CHAPTER 146

MISCELLANEOUS HEALTH PROVISIONS

146.001 Definitions.
146.0255 Testing infants for controlled substances or controlled substance analogs.
146.0257 Evaluation of infants for fetal alcohol spectrum disorders.
146.085 Pay toilets prohibited.
146.15 Information.
146.16 Expenses.
146.17 Limitations.
146.22 Flushing devices for urinals.
146.25 Required implanting of microchip prohibited.
146.29 Access to toilet facility in retail establishment.
146.31 Blood or tissue transfer services.
146.33 Blood donors.
146.34 Donation of bone marrow by a minor.
146.343 Donation of newborn umbilical cord blood.
146.345 Sale of human organs prohibited.
146.348 Reimbursement in cancer clinical trial programs.
146.35 Female genital mutilation prohibited.
146.37 Health care services review; civil immunity.
146.38 Health care services review; confidentiality of information.
146.40 Instructional programs for nurse aides; reporting client abuse.
146.60 Notice of release of genetically engineered organisms into the environment.
146.615 Advanced practice clinician training grants.
146.616 Allied health professional education and training grants.
146.618 Treatment program grants.
146.62 Rural hospital loan program.
146.63 Grants to establish graduate medical training programs.
146.64 Grants to support graduate medical training programs.
146.645 Grants to support the establishment or operation of graduate medical training consortia.
146.65 Rural health dental clinics.
146.66 Low-income dental clinics.
146.68 Grant for colposcopies and other services.
146.69 Grants for the Surgical Collaborative of Wisconsin.
146.71 Determination of death.
146.81 Health care records; definitions.
146.815 Contents of certain patient health care records.
146.816 Uses and disclosures of protected health information.
146.817 Preservation of fetal monitor tracings and microfilm copies.
146.819 Preservation or destruction of patient health care records.
146.82 Confidentiality of patient health care records.
146.83 Access to patient health care records.
146.835 Parents denied physical placement rights.
146.836 Applicability.
146.84 Violations related to patient health care records.
146.87 Federal registration numbers for prescribers of controlled substances.
146.89 Volunteer health care provider program.
146.903 Disclosures required of health care providers and hospitals.
146.905 Reduction in fees prohibited.
146.91 Long-term care insurance.
146.95 Patient visitation.
146.96 Uniform claim processing form.
146.997 Health care worker protection.

146.001 Definitions. In this chapter unless the context otherwise requires:

(1) "Department" means the department of health services.

(2) "Secretary" means the secretary of health services.

History: 1973 c. 323; 1985 a. 120; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

146.0255 Testing infants for controlled substances or controlled substance analogs. (1) DEFINITIONS. In this section:

(a) "Controlled substance" has the meaning given in s. 961.01 (4).

(b) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2) TESTING. Any hospital employee who provides health care, social worker, or intake worker under ch. 48 may refer an infant or an expectant mother of an unborn child, as defined in s. 48.02 (19), to a physician for testing of the bodily fluids of the infant or expectant mother for controlled substances or controlled substance analogs if the hospital employee who provides health care, social worker, or intake worker suspects that the infant or expectant mother has controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother because of the use of controlled substances or controlled substance analogs by the mother while she was pregnant with the infant or by the expectant mother while she is pregnant with the unborn child. The physician may test the infant or expectant mother to ascertain whether or not the infant or expectant mother has controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother, if the physician determines that there is a serious risk that there are controlled substances or controlled substance analogs in the bodily fluids of the infant or expectant mother because of the use of controlled substances or controlled substance analogs by the mother while she was pregnant with the infant or by the expectant mother while she is pregnant with the unborn child and that the health of the infant, the unborn child or the child when born may be adversely affected by the controlled substances or controlled substance analogs. If the results of the test indicate that the infant does have controlled substances or controlled substance analogs in the infant's bodily fluids, the physician shall report the occurrence of that condition in the infant to the agency, as defined in s. 48.981 (1) (ag), that is responsible for conducting child abuse and neglect investigations under s. 48.981, and that agency shall offer to provide, or arrange or refer for the provision of, services and treatment for the child and the child's mother as provided under s. 46.238. If the results of the test indicate that the expectant mother does have controlled substances or controlled substance analogs in the expectant mother's bodily fluids, the physician may report the occurrence of that condition in the expectant mother to the agency, as defined in s. 48.981 (1) (ag), that is responsible for conducting unborn child abuse investigations under s. 48.981, and that agency shall offer to provide, or arrange or refer for the provision of, services and treatment for the unborn child and expectant mother as provided under s. 46.238. Under this subsection, no physician may test an expectant mother without first receiving her informed consent to the testing.

(3) TEST RESULTS. The physician who performs a test under sub. (2) shall provide the infant's parents or guardian or the expectant mother with all of the following information:

(a) A statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

(b) A statement of explanation that the test results of an infant must, and that the test results of an expectant mother may, be disclosed to an agency under sub. (2) if the test results are positive.

(4) CONFIDENTIALITY. The results of a test given under this section may be disclosed as provided in sub. (3).

History: 1989 a. 122, 359; 1993 a. 16, 446; 1995 a. 386, 448; 1997 a. 27, 35, 292; 2009 a. 79.

146.0257 Evaluation of infants for fetal alcohol spectrum disorders. (1) DEFINITION. In this section, "agency" has the meaning given in s. 48.981 (1) (ag).

(2) EVALUATION. If a hospital employee who provides health

care, social worker, or intake worker under ch. 48 suspects that an infant has a fetal alcohol spectrum disorder, the hospital employee, social worker, or intake worker shall refer the infant to a physician for an evaluation to diagnose whether the infant has that disorder. If a physician determines that there is a serious risk that an infant has a fetal alcohol spectrum disorder, the physician shall evaluate the infant to diagnose whether the infant has that disorder. If a physician diagnoses that an infant has a fetal alcohol spectrum disorder, the physician shall report that diagnosis to the agency that is responsible for conducting child abuse and neglect investigations under s. 48.981, and that agency shall offer to provide, or arrange or refer for the provision of, services and treatment for the infant and the infant's mother as provided under s. 46.238.

(3) DIAGNOSIS. A physician who performs an evaluation under sub. (2) shall provide the infant's parents or guardian with all of the following information:

(a) An explanation concerning the evaluation that was performed, the date of that evaluation, and the diagnosis resulting from that evaluation.

(b) An explanation that the results of the evaluation must be disclosed to an agency under sub. (2) if the evaluation indicates a diagnosis of a fetal alcohol spectrum disorder.

(4) CONFIDENTIALITY. The results of an evaluation performed under sub. (2) may be disclosed as provided in sub. (3).

History: 2013 a. 260.

