applies to use of records or information on the effective date  
 14 of this subsection.

15 (5) EVIDENCE. The treatment of sections 904.16 and 940.17 of the statutes first  
 16 applies to depositions and answers to interrogatories obtained, health care provider  
 17 reports received, and health care provider information obtained, on the effective date  
 18 of this subsection.

statements of records of interviews with employees of a

(END)

940.08(1), (2), and (3), 940.24 (1), (2), and (3), 940.285  
 (2)(a) 3, and (b) 1, 2, 4, and 5, and 940.295 (1)(m) and (3)(a) 3.

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3671/P2rins  
RLR:.....

STV

1           **Ins 2-3:**

2           146.38 (1) (bm) "Incident report" means a written or oral statement that is  
3           made to notify a person, organization, or an evaluator who reviews or evaluates the  
4           services of health care providers or facilities or charges for such services of an  
5           incident, practice, or other situation that becomes the subject of such a review or  
6           evaluation. ✓

7  
8           **Ins 2-15:**

9           no 9 or facilities in order to help improve the quality of health care, to avoid improper  
10          utilization of the services of health care providers or facilities, to determine the  
11          reasonable charges for such services, or to obtain health care information under ch.  
12          153 ✓

13          History: 1975 c. 187; 1979 c. 221; 1981 c. 323; 1983 a. 27; 1985 a. 29 s. 3202 (27); 1985 a. 340; 1987 a. 27, 399; 1989 a. 102; 1997 a. 175; 1999 a. 56.

14  
15          **Ins 3-11:**

16          \*\*\*\*NOTE: Adding Does it really make sense to add "obtaining health care information  
17          under ch. 153" as a purpose? This section, as amended, says a reviewer or evaluator  
18          cannot disclose records of a review done for the purpose of obtaining health care  
19          information under ch. 153. Doesn't the reviewer or evaluator have to disclose those  
                records in order to comply with ch. 153?

in this subsection appears to create a conflict

sub

18          **Ins 9-24**

19          **SECTION 1.** 940.08 (1) of the statutes is amended to read:

1           940.08 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
2 of another human being by the negligent operation or handling of a dangerous  
3 weapon, explosives or fire is guilty of a Class G felony.

4 History: 1977 c. 173; 1985 a. 293; 1987 a. 399; 1997 a. 295; 2001 a. 109.

**SECTION 2.** 940.08 (2) of the statutes is amended to read:

5           940.08 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes the death  
6 of an unborn child by the negligent operation or handling of a dangerous weapon,  
7 explosives or fire is guilty of a Class G felony.

8 History: 1977 c. 173; 1985 a. 293; 1987 a. 399; 1997 a. 295; 2001 a. 109.

**SECTION 3.** 940.08 (3) of the statutes is created to read:

9           940.08 (3) Subsections (1) and (2) do not apply to a health care provider acting  
10 within the scope of his or her practice or employment. ✓

11           **SECTION 4.** 940.24 (1) of the statutes is amended to read:

12           940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
13 to another by the negligent operation or handling of a dangerous weapon, explosives  
14 or fire is guilty of a Class I felony.

15 History: 1977 c. 173; 1987 a. 399; 1997 a. 295; 2001 a. 109.

**SECTION 5.** 940.24 (2) of the statutes is amended to read:

16           940.24 (2) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm  
17 to an unborn child by the negligent operation or handling of a dangerous weapon,  
18 explosives or fire is guilty of a Class I felony.

19 History: 1977 c. 173; 1987 a. 399; 1997 a. 295; 2001 a. 109.

**SECTION 6.** 940.24 (3) of the statutes is created to read:

20           940.24 (3) Subsections (1) and (2) do not apply to a health care provider acting  
21 within the scope of his or her practice or employment.

22           **SECTION 7.** 940.285 (2) (a) 3. of the statutes is repealed. ✕

23           **SECTION 8.** 940.285 (2) (b) 1g. of the statutes is amended to read:



1           940.285 (2) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances  
2 that cause death is guilty of a Class C felony. ~~Any person violating par. (a) 3. under~~  
3 ~~circumstances that cause death is guilty of a Class D felony.~~

4 **History:** 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109; 2005 a. 264, 388.

