



2007 ASSEMBLY BILL 863

February 21, 2008 – Introduced by Representatives NEWCOMER, MOULTON, VUKMIR, SOLETSKI, VRUWINK, ALBERS, GUNDERSON, HAHN, LEMAHIEU, M. WILLIAMS, MONTGOMERY, MUSSER, NYGREN, A. OTT, STRACHOTA, SUDER and VOS, cosponsored by Senators COWLES, DARLING, KANAVAS, KAPANKE, KEDZIE and OLSEN. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT** *to repeal* 146.38 (3) (d), 146.38 (3) (e), 940.285 (2) (a) 3., 940.295 (1) (km)
2 and 940.295 (3) (a) 3.; *to amend* 146.38 (1m), 146.38 (2), 940.08 (1), 940.24 (1),
3 940.285 (2) (b) 1g., 940.285 (2) (b) 1r., 940.285 (2) (b) 4., 940.285 (2) (b) 5.,
4 940.295 (3) (b) 1g., 940.295 (3) (b) 3., 940.295 (3) (b) 4. and 940.295 (3) (b) 5.; and
5 **to create** 146.38 (1) (bm), 146.38 (2m), 146.38 (3m), 904.16, 940.08 (3) and
6 940.24 (3) of the statutes; **relating to:** confidentiality of health care services
7 reviews; use as evidence of information regarding health care providers;
8 homicide or injury by negligent handling of a dangerous weapon, explosives, or
9 fire; criminal abuse of individuals at risk; and criminal abuse and neglect of
10 patients and residents.

Analysis by the Legislative Reference Bureau

Confidentiality of health care services reviews

Current law provides that a person who participates in a review or evaluation of services provided by a health care provider or facility, or of charges for such services, (a review) generally may not disclose information acquired in connection with the review. Further, the records that a reviewer or evaluator creates of

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investigations, inquiries, proceedings, and conclusions conducted for the review (review records) generally may not be released. Under current law, review records may not be used in a civil action for personal injuries against the health care provider or health care facility.

Current law contains several exceptions to confidentiality of review records and information acquired in connection with a review, which require disclosure of such records and information under the following circumstances: to a health care provider or facility whose services are reviewed, or to any person with the consent of that provider or facility; to the person who requested the review, for use only for the purpose of improving the quality of health care, avoiding improper utilization of health care services, and determining reasonable charges for services; to a court upon issuance of a subpoena in a criminal action; to an examining or licensing board or agency, when the organization or evaluator conducting the review determines that such action is advisable; and in a report in statistical format.

This bill makes the following changes to confidentiality provisions for health care service reviews:

1. The bill repeals the exception to confidentiality that requires release of review records and information acquired in connection with a review upon issuance of a subpoena in a criminal action.

2. The bill provides that review records may not be used in any civil or criminal action against any health care provider or health care facility.

3. The bill provides that a person who participates in a review may not disclose any incident report that is made to notify a reviewer of an incident, practice, or other situation that becomes the subject of a review. Further the bill prohibits using such an incident report in any civil or criminal action against a health care provider or facility.

4. The bill specifies that the confidentiality provisions related to review records apply regardless of whether the review is conducted by representatives from one or more organizations.

5. The bill provides that the confidentiality provisions for review records apply only if the review for which the records were created was conducted for one of the following purposes: to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities, or to determine reasonable charges for such services.

6. Instead of requiring that review records and information acquired in connection with a review be disclosed in statistical form, the bill allows that such information and review records may be disclosed in statistical form.

Use of health care reports or employee statements

This bill prohibits the use as evidence in a civil or criminal action of any health care provider reports that are required by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews. The bill also prohibits the use as evidence in a civil or criminal action of any statements of, or records of interviews with, employees of a health care provider related to the regulation of a health care provider and obtained by the department of regulation and licensing or by the

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division within the department of health and family services that conducts health care provider quality assurance reviews. The bill makes an exception from these prohibitions for the use of the records, statements, or interviews in an administrative proceeding conducted by the department of regulation and licensing or by the division within the department of health and family services that conducts health care provider quality assurance reviews.

Crimes

Under current law, a person who causes the death of, or bodily harm to, an individual by negligent operation or handling of a dangerous weapon, explosives, or fire is guilty of a crime. A dangerous weapon includes any device or instrumentality, which in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm. The bill provides that a health care provider is not guilty of the crimes of causing the death of, or bodily harm to, an individual by negligent operation or handling of a dangerous weapon, explosives, or fire, if the health care provider is acting within the scope of his or her practice or employment.

Also under current law, a person who intentionally, recklessly, or negligently abuses an individual who is age 60 or older, or an individual who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs, and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation (individual at risk), is guilty of a crime. This bill eliminates criminal liability for negligent abuse of an individual at risk.

Finally, under current law, a person who is in charge of or employed by a residential care facility, an inpatient health care facility, a treatment facility, or a home health agency, who intentionally, recklessly, or negligently abuses or neglects a patient or resident is guilty of a crime. This bill eliminates criminal liability for negligent abuse or neglect of a patient or resident.

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

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

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

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

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

6 146.38 (2) All persons, organizations, or evaluators reviewing or evaluating,
7 whether from one or more entities, who review or evaluate the services of health care
8 providers or facilities in order to help improve the quality of health care, to avoid
9 improper utilization of the services of health care providers or facilities, or to
10 determine the reasonable charges for such services shall keep a record of their
11 investigations, inquiries, proceedings and conclusions. No such record may be
12 released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3)
13 or (3m). No such record may be used in any civil or criminal action ~~for personal~~
14 ~~injuries~~ against the health care provider or facility or any other health care provider
15 or facility; however, information, documents or records presented during the review
16 or evaluation may not be construed as immune from discovery under s. 804.10 (4) or
17 use 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 action as to matters within his or her knowledge, but may not testify as to
20 information obtained through his or her participation in the review or evaluation,
21 nor as to any conclusion of such review or evaluation.