146.085 Pay toilets prohibited. (1) PROHIBITION. The owner or manager of any public building shall not permit an admission fee to be charged for the use of any toilet compartment.

(2) PENALTY. Any person who violates this section shall be fined not less than $10 nor more than $50.

(3) ENFORCEMENT. The department, the department of safety and professional services, and the public service commission shall enforce this section within their respective jurisdictions.

History: 1971 c. 228 s. 44; 1973 c. 12 s. 37; 1975 c. 298; 1995 a. 27 ss. 4361, 9116 (5); 2011 a. 32.

146.15 Information. State officials, physicians of mining, manufacturing and other companies or associations, officers and agents of a company incorporated by or transacting business under the laws of this state, shall when requested furnish, so far as practicable, the department any information required touching the public health; and for refusal shall forfeit $10.

146.16 Expenses. Expenses incurred under this chapter, not made otherwise chargeable, shall be paid by the town, city or village.

History: 1983 a. 27 s. 2202 (20); 1993 a. 27; 1995 a. 227.

146.17 Limitations. Nothing in the statutes shall be construed to authorize interference with the individual's right to select his or her own physician or mode of treatment, nor as a limitation upon the municipality to enact measures in aid of health administration, consistent with statute and acts of the department.

History: 1993 a. 482.

146.22 Flushing devices for urinals. The department shall not promulgate any rules which either directly or indirectly prohibit the use of manual flushing devices for urinals. The department shall take steps to encourage the use of manual flushing devices for urinals.

History: 1977 c. 418.

146.25 Required implanting of microchip prohibited.

(1) No person may require an individual to undergo the implanting of a microchip.

(2) Any person who violates sub. (1) may be required to forfeit not more than $10,000. Each day of continued violation constitutes a separate offense.

History: 2005 a. 482.

146.29 Access to toilet facility in retail establishment.

(1) DEFINITIONS. In this section:

(a) "Eligible medical condition" means inflammatory bowel disease, irritable bowel syndrome, or any other medical condition that periodically requires immediate access to a toilet facility.

(b) "Inflammatory bowel disease" means Crohn's disease or ulcerative colitis.

(c) "Ostomy device" means a medical device that creates an artificial passage for elimination of body waste.

(d) "Physician" has the meaning given in s. 448.01 (5).

(e) "Retail establishment" means a store or shop in which retail sales is the principal business conducted, except that "retail establishment" does not include a motor vehicle fuel retailer's establishment that is a structure that is 800 square feet or less in size.

(2) ACCESS TO TOILET FACILITY REQUIRED. A retail establishment that has a toilet facility that is designated for use by the establishment's employees shall permit a person who suffers from an eligible medical condition or uses an ostomy device to use the toilet facility if all of the following apply:

(a) The person provides the retail establishment any of the following:

1. A copy of a written statement, signed and issued by a physician on the physician's letterhead or that of the facility with which the physician is associated, that indicates that the person suffers from an eligible medical condition or uses an ostomy device.

2. An identification card issued by an entity approved by the department under sub. (4) that indicates that the person suffers from an eligible medical condition or uses an ostomy device.

(b) The person requests to use the toilet facility during the retail establishment's usual business hours.

(c) Three or more employees of the retail establishment are working at the establishment at the time the person requests use of the toilet facility.

(d) The toilet facility is not located in an area where access creates an obvious health or safety risk for the person or an obvious security risk for the retail establishment.

(e) The retail establishment does not have a toilet facility that the public may use.

(f) A public toilet facility is not immediately accessible to the person.

(3) LIMITATION ON REQUIREMENT. No retail establishment may, under this section, be required to make physical changes to a toilet facility that is designated for use by the establishment's employees.

(4) ENTITIES THAT MAY ISSUE IDENTIFICATION CARDS. The department shall approve, to issue identification cards that may be used under sub. (2) (a) 2., entities that provide services to, or advocate on behalf of, persons who suffer from an eligible medical condition or use an ostomy device.

(5) PENALTIES. (a) Whoever violates sub. (2) may be required to forfeit not more than $200.

(b) Whoever does any of the following with respect to a written statement or identification card that is specified in sub. (2) (a) may be required to forfeit not more than $200:

1. Forges a statement or identification card, or utters a forged statement or identification card.

2. Alters a statement or identification card, or utters an altered statement or identification card.

3. Transfers to another person, for use by that person, a statement or identification card intended for use by a different person.

4. Knowingly possesses a forged or altered statement or identification card.

(c) Each day of continued violation under par. (a) or (b) constitutes a separate offense.

History: 2009 a. 198.

146.31 Blood or tissue transfer services. (1) It is unlawful to operate a blood bank for commercial profit.

(2) The procurement, processing, distribution or use of whole blood, plasma, blood products, blood derivatives and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing or transplanting any of them into the human body is declared to be, for all purposes except as provided under s. 146.345, the rendition of a service by every person participating therein and, whether or not any remuneration is paid therefor, not to be a sale of the whole blood, plasma, blood products, blood derivatives or other tissues. No person involved in the procurement, processing, distribution or use of whole blood, plasma, blood products or blood derivatives for the purpose of injecting or transfusing any of them into the human body shall be liable for damages resulting from these activities except for his or her own negligence or willful misconduct.

(3) No hospital, nonprofit tissue bank, physician, nurse or other medical personnel acting under the supervision and direction of a physician involved in the procurement, processing, distribution or use of human tissues such as corneas, bones or organs for the purpose of transplanting any of them into the human body shall be liable for damages resulting from those activities except for negligence or willful misconduct by that hospital, nonprofit tissue bank, physician, nurse or other medical personnel.

History: 1975 c. 75, 76; 1987 a. 97.

Sub. (1) is unconstitutional. It violates the commerce clause, article I, section 8, and the supremacy clause, article VI, of the U.S. Constitution. State v. Interstate Blood Bank, Inc., 65 Wis. 2d 482, 222 N.W.2d 912 (1974).

146.33 Blood donors. Any person who is 17 years old or older may donate blood in any voluntary and noncompensatory blood program, and any person who is 16 years old may donate blood in such a program if his or her parent or legal guardian consents to the donation.

History: 1971 c. 228; 1983 a. 21; 2007 a. 103.

146.34 Donation of bone marrow by a minor. (1) DEFINITIONS. In this section:

(a) "Bone marrow" means the soft material that fills human bone cavities.

(b) "Bone marrow transplant" means the medical procedure by which transfer of bone marrow is made from the body of a person to the body of another person.

(c) "Donor" means a minor whose bone marrow is transplanted from his or her body to the body of the minor's brother or sister.

(d) "Guardian" means the person named by the court under ch. 48 or 54 or ch. 880, 2003 stats., having the duty and authority of guardianship.