**SECTION 9.** 940.285 (2) (b) 1r. of the statutes is amended to read:

5           940.285 (2) (b) 1r. Any person violating par. (a) 1. under circumstances that are  
6 likely to cause great bodily harm is guilty of a Class G felony. Any person violating  
7 par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause great bodily harm is  
8 guilty of a Class I felony.

9 **History:** 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109; 2005 a. 264, 388.

**SECTION 10.** 940.285 (2) (b) 4. of the statutes is amended to read:

10           940.285 (2) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that  
11 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

12 **History:** 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109; 2005 a. 264, 388.

**SECTION 11.** 940.285 (2) (b) 5. of the statutes is amended to read:

13           940.285 (2) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances  
14 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

15 **History:** 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109; 2005 a. 264, 388.

**SECTION 12.** 940.295 (1) (km) of the statutes is repealed. ✕

16 **SECTION 13.** 940.295 (3) (a) 3. of the statutes is amended to read:

17           940.295 (3) (a) 3. ~~Abuses, with negligence, or neglects~~ Neglects a patient or a ✕  
18 resident.

**History:** 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388.

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3671/P2insrn  
RPN:cs:rs

Insert 5-6

(B)  
(1)  
no 4

1 In this section:

2 (a) ~~1~~ "Health care provider" has the meaning given in s. 146.81 (1). ✓

3 (b) ~~2~~ "Regulatory agency" means the department of regulation and licensing or  
4 the division within the department of health and family services that regulates  
5 *conducts quality assurance activities related to*  
6 health care providers.

7 (2) ~~(b)~~ Except as provided in par. (c), <sup>sub. (3)</sup> the following may not be used as evidence in  
8 a civil or criminal action brought against a health care provider.

9 (a) ~~1~~ Reports that a regulatory agency requires a health care provider to give or  
10 disclose to that regulatory agency.

11 (b) ~~2~~ Statements of ~~employees~~ or records of interviews with employees of a health  
12 care provider related to the regulation of the health care provider obtained by a  
13 regulatory agency.

14 (3) ~~(b)~~ This section does not prohibit the use of the reports, statements, and records  
15 described in par. (b) in any administrative proceeding conducted by a regulatory  
agency. This section does not apply to reports protected under s. 146.997.

Sub. (2)

**Ryan, Robin**

---

**From:** Leitch, Laura [LLeitch@wha.org]  
**Sent:** Monday, January 28, 2008 2:57 PM  
**To:** Ryan, Robin  
**Subject:** QIA /P2

Robin,

Here are some comments on the most recent QIA draft.

Thank you!

Laura

- RR ✓ • Drafter's note, page 3: Agree that "obtaining health care information under ch. 153" should not be included.
- RR • Section 5: We recommend s. 146.38(3)(d) read as follows (deleting "accrediting agency" and clarifying the other provisions): "In a report in statistical form that is mandated by and filed with a regulatory agency, ~~accrediting agency~~, or that has been publicly reported by a person that publicly reports quality and patient safety information voluntarily provided by the health care provider."
- Section 8: We ask that this section be deleted.
- RR • Section 21: Because some people could argue that "neglect" as defined in s. 46.90 could include almost any act of medical negligence (" 'neglect' means the failure of a caregiver, as evidenced by an act, omission or course of conduct to endeavor to secure or maintain adequate care ... for an individual ... including physical or mental health care ...") we ask that the definition of "neglect" be amended be consistent with the definition of "neglect" in HFS 13.
- Section 22. Initial applicability. The reference to s. 904.17 and to depositions and answers should be deleted to be consistent with deleting Section 8.

LRRB - 3671

**Ryan, Robin**

---

**From:** Leitch, Laura [LLeitch@wha.org]  
**Sent:** Tuesday, January 29, 2008 3:06 PM  
**To:** Ryan, Robin  
**Subject:** RE: public reports

Robin,

You're right, people have been struggling with (d) for years because of the "shall" and that it doesn't include a "to" like the other provisions. What if (d) in (3) said "to federal and state agencies if required by law." And then a new "may" section for statistical reports would address many of the issues for public reporting and for "best practices."

Thanks!  
Laura

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

**From:** Ryan, Robin [mailto:Robin.Ryan@legis.wisconsin.gov]  
**Sent:** Tuesday, January 29, 2008 2:36 PM  
**To:** Leitch, Laura  
**Subject:** public reports

Hi Laura,

I have a couple of questions on the changes to section 5 of LRB-3671/P2 concerning public reporting.

