

State of Wisconsin



2009 Senate Bill 80

Date of enactment: **December 1, 2009**
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2009 WISCONSIN ACT 93

AN ACT to renumber and amend 146.89 (1) (r); and to amend 146.89 (4) and 895.46 (1) (a) of the statutes; relating to: the Volunteer Health Care Provider Program.

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

SECTION 1. 146.89 (1) (r) of the statutes is renumbered 146.89 (1) (r) (intro.) and amended to read:

146.89 (1) (r) (intro.) “Volunteer health care provider” means an individual who is licensed one of the following and who receives no income from the practice of his or her health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub. (3) or for the school board or governing body specified under sub. (3r):

1. Licensed as a physician under ch. 448, a dentist or dental hygienist under ch. 447, a registered nurse, practical nurse, or nurse-midwife under ch. 441, an optometrist under ch. 449, or a physician assistant under ch. 448, or a pharmacist under ch. 450, who is certified a chiropractor under ch. 446, a podiatrist under subch. IV of ch. 448, or a physical therapist under subch. III of ch. 448.

2. Certified as a dietitian under subch. V of ch. 448, or who is a,

3. A nurse practitioner, as defined in s. 255.06 (1) (d), or,

4. An individual who performs functions described for pharmacy technicians in rules promulgated by the pharmacy examining board, and who receives no income from the practice of that health care profession or who

receives no income from the practice of that health care profession when providing services at the nonprofit agency or school specified under sub. (3).

SECTION 2. 146.89 (4) of the statutes is amended to read:

146.89 (4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46. This state agency status applies regardless of whether the volunteer health care provider has coverage under a policy of health care liability insurance that would extend to services provided by the volunteer health care provider under this section; and the limitations under s. 895.46 (1) (a) on the payment by the state of damages and costs in excess of any insurance coverage applicable to the agent and on the duty of a governmental unit to provide or pay for legal representation do not apply. Any policy of health care liability insurance providing coverage for services of a health care provider may exclude coverage for services provided by the health care provider under this section.

SECTION 3. 895.46 (1) (a) of the statutes is amended to read:

895.46 (1) (a) If the defendant in any action or special proceeding is a public officer or employee and is proceeded against in an official capacity or is proceeded

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

against as an individual because of acts committed while carrying out duties as an officer or employee and the jury or the court finds that the defendant was acting within the scope of employment, the judgment as to damages and costs entered against the officer or employee, except as provided in s. 146.89 (4), in excess of any insurance applicable to the officer or employee shall be paid by the state or political subdivision of which the defendant is an officer or employee. Agents of any department of the state shall be covered by this section while acting within the scope of their agency. Regardless of the results of the litigation the governmental unit, if it does not provide legal counsel to the defendant officer or employee, shall pay reasonable attorney fees and costs of defending the action, unless it is found by the court or jury that the defendant officer or employee did not act within the scope of employment. The Except as provided in s. 146.89 (4), the duty of a governmental unit to provide or pay for the provision of legal representation does not apply to the extent that applicable insurance provides that representation. If the employing state agency or the attorney general denies that the state officer, employee or agent was doing any act growing out of or committed in

the course of the discharge of his or her duties, the attorney general may appear on behalf of the state to contest that issue without waiving the state's sovereign immunity to suit. Failure by the officer or employee to give notice to his or her department head of an action or special proceeding commenced against the defendant officer or employee as soon as reasonably possible is a bar to recovery by the officer or employee from the state or political subdivision of reasonable attorney fees and costs of defending the action. The attorney fees and expenses shall not be recoverable if the state or political subdivision offers the officer or employee legal counsel and the offer is refused by the defendant officer or employee. If the officer, employee or agent of the state refuses to cooperate in the defense of the litigation, the officer, employee or agent is not eligible for any indemnification or for the provision of legal counsel by the governmental unit under this section.

SECTION 4. Initial applicability.

(1) HEALTH CARE LIABILITY INSURANCE. This act first applies to health care liability insurance policies issued or renewed on the effective date of this subsection.