(e) "Legal custodian" means a person other than a parent or guardian or an agency to whom the legal custody of a minor has been transferred by a court under ch. 48 or 938, but does not include a person who has only physical custody of a minor.

(f) "Parent" means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40 or a parent by adoption. If the minor is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, "parent" includes a person adjudged in a judicial proceeding under ch. 48 to be the biological father of the minor. "Parent" does not include any person whose parental rights have been terminated.

(g) "Physician" means a person licensed to practice medicine and surgery under ch. 448.

(h) "Psychiatrist" means a physician specializing in psychiatry.

(i) "Psychologist" means a person who is licensed to practice psychology under ch. 455, who is exercising the temporary authorization to practice, as defined in s. 455.50 (2) (o), in this state, or who is practicing under the authority to practice interjurisdictional telepsychology, as defined in s. 455.50 (2) (b).

(j) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(2) PROHIBITION ON DONATION OF BONE MARROW BY A MINOR. Unless the conditions under sub. (3) or (4) have been met, no minor may be a bone marrow donor in this state.

(3) CONSENT TO DONATION OF BONE MARROW BY A MINOR UNDER 12 YEARS OF AGE. If the medical condition of a brother or a sister of a minor who is under 12 years of age requires that the brother or sister receive a bone marrow transplant, the minor is deemed to have given consent to be a donor if all of the following conditions are met:

(a) The physician who will remove the bone marrow from the minor has informed the parent, guardian or legal custodian of the minor of all of the following:

1. The nature of the bone marrow transplant.

2. The benefits and risks to the prospective donor and prospective recipient of performance of the bone marrow transplant.

3. The availability of procedures alternative to performance of a bone marrow transplant.

(b) The physician of the brother or sister of the minor has determined all of the following, has confirmed those determinations through consultation with and under recommendation from a physician other than the physician under par. (a) and has provided the determinations to the parent, guardian or legal custodian under par. (e):

1. That the minor is the most acceptable donor who is available.

2. That no medically preferable alternatives to a bone marrow transplant exist for the brother or sister.

(c) A physician other than a physician under par. (a) or (b) has determined the following and has provided the determinations to the parent, guardian or legal custodian under par. (e):

1. The minor is physically able to withstand removal of bone marrow.

2. The medical risks of removing the bone marrow from the minor and the long-term medical risks for the minor are minimal.

(d) A psychiatrist or psychologist has evaluated the psychological status of the minor, has determined that no significant psychological risks to the minor exist if bone marrow is removed from the minor and has provided that determination to the parent, guardian or legal custodian under par. (e).

(e) The parent, guardian or legal custodian, upon receipt of the information and the determinations under pars. (a) to (d), has given written consent to donation by the minor of the bone marrow.

(4) CONSENT TO DONATION OF BONE MARROW BY A MINOR

12 YEARS OF AGE OR OVER. (a) A minor who has attained the age of 12 years may, if the medical condition of a brother or sister of the minor requires that the brother or sister receive a bone marrow transplant, give written consent to be a donor if:

1. A psychiatrist or psychologist has evaluated the intellect and psychological status of the minor and has determined that the minor is capable of consenting.

2. The physician who will remove the bone marrow from the minor has first informed the minor of all of the following:

a. The nature of the bone marrow transplant.

b. The benefits and risks to the prospective donor and prospective recipient of performance of the bone marrow transplant.

c. The availability of procedures alternative to performance of a bone marrow transplant.

(b) If the psychiatrist or psychologist has determined under par. (a) that the minor is incapable of consenting, consent to donation of bone marrow must be obtained under the procedures under sub. (3).

(5) HEARING ON PROHIBITION OF CONSENT OR PERFORMANCE. (a) A relative of the prospective donor or the district attorney or corporation counsel of the county of residence of the prospective donor may file a petition with the court assigned to exercise jurisdiction under chs. 48 and 938 for an order to prohibit either of the following:

1. The giving of consent under sub. (3) or (4) to donation of bone marrow.

2. If consent under sub. (3) or (4) has been given, the performance of the bone marrow transplant for which consent to donate bone marrow has been given.

(am) Any party filing a petition for an order to prohibit performance under par. (a) 2. shall file and serve the petition within 3 days after consent has been given under sub. (3) or (4).

(b) Any party filing a petition under par. (a) shall at the same time file with the court a statement of a physician or psychologist who has recently examined the prospective donor and which avers, if made by a physician, to a reasonable degree of medical certainty or, if made by a psychologist, to a reasonable degree of professional certainty, that the removal of bone marrow presents medical or psychological risks to the prospective donor or to the prospective recipient which outweigh all benefits to the prospective donor or to the prospective recipient.

(c) Any party filing a petition under par. (a) and a statement under par. (b) shall, at the time of filing, provide personal service of notice of the filing and a copy of the statement to the parent, guardian or legal custodian of the prospective donor and, if the prospective donor is a minor who has attained 12 years of age, to the minor.

(d) Following the filing of a petition under par. (a) and a statement under par. (b), the judge shall appoint a guardian ad litem under s. 48.235 for the prospective donor.

(e) If a request for hearing is filed by the prospective donor under sub. (4) or by the parent, guardian or legal custodian within 7 days following the personal service of notice under par. (c), the court shall conduct a hearing to determine whether the giving of consent under par. (a) 1. or performance under par. (a) 2. shall be prohibited and providing the prospective donor under sub. (4) and the parent, guardian or legal custodian opportunity to rebut the statement under par. (b).

(f) If no request for hearing is filed by the prospective donor under sub. (4) or by the parent, guardian or legal custodian within the time limit specified under par. (e), the court may do one of the following:

1. Order prohibition of consent under par. (a) 1. or performance under par. (a) 2.

2. On its own motion conduct a hearing to determine whether the giving of consent under par. (a) 1. or performance under par. (a) 2. shall be prohibited.

(g) If the court on its own motion conducts a hearing under par. (f) 2., the court shall provide personal service of notice of the hearing to all parties and may request submission of relevant evidence.

(h) Any person aggrieved by a final judgment or final order of the court under par. (e) or (f) may appeal within the time period specified in s. 808.04 (3) or (4).

History: 1985 a. 50; 1995 a. 77; 1997 a. 188; 1999 a. 32, 162; 2001 a. 38; 2005 a. 387; 2005 a. 443 s. 265; 2021 a. 131.

146.343 Donation of newborn umbilical cord blood.

(1) In this section, "hospital" has the meaning given in s. 50.33 (2).

(2) Notwithstanding s. 146.33, the principal prenatal health care provider of a woman who is known to be pregnant shall, before the woman's 35th week of pregnancy, offer her information on options to donate, to an accepting and accredited cord blood bank, blood bank, blood center, or plasma center, blood extracted from the umbilical cord of her newborn child, if the donation may be made without monetary expense for the collection or storage to the woman, to any 3rd-party payor of health care coverage for the woman, or to the hospital in which delivery occurs.