Here is the language you provided:

In a report in statistical form ...that has been publicly reported by a person that publicly reports quality and patient safety information voluntarily provided by the health care provider.

The language does not specify that for a particular report the information must be voluntarily provided by a health care provider. Instead it just requires that the person who issues the report does issue at least some reports that include voluntarily provided information. Is this what you intend?

Are these the key elements you want?

1. The report has been released to the public
2. The report only contains information that is voluntarily provided by health care providers

If so, how about:

"In a report in statistical form that has been made public [by a person who publicly reports quality and patient safety information] and that contains only information that was voluntarily provided by health care providers." What does the bracketed portion accomplish? Is the purpose of the bracketed portion to make sure that the report is released by someone who is authorized to do so?

Also, all of the items under 146.38 (3) describe situations in which information must be disclosed and records of reviews must be released. As such the portion of par. (d) dealing with public reporting seems misplaced, because I imagine that you only want to say that these reports may be released, not that they have to be. Is this correct?

Robin

## Ryan, Robin

---

**From:** Ryan, Robin  
**Sent:** Tuesday, January 29, 2008 2:36 PM  
**To:** 'lleitch@wha.org'  
**Subject:** public reports

Hi Laura,

I have a couple of questions on the changes to section 5 of LRB-3671/P2 concerning public reporting.

Here is the language you provided:

In a report in statistical form ...that has been publicly reported by a person that publicly reports quality and patient safety information voluntarily provided by the health care provider.

The language does not specify that for a particular report the information must be voluntarily provided by a health care provider. Instead it just requires that the person who issues the report does issue at least some reports that include voluntarily provided information. Is this what you intend?

Are these the key elements you want?

1. The report has been released to the public
2. The report only contains information that is voluntarily provided by health care providers

If so, how about:

"In a report in statistical form that has been made public [by a person who publicly reports quality and patient safety information] and that contains only information that was voluntarily provided by health care providers." What does the bracketed portion accomplish? Is the purpose of the bracketed portion to make sure that the report is released by someone who is authorized to do so?

Also, all of the items under 146.38 (3) describe situations in which information must be disclosed and records of reviews must be released. As such the portion of par. (d) dealing with public reporting seems misplaced, because I imagine that you only want to say that these reports may be released, not that they have to be. Is this correct?

Robin

LRB-3671

**Ryan, Robin**

---

**From:** Leitch, Laura [LLeitch@wha.org]  
**Sent:** Tuesday, January 29, 2008 3:32 PM  
**To:** Ryan, Robin  
**Subject:** RE: criminal neglect

Robin,

Hmm, I see your point.

A prosecutor could argue that a nurse "recklessly neglected" her patient, but we would want a prosecutor to prove the higher standard and those elements.

I think people have been focused on the exception to the definition of "neglect" in HFS 13:

(b) "Neglect" does not include an act or acts of mere inefficiency, unsatisfactory conduct or failure in good performance as the result of inability, incapacity, inadvertency or ordinary negligence in isolated instances, or good faith errors in judgment or discretion.

But I'm not sure how that squares with the elements you outlined below, so I think you're right that deleting "neglect" makes sense. I was just chatting with Burt Wagner about this one and he agrees that it does make sense that .285 and .295 match and that "neglect" in (3)(a)3. should be deleted.

Thank you!

Laura

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

**From:** Ryan, Robin [mailto:Robin.Ryan@legis.wisconsin.gov]  
**Sent:** Tuesday, January 29, 2008 12:51 PM  
**To:** Leitch, Laura  
**Subject:** criminal neglect

Laura,

I don't think that using the definition of "neglect" from HFS 13 gets you where you want to go because it incorporates an element of "carelessness or negligence".

Why not just eliminate neglect from s. 940.295? Section 940.285 does not have a penalty for neglect, so eliminating neglect in 940.295 would make it more similar to s. 940.285.

Here are the elements of the definition of "neglect" in HFS 13:  
the perpetrator commits an intentional omission or course of conduct  
the omission/course of conduct is contrary to the agency's policies and procedures  
the omission/course of conduct is not part of the client's treatment plan (is this element even applicable, i.e. do hospitals create treatment plans?)

through substantial carelessness or negligence the perpetrator causes a specified harm

Under this definition of neglect, the nurses actions are neglect, right?

Robin