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

23 146.38 (2m) An incident report may not be used in any civil or criminal action
24 against a health care provider or facility.

25 **SECTION 5.** 146.38 (3) (d) of the statutes is repealed.

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

2 **SECTION 7.** 146.38 (3m) of the statutes is created to read:

3 146.38 **(3m)** Information acquired in connection with the review and
4 evaluation of health care services may be disclosed, and records of such review and
5 evaluation may be released, in statistical form with the consent of the person
6 directing the review or evaluation. Information disclosed or records released under
7 this subsection shall not reveal the identity of any patient unless the patient has
8 granted permission to disclose his or her identity.

9 **SECTION 8.** 904.16 of the statutes is created to read:

10 **904.16 Health care reports. (1)** In this section:

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

12 (b) "Regulatory agency" means the department of regulation and licensing or
13 the division within the department of health and family services that conducts
14 quality assurance activities related to health care providers.

15 **(2)** Except as provided in sub. (3), the following may not be used as evidence
16 in a civil or criminal action brought against a health care provider.

17 (a) Reports that a regulatory agency requires a health care provider to give or
18 disclose to that regulatory agency.

19 (b) Statements of, or records of interviews with, employees of a health care
20 provider related to the regulation of the health care provider obtained by a regulatory
21 agency.

22 **(3)** This section does not prohibit the use of the reports, statements, and records
23 described in sub. (2) in any administrative proceeding conducted by a regulatory
24 agency. This section does not apply to reports protected under s. 146.997.

25 **SECTION 9.** 940.08 (1) of the statutes is amended to read:

ASSEMBLY BILL 863**SECTION 9**

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 **SECTION 10.** 940.08 (3) of the statutes is created to read:

5 940.08 (3) Subsection (1) does not apply to a health care provider acting within
6 the scope of his or her practice or employment.

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

8 940.24 (1) ~~Whoever~~ Except as provided in sub. (3), whoever causes bodily harm
9 to another by the negligent operation or handling of a dangerous weapon, explosives
10 or fire is guilty of a Class I felony.

11 **SECTION 12.** 940.24 (3) of the statutes is created to read:

12 940.24 (3) Subsection (1) does not apply to a health care provider acting within
13 the scope of his or her practice or employment.

14 **SECTION 13.** 940.285 (2) (a) 3. of the statutes is repealed.

15 **SECTION 14.** 940.285 (2) (b) 1g. of the statutes is amended to read:

16 940.285 (2) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances
17 that cause death is guilty of a Class C felony. ~~Any person violating par. (a) 3. under~~
18 ~~circumstances that cause death is guilty of a Class D felony.~~

19 **SECTION 15.** 940.285 (2) (b) 1r. of the statutes is amended to read:

20 940.285 (2) (b) 1r. Any person violating par. (a) 1. under circumstances that are
21 likely to cause great bodily harm is guilty of a Class G felony. Any person violating
22 par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause great bodily harm is
23 guilty of a Class I felony.

24 **SECTION 16.** 940.285 (2) (b) 4. of the statutes is amended to read:

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1 940.285 (2) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that
2 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

3 **SECTION 17.** 940.285 (2) (b) 5. of the statutes is amended to read:

4 940.285 (2) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances
5 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

6 **SECTION 18.** 940.295 (1) (km) of the statutes is repealed.

7 **SECTION 19.** 940.295 (3) (a) 3. of the statutes is repealed.

8 **SECTION 20.** 940.295 (3) (b) 1g. of the statutes is amended to read:

9 940.295 (3) (b) 1g. Any person violating par. (a) 1. or 2. under circumstances
10 that cause death to an individual at risk is guilty of a Class C felony. ~~Any person~~
11 ~~violating par. (a) 3. under circumstances that cause death to an individual at risk is~~
12 ~~guilty of a Class D felony.~~

13 **SECTION 21.** 940.295 (3) (b) 3. of the statutes is amended to read:

14 940.295 (3) (b) 3. Except as provided in subd. 1m., any person violating par. (a)
15 2. ~~or 3.~~ under circumstances that cause great bodily harm is guilty of a Class H felony.
16 Any person violating par. (a) 2. ~~or 3.~~ under circumstances that are likely to cause
17 great bodily harm is guilty of a Class I felony.

18 **SECTION 22.** 940.295 (3) (b) 4. of the statutes is amended to read:

19 940.295 (3) (b) 4. Any person violating par. (a) 2. ~~or 3.~~ under circumstances that
20 cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

21 **SECTION 23.** 940.295 (3) (b) 5. of the statutes is amended to read:

22 940.295 (3) (b) 5. Any person violating par. (a) 1., or 2. ~~or 3.~~ under circumstances
23 not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

24 **SECTION 24. Initial applicability.**

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1 (1) CRIMES. The treatment of sections 940.08 (1) and (3), 940.24 (1) and (3),
2 940.285 (2) (a) 3. and (b) 1g., 1r., 4., and 5., and 940.295 (1) (km) and (3) (a) 3. and
3 (b) 1g., 3., 4., and 5. of the statutes first applies to acts or omissions committed on the
4 effective date of this subsection.

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

8 (3) USE OF RECORDS OR INFORMATION. The treatment of section 146.38 (2) and
9 (2m) of the statutes first applies to use of records or information on the effective date
10 of this subsection.

11 (4) EVIDENCE. The treatment of section 904.16 of the statutes first applies to
12 health care provider reports received, and statements of, or records of interviews
13 with, employees of a health care provider obtained, on the effective date of this
14 subsection.

15 (END)