(4) No person may be held civilly liable for failure to comply, or for complying, with sub. (2).

History: 2005 a. 56; 2021 a. 239.

146.345 Sale of human organs prohibited.

(1) In this section:

(a) "Human organ" means a human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone or skin or any other human organ specified by the department by rule. "Human organ" does not mean human whole blood, blood plasma, a blood product or a blood derivative or human semen.

(b) "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of a person to the body of another person.

(c) "Valuable consideration" does not include reasonable payment associated with the removal, transportation, implantation, processing, preservation, quality control or storage of a human organ or an expense of travel, housing or lost wages incurred by a human organ donor in connection with donation of the human organ.

(2) No person may knowingly and for valuable consideration acquire, receive or otherwise transfer any human organ for use in human organ transplantation.

(3) Any person who violates this section is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $50,000.

History: 1987 a. 97; 1997 a. 283; 2001 a. 109.

146.348 Reimbursement in cancer clinical trial programs.

(1) In this section:

(a) "Cancer clinical trial" means a research study that tests a new cancer treatment regimen on patients, including chemotherapy and other new treatments.

(b) "Inducement" means paying a person money, including a lump sum or salary payment, to participate in a cancer clinical trial.

(c) "Patient-subject" means a person participating in a cancer clinical trial.

(2) All sponsors of cancer clinical trials shall provide potential patient-subjects at the time of the informed consent process the following information:

(a) Whether reimbursement for travel and ancillary costs may be available to patient-subjects.

(b) That coverage of the travel and ancillary costs is done to eliminate financial barriers to enrollment in order to retain patient-subjects in the cancer clinical trial.

(c) Whether family members, friends, or chaperones who attend the cancer clinical trial treatments to support the patient-subject may be eligible for reimbursement of their travel and ancillary costs.

(3) (a) Reimbursement of travel, ancillary costs, and other direct patient-incurred expenses related to cancer clinical trial participation will not be considered an undue inducement to participate in a cancer clinical trial.

(b) Reimbursement for travel and ancillary costs may not be considered coercive or as exerting undue influence to participate in a cancer clinical trial, but rather shall be considered a means to create parity in cancer clinical trial access and remove a barrier to participation for financially burdened patient-subjects.

(c) Government, industry, public charities, private foundations and other nonprofit organizations, associations, corporations and other business entities, individuals, and any other legal or commercial entities may offer financial support to patient-subjects, or the family, friends, or chaperones of patient-subjects, to cover ancillary costs through their support of a reimbursement entity or program.

(4) (a) Language informing patient-subjects that reimbursement entities or programs that cover travel, ancillary costs, and other direct patient-incurred expenses may be available must be submitted for review to the relevant federally designated institutional review board in conjunction with the review of a proposed cancer clinical trial and included in the informed consent form approved by the institutional review board.

(b) A reimbursement entity or program must disclose the nature of the ancillary support and general guidelines on financial eligibility to interested patient-subjects and employ a reimbursement process that conforms to federal law and guidance.

History: 2019 a. 150.

146.35 Female genital mutilation prohibited.

(1) In this section, "infibulate" means to clasp together with buckles or stitches.

(2) Except as provided in sub. (3), no person may circumcise, excise or infibulate the labia majora, labia minora or clitoris of a female minor.

(3) Subsection (2) does not apply if the circumcision, excision or infibulation is performed by a physician, as defined in s. 448.01 (5), and is necessary for the health of the female minor or is necessary to correct an anatomical abnormality.

(4) None of the following may be asserted as a defense to prosecution for a violation of sub. (2):

(a) Consent by the female minor or by a parent of the female minor to the circumcision, excision or infibulation.

(b) The circumcision, excision or infibulation is required as a matter of custom or ritual.

(5) Whoever violates sub. (2) is guilty of a Class H felony.

History: 1995 a. 365; 1997 a. 283; 2001 a. 109.

146.37 Health care services review; civil immunity.

(1) In this section:

(a) "Health care provider" includes an ambulance service provider, as defined in s. 256.01 (3), and an emergency medical services practitioner, as defined in s. 256.01 (5), and an emergency medical responder, as defined in s. 256.01 (4p).

(b) "Medical director" has the meaning specified in s. 256.01 (11).

(1g) Except as provided in s. 153.76, no person acting in good faith who participates in the review or evaluation of the services of health care providers or facilities or the charges for such services conducted in connection with any program organized and operated to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities or to determine the reasonable charges for such services, or who participates in the obtaining of health care information under subch. I of ch. 153, is liable for any civil damages as a result of any act or omission by such person in the course of such review or evaluation. Acts and omissions to which this subsection applies include, but are not limited to, acts or omissions by peer review committees or hospital governing bodies in censuring, reprimanding, limiting or revoking hospital staff privileges or notifying the medical examining board or podiatry affiliated credentialing board under s. 50.36 or taking any other disciplinary action against a health care provider or facility and acts or omissions by a medical director in reviewing the performance of emergency medical services practitioners, as defined in s. 256.01 (5), or ambulance service providers.

(1m) The good faith of any person specified in subs. (1g) and (3) shall be presumed in any civil action. Any person who asserts that such a person has not acted in good faith has the burden of proving that assertion by clear and convincing evidence.

(2) In determining whether a member of the reviewing or evaluating organization or the medical director has acted in good faith under sub. (1g), the court shall consider whether the member or medical director has sought to prevent the health care provider or facility and its counsel from examining the documents and records used in the review or evaluation, from presenting witnesses, establishing pertinent facts and circumstances, questioning or refuting testimony and evidence, confronting and cross-examining adverse witnesses or from receiving a copy of the final report or recommendation of the reviewing organization or medical director.

(3) This section applies to any person acting in good faith who participates in the review or evaluation of the services of a psychiatrist, or facilities or charges for services of a psychiatrist, conducted in connection with any organization, association or program organized or operated to help improve the quality of psychiatric services, avoid improper utilization of psychiatric services or determine reasonable charges for psychiatric services. This immunity includes, but is not limited to, acts such as censuring, reprimanding or taking other disciplinary action against a psychiatrist for unethical or improper conduct.

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; 2007 a. 130; 2009 a. 113, 274; 2011 a. 260 s. 81; 2017 a. 12.

Anyone who has the good faith belief that they are participating in a valid peer review procedure of a health care provider is entitled to the presumption of good faith under sub. (1g) and is immune from liability unless the presumption is overcome. Limjoco v. Schenck, 169 Wis. 2d 703, 486 N.W.2d 567 (Ct. App. 1992).

When a third party becomes an integral part of the ongoing medical services review, its actions are eligible for immunity from civil liability under this section. It would defeat the purpose of this section if the participation of an outside entity enlisted by a reviewing committee to perform an assessment of the abilities of a physician to perform effectively while on call is not eligible for immunity simply because the outside entity is not part of a formal "peer review program." Rechsteiner v. Hazelden, 2008 WI 97, 313 Wis. 2d 542, 753 N.W.2d 496, 06-1521.

When a third party's diagnosis of the condition of the doctor subject to review was indistinguishable from the employing hospital's review, evaluation, and analysis of the doctor's ability to perform as an on-call surgeon, the diagnosis was the essence of the peer review process initiated by the hospital. Even if the diagnosis was negligent, it was immune because it was central to the peer review process. However, this case does not mean that the peer review statute will immunize medical negligence in all situations, irrespective of the circumstances. Rechsteiner v. Hazelden, 2008 WI 97, 313 Wis. 2d 542, 753 N.W.2d 496, 06-1521.

A person reviewing a peer can be found to have acted in bad faith even if proce-

dural rights under sub. (2) were not denied, but whether procedural rights were denied is a factor that must be considered in a determination of "good faith." Qasem v. Kozarek, 716 F.2d 1172 (1983).

146.38 Health care services review; confidentiality of information. (1) In this section:

(a) "Evaluator" means a medical director or a registered nurse who coordinates review of an emergency medical services program of a health care provider.

(b) "Health care provider" means any of the following:

1. A person specified in s. 146.81 (1) (a) to (hp), (r), or (s).

2. A facility, association, or business entity, as specified in s. 146.81 (1) (i) to (q) and including a residential care apartment complex, as defined in s. 50.01 (6d).

3. A person working under the supervision of or in collaboration with a person specified in subd. 1.

4. A parent, subsidiary, or affiliate organization of a facility, association, or business entity, as specified in subd. 2.

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

(c) "Medical director" has the meaning specified in s. 256.01 (11).

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

(2) All persons, organizations, or evaluators, whether from one or more entities, who review or evaluate the services of health care providers in order to help improve the quality of health care, to avoid improper utilization of the services of health care providers, or to determine the reasonable charges for such services shall keep a record of their investigations, inquiries, proceedings and conclusions. No such record may be released to any person under s. 804.10 (4) or otherwise except as provided in sub. (3) or (3m). No such record may be used in any civil or criminal action against the health care provider or any other health care provider; however, except for incident or occurrence reports or records from other persons, organizations, or evaluators reviewing or evaluating health care providers, 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. Any person who testifies during or participates in the review or evaluation may testify in any civil or criminal action as to matters within his or her knowledge, but may not testify as to information obtained through his or her participation in the review or evaluation, nor as to any conclusion of such review or evaluation.

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

(3) Information acquired in connection with the review and evaluation of health care services shall be disclosed and records of such review and evaluation shall be released, with the identity of any patient whose treatment is reviewed being withheld except as permitted under s. 146.82, in the following circumstances:

(a) To the health care provider whose services are being reviewed or evaluated, upon the request of such provider;

(b) To any person with the consent of the health care provider whose services are being reviewed or evaluated;

(c) To the person requesting the review or evaluation, for use solely for the purpose of improving the quality of health care, avoiding the improper utilization of the services of health care providers, and determining the reasonable charges for such services;

(dm) With regard to an action under s. 895.441, to a court of record after issuance of a subpoena; and

(f) To the appropriate examining or licensing board or agency, when the organization or evaluator conducting the review or evaluation determines that such action is advisable.

(3m) (a) Information acquired in connection with the review and evaluation of health care services may be disclosed, and records of such review and evaluation may be released, in statistical form with the consent of the person authorizing or with the authority to authorize the review or evaluation. Information disclosed or records released under this subsection shall not reveal the identity of any patient except as permitted under s. 146.82.

(b) Information acquired in connection with the review or evaluation of health care services may be disclosed, and the records of such a review or evaluation released, to any of the following persons, with the consent of the person authorizing or with the authority to authorize the review or evaluation:

1. The employer of a health care provider, as defined in sub. (1) (b) 1. and 3.

2. The parent, subsidiary, or affiliate organization of a health care provider, as defined in sub. (1) (b) 2.

3. The parent, subsidiary, or affiliate organization of the employer of a health care provider, as defined in sub. (1) (b) 1. and 3.

(3t) A record described under sub. (2) or an incident or occurrence report disclosed either under sub. (3) or (3m) or in violation of this section remains confidential and may not be used in any civil or criminal action against the health care provider or any other health care provider.

(4) Any person who discloses information or releases a record in violation of this section, other than through a good faith mistake, is civilly liable therefor to any person harmed by the disclosure or release.

(5) This section does not apply to s. 256.25.

(6) Health care provider specific information acquired by an administrative agency in order to help improve the quality of health care, to avoid the improper utilization of services of health care providers, or to determine the reasonable charges for health care services is exempt from inspection, copying, or receipt under s. 19.35 (1).

History: 1975 c. 187; 1979 c. 89; 1983 a. 27; 1989 a. 102; 1991 a. 217; 1999 a. 56; 2005 a. 155, 315; 2007 a. 130; 2011 a. 2, 32; 2013 a. 165 s. 114; 2013 a. 166.

The conclusions of a hospital governing body, based on records and conclusions of peer review committees, were not privileged under this section. State ex rel. Good Samaritan Medical Center-Deaconess Hospital Campus v. Maroney, 123 Wis. 2d 89, 365 N.W.2d 887 (Ct. App. 1985).

Outlining the methodology for determining privileged records under sub. (2). Franzen v. Children's Hospital of Wisconsin, Inc., 169 Wis. 2d 366, 485 N.W.2d 603 (Ct. App. 1992).

Discussing the methodology for determining privileged communications under sub. (1m). Mallon v. Campbell, 178 Wis. 2d 278, 504 N.W.2d 357 (Ct. App. 1993).

Because this section does not provide for the loss of confidentiality due to disclosure to third parties, no waiver exists under this section. Ollman v. Wisconsin Health Care Liability Insurance Plan, 178 Wis. 2d 648, 505 N.W.2d 399 (Ct. App. 1993).

Statistical data regarding a hospital's rates of infection for postoperative patients qualifies as a report in statistical form under former sub. (3) (d), 1999 stats., and is subject to discovery. A court need not conduct an in camera inspection to determine if material sought may be released when there is a request for information that on its face is clearly protected by this section. Braverman v. Columbia Hospital, Inc., 2001 WI App 106, 244 Wis. 2d 98, 629 N.W.2d 66, 00-0901.

The Department of Health and Family Services is a person subject to restrictions under sub. (1m) regarding the release of information. Braverman v. Columbia Hospital, Inc., 2001 WI App 106, 244 Wis. 2d 98, 629 N.W.2d 66, 00-0901.

Site reviews by associations to which local hospitals voluntarily submit for review in order to improve the quality of health care services constitutes peer review, the discovery of which is barred by this section. Hofflander v. St. Catherine's Hospital, Inc., 2003 WI 77, 262 Wis. 2d 539, 664 N.W.2d 545, 00-2467.

The party asserting the health care services review privilege under sub. (1m) bears the burden of establishing two conditions: 1) the investigation must be part of

a program organized and operated to improve the quality of health care at the hospital; and 2) the person conducting the investigation must be acting on behalf of, or as part of a group with relatively constant membership, officers, a purpose, and a set of regulations. The privilege did not apply to an investigation conducted by an individual doctor, and not the hospital's peer review committee, that was initiated by the hospital to report a problem to the supervisor of the residency program in which the defendant resident was enrolled, and not to improve the quality of health care at the hospital. Phelps v. Physicians Insurance Co. of Wisconsin, 2005 WI 85, 282 Wis. 2d 69, 698 N.W.2d 643, 03-0580.

A health care provider cannot rely on this section, conferring a "peer review privilege," to withhold documents that are relevant to a federal investigation. Because participants in peer review already expect that peer-review materials may be disclosed in certain circumstances, there appears to be nothing to be gained by recognizing the privilege in the limited circumstances presented by this case. United States v. Aurora Health Care, Inc., 91 F. Supp. 3d 1066 (2015).

146.40 Instructional programs for nurse aides; reporting client abuse. (1) In this section:

(ad) "Client" means a person who receives services from an entity.

(ag) "Credential" has the meaning given in s. 440.01 (2) (a).

(as) "Entity" has the meaning given in s. 50.065 (1) (c).

(aw) "Feeding assistant" means an individual who has completed a state-approved training and testing program, as specified by the department by rule, or training, as described in sub. (2m), that satisfies the state-approved training requirement, to perform one nursing-related duty, as defined by the department by rule.

(b) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(bo) "Hospice" means a hospice that is licensed under subch. VI of ch. 50.

(br) "Hospital" has the meaning specified in s. 50.33 (2).

(bt) "Intermediate care facility for persons with an intellectual disability" has the meaning given for "intermediate care facility for the mentally retarded" under 42 USC 1396d (d).

(c) "Licensed practical nurse" means a licensed practical nurse who is licensed or has a temporary permit under s. 441.10 or who holds a multistate license, as defined in s. 441.51 (2) (h), issued in a party state, as defined in s. 441.51 (2) (k).

(d) "Nurse aide" means an individual who performs routine patient care duties delegated by a registered nurse or licensed practical nurse who supervises the individual, for the direct health care of a patient or resident. "Nurse aide" does not mean a feeding assistant, an individual who is licensed, permitted, certified, or registered under ch. 441, 448, 449, 450, 451, 455, 459, or 460, or an individual whose duties primarily involve skills that are different than those taught in instructional programs for nurse aides approved under sub. (3) or (3g) or evaluated by competency evaluation programs for nurse aides approved under sub. (3m).

(e) "Nursing home" has the meaning specified in s. 50.01 (3).

(f) "Registered nurse" means a registered nurse who has a license under s. 441.06 or a temporary permit under s. 441.08 or who holds a multistate license, as defined in s. 441.51 (2) (h), issued in a party state, as defined in s. 441.51 (2) (k).

(g) "Student nurse" means an individual who is currently enrolled in a school for professional nurses or a school for licensed practical nurses that meets standards established under s. 441.01 (4), or who has successfully completed the course work of a basic nursing course of the school but has not successfully completed the examination under s. 441.06 (1) (e) or 441.10 (1) (f).

(2) A hospital, nursing home, intermediate care facility for persons with an intellectual disability, home health agency, or hospice may not employ or contract for the services of an individual as a nurse aide, regardless of the title under which the individual is employed or contracted for, unless one of the following is true:

(a) The individual has successfully completed instruction in an instructional program for nurse aides that is approved under sub. (3) or (3g), or has been issued a waiver from completing instruction in an instructional program under sub. (2g) (b), and has successfully completed a competency evaluation program that is approved under sub. (3m). In order to be eligible under this paragraph, an individual who successfully completes instruction in an instructional program for nurse aides that is approved under sub. (3g) and who previously completed a competency evaluation program in another state must successfully complete a competency evaluation program that is approved under sub. (3m), regardless of whether the competency evaluation program that the individual completed in another state is the same as or substantially similar to a competency evaluation program that is approved under sub. (3m).

(ac) The individual has been added to the registry under sub. (4g) as provided under sub. (2g) (a).

(am) The individual has completed relevant education, training, instruction, or other experience in connection with any military service, as defined in s. 111.32 (12g), if the individual or the hospital, nursing home, intermediate care facility, home health agency, or hospice demonstrates to the satisfaction of the department that the education, training, instruction, or other experience is substantially equivalent to an instructional program that is approved under sub. (3), and the individual has successfully completed a competency evaluation program that is approved under sub. (3m).

(c) For hospitals, nursing homes, home health agencies or hospices, whether or not certified providers of medical assistance, and intermediate care facilities persons with an intellectual disability that are certified providers of medical assistance, the individual is enrolled in an instructional program for nurse aides that is approved under sub. (3) or (3g) and is employed or under contract as a nurse's assistant, home health aide or hospice aide fewer than 120 calendar days by the hospital, nursing home, home health agency, hospice or intermediate care facility for persons with an intellectual disability. All of the following applies to an individual specified under this paragraph:

1. He or she may perform only services for which he or she has received training and has been found proficient by an instructor under the instructional program.

2. The hospital, nursing home, home health agency, hospice, or intermediate care facility for persons with an intellectual disability may not include the individual in meeting or complying with a requirement for nursing care staff and functions, including a minimum nursing staff requirement.

(d) For hospitals, nursing homes, home health agencies, or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with an intellectual disability that are certified providers of medical assistance, the individual has successfully completed an instructional program and a competency evaluation program for nurse aides that is certified in another state that meets criteria for acceptance in this state as specified by the department by rule.

(e) For hospitals, home health agencies, or hospices, whether or not certified providers of medical assistance, nursing homes that are not certified providers of medical assistance and intermediate care facilities for persons with an intellectual disability that are certified providers of medical assistance, the individual is a student nurse who has successfully completed a basic nursing course from a school that is on the accredited list of schools specified under s. 441.01 (4) or who successfully completes a competency evaluation program for nurse aides that is approved by the department under sub. (3m).

(em) For nursing homes that are certified providers of medical assistance, the individual is a student nurse who successfully completes a competency evaluation program for nurse aides that is approved by the department under sub. (3m).

(g) 1. For hospitals, nursing homes, home health agencies, or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with an intellectual disability that are certified providers of medical assistance, the individual, if he or she has performed no nursing-related service for monetary compensation for 24 consecutive months after having satisfied the requirement under par. (a), again successfully completes a competency evaluation program for nurse aides that is approved by the department under sub. (3m).

2. For hospitals, nursing homes, home health agencies, or hospices, whether or not certified providers of medical assistance, and intermediate care facilities for persons with an intellectual disability that are certified providers of medical assistance, the individual, if he or she has performed no nursing-related service for monetary compensation for 24 consecutive months after having satisfied the requirement under par. (ac), successfully completes a competency evaluation program for nurse aides that is approved by the department under sub. (3m).

(2d) (a) Notwithstanding sub. (2), subject to par. (b), a hospital, nursing home, intermediate care facility for persons with an intellectual disability, home health agency, or hospice may employ or contract for the services of an individual as a nurse aide, if the individual is enrolled in an instructional program for nurse aides that is approved under sub. (3) or (3g), is employed part-time as a nurse's assistant, home health aide, or hospice aide fewer than 120 days, and has a preceptor. The requirements of sub. (2) (c) 1. and 2. apply to individuals under this subsection. An individual employed or contracted as a nurse aide under this subsection shall pass a Wisconsin-approved nurse aide competency evaluation examination within 120 calendar days of the start of the individual's part-time employment as a nurse aide or may not continue to be employed or contracted as a nurse aide under this subsection.

(b) The department shall, as soon as possible after March 24, 2024, request any necessary federal approval required to implement this subsection and, if approval is granted or if no federal approval is required, the department shall implement this subsection. If federal approval is necessary but not granted, the department may not implement this subsection.

(2g) (a) An individual who has previously been employed in another state as a nurse aide for 2,088 hours or more within the prior 2-year period and who has successfully completed a competency evaluation program in that other state that is the same as or substantially similar to one approved under sub. (3m) may apply to the department to be eligible to be employed or contracted as a nurse aide under sub. (2) (ac). The department shall verify that the individual was employed in that state as a nurse aide for 2,088 hours in the 2-year period prior to the date of application. If the individual is so eligible, the department shall add the individual to the registry under sub. (4g).

(b) An individual who has previously been employed in another state as a nurse aide for 2,088 hours or more within the prior 2-year period but who has not successfully completed a competency evaluation program that is the same as or substantially similar to one approved under sub. (3m) may apply to the department to be eligible for a waiver from completing instruction in an instructional program for nurse aides under subs. (3) and (3g). The department shall verify that the individual was employed in that state as a nurse aide for 2,088 hours in the 2-year period prior to the date of application. If the individual is so eligible, the department shall issue the individual a waiver so that the individual may complete a competency evaluation program under sub. (3m) without completing instruction in an instructional program for nurse aides under sub. (3) or (3g).

(2m) A nursing home or intermediate care facility for persons with an intellectual disability, whether or not the nursing home or intermediate care facility is a certified provider of medical assistance, may not employ or contract for the services of an individual as a feeding assistant, regardless of the title under which the individual is employed or contracted for, unless the individual has successfully completed a state-approved training and testing program, as specified by the department by rule. Any relevant education, training, instruction, or other experience that an individual has obtained in connection with any military service, as defined in s. 111.32 (12g), counts toward satisfying the requirement to complete the state-approved training program under this subsection, if the individual or the nursing home or intermediate care facility demonstrates to the satisfaction of the department that the education, training, instruction, or other experience obtained by the individual is substantially equivalent to the state-approved training program.

(3) Except as provided in sub. (4d), the department shall approve instructional programs for nurse aides that apply for, and satisfy standards for, approval that are promulgated by rule by the department. The department may not require an instructional program to exceed the federally required minimum total training hours or minimum hours of supervised practical training under 42 CFR 483.152 (a). The department shall review the curriculum of each approved instructional program at least once every 24 months following the date of approval to determine whether the program continues to satisfy the standards for approval. Under this subsection, the department may, after providing notice, suspend or revoke the approval of an instructional program or impose a plan of correction on the program if the program fails to satisfy the standards for approval or operates under conditions that are other than those contained in the application approved by the department.

(3g) Except as provided in sub. (4d), the department shall approve instructional programs for nurse aides that apply for approval; that satisfy standards for approval that are promulgated by rule by the department; and that allow an individual who has successfully completed an instructional program for nurse aides in another state to receive instruction in this state that, when combined with the instructional program in the other state, will result in the individual having received substantially the same instruction as an individual who successfully completes an instructional program approved under sub. (3). Only an individual so described may complete an instructional program for nurse aides that is approved under this subsection. The department shall review the curriculum of each approved instructional program at least once every 24 months following the date of approval to determine whether the program continues to satisfy the requirements of this subsection. Under this subsection, the department may, after providing notice, suspend or revoke the approval of an instructional program or impose a plan of correction on the program if the program fails to satisfy the requirements of this subsection or operates under conditions that are other than those contained in the application approved by the department.

(3m) The department shall review competency evaluation programs for nurse aides and, except as provided in sub. (4d), may approve those competency evaluation programs that satisfy standards for approval that are specified in rules promulgated by the department. The department may approve a competency evaluation program to be taken by an individual who completes an instructional program for nurse aides that is approved under sub. (3g) only if the competency evaluation program is the same as one to be taken by an individual who completes an instructional program for nurse aides that is approved under sub. (3). Under this subsection, the department may, after providing notice, suspend or revoke approval of a competency evaluation program or impose a plan of correction on the program if the compe-

tency evaluation program fails to satisfy the standards for approval or operates under conditions that are other than those contained in the application approved by the department.

(4) A competency evaluation program approved under sub. (3m) shall notify the department to include an individual on the registry under sub. (4g) (a) 1. after the individual has successfully completed the competency examination.

(4d) (a) Except as provided in par. (am), the department shall require each applicant to provide the department with his or her social security number, if the applicant is an individual, or the applicant's federal employer identification number, if the applicant is not an individual, as a condition of issuing an approval under sub. (3), (3g), or (3m).

(am) If an individual specified under par. (a) does not have a social security number, the individual, as a condition of obtaining approval, shall submit a statement made or subscribed under oath or affirmation to the department that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. An approval issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department may not disclose any information received under par. (a) to any person except to the department of revenue for the sole purpose of requesting certifications under s. 73.0301 and to the department of workforce development for the sole purpose of requesting certifications under s. 108.227.

(c) Except as provided in par. (am), the department shall deny an application for the issuance of an approval specified in par. (a) if the applicant does not provide the information specified in par. (a).

(d) The department shall deny an application for the issuance of an approval specified in par. (a) or shall revoke an approval if the department of revenue certifies under s. 73.0301 that the applicant for or holder of approval is liable for delinquent taxes or if the department of workforce development certifies under s. 108.227 that the applicant for or holder of approval is liable for delinquent unemployment insurance contributions.

(e) An action taken under par. (c) or (d) is subject to review only as provided under s. 73.0301 (2) (b) and (5) or s. 108.227 (5) and (6), whichever is applicable.

(4g) (a) The department shall establish and maintain a registry that contains all of the following:

1. A listing of all individuals who are added to the registry as required under sub. (2g) and all individuals about whom the department is notified under sub. (4).

2. A listing of all individuals about whom the department is notified under sub. (4r) (a) or (am), for whom the department makes findings under sub. (4r) (b) and to whom any of the following applies:

a. The individual waives a hearing or fails to notify the department under sub. (4r) (c).

b. A hearing officer finds reasonable cause to believe that the individual performed an action alleged under sub. (4r) (a) or (am).

3. Findings of the department under sub. (4r) (b) or of the hearing officer under sub. (4r) (d) concerning the misappropriation of property or the neglect or abuse of a client by an individual listed under subd. 2.

4. A brief statement, if any, of an individual about whom the department is notified under sub. (4) and who disputes the department's findings under sub. (4r) (b) or the hearing officer's findings under sub. (4r) (d).

(b) The department shall provide, upon receipt of a specific, written request, information requested that is contained in the registry under par. (a).

(c) Section 46.90 does not apply to this subsection.

(4m) An instructional program under sub. (3) or (3g) for which the department has suspended or revoked approval or imposed a plan of correction or a competency evaluation program under sub. (3m) for which the department has suspended or revoked approval or imposed a plan of correction may contest the department's action by sending, within 10 days after receipt of notice of the contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent. This subsection does not apply to a revocation of approval under sub. (4d) (d).

(4r) (a) Any individual may report to the department that he or she believes that any person employed by or under contract with an entity has neglected or abused a client or misappropriated the client's property.

(am) 1. An entity shall report to the department any allegation of misappropriation of the property of a client or of neglect or abuse of a client by any individual employed by or under contract with the entity if the individual is under the control of the entity.

3. An entity that intentionally fails to report an allegation of misappropriation of the property of a client or of neglect or abuse of a client may be required to forfeit not more than $1,000 and may be subject to other sanctions specified by the department by rule.

(b) Except as provided in pars. (em) and (er), the department shall review and investigate any report received under par. (a) or (am) and, if the allegation is substantiated, make specific, documented findings concerning the misappropriation of property or the neglect or abuse. The department shall, in writing, notify the individual specified in the report that the individual's name and the department's findings about the individual shall be listed in the registry under sub. (4g) (a) 2. and 3. unless the individual contests the listings in a hearing before the division of hearings and appeals created under s. 15.103 (1). The written notification shall describe the investigation conducted by the department, enumerate the findings alleging misappropriation of property or neglect or abuse of a client and explain the consequence to the individual specified in the report of waiving a hearing to contest the findings. The individual specified in the report shall have 30 calendar days after receipt of the notification to indicate to the department in writing whether he or she intends to contest the listing or to waive the hearing.

(c) If an individual under par. (b) notifies the department that he or she waives a hearing to contest the listings in the registry under par. (b), or fails to notify the department within 30 calendar days after receipt of a notice under par. (b), the department shall enter the name of the individual under sub. (4g) (a) 2. and the department's findings about the individual under sub. (4g) (a) 3.

(d) If the person specified in the report received under par. (a) or (am) timely notifies the division of hearings and appeals created under s. 15.103 (1) that he or she contests the listings in the registry under par. (b), the division of hearings and appeals shall

hold a hearing under the requirements of ch. 227. If after presentation of evidence a hearing officer finds that there is no reasonable cause to believe that the person specified in the report received under par. (a) or (am) performed an action alleged under par. (a) or (am), the hearing officer shall dismiss the proceeding. If after presentation of evidence a hearing officer finds that there is reasonable cause to believe that the person specified in the report received under par. (a) or (am) performed an action alleged under par. (a) or (am), the hearing officer shall so find and shall cause the name of the person specified in the report received under par. (a) or (am) to be entered under sub. (4g) (a) 2. and the hearing officer's findings about the person specified in the report received under par. (a) or (am) to be entered under sub. (4g) (a) 3.

(e) The individual may provide the department with a brief statement disputing the department's findings under par. (b) or the hearing officer's findings under par. (d) and, if so provided, the department shall enter the statement under sub. (4g) (a) 4.

(em) If the department receives a report under par. (a) or (am) and determines that an individual who is the subject of the report holds a credential that is related to the individual's employment at, or contract with, the entity, the department shall refer the report to the department of safety and professional services.

(er) The department may contract with private field investigators to conduct investigations of reports received by the department under par. (a) or (am).

(f) Section 46.90 does not apply to this subsection.

(5) (a) The department shall promulgate rules specifying standards for approval in this state of instructional programs and competency evaluation programs for nurse aides. The standards shall include specialized training in providing care to individuals with special needs.

(b) The department shall promulgate rules specifying criteria for acceptance by this state of an instructional program and a competency evaluation program that is certified in another state, including whether the other state grants nurse aide privileges to persons who have completed instruction in an instructional program that is approved under sub. (3) and whether one of the following is true:

1. If the other state certifies instructional programs and competency evaluation programs for nurse aides, the state's requirements are substantially similar, as determined by the department, to certification requirements in this state.

2. If the other state certifies nurse aides, that state's requirements are such that one of the following applies:

a. The instructional programs required for attendance by persons receiving certificates are substantially similar, as determined by the department, to instructional programs approved under sub. (3).

b. The competency evaluation programs required for successful completion by persons receiving certificates are substantially similar, as determined by the department, to competency evaluation programs approved under sub. (3m).

(6) Any person who violates sub. (2) shall forfeit not more than $1,000.

(7) This section does not apply to a hospice that receives no federal or state moneys for any purpose.

History: 1987 a. 128; 1989 a. 31, 84, 336; 1991 a. 39; 1993 a. 27, 399; 1995 a. 27; 1997 a. 27, 35, 156, 237, 252; 1999 a. 9, 22, 32; 2001 a. 74; 2007 a. 20 ss. 2862, 9121 (6) (a); 2007 a. 45, 153; 2011 a. 32, 120, 126; 2013 a. 36, 165, 357; 2015 a. 55; 2015 a. 195 s. 83; 2015 a. 265; 2017 a. 135; 2019 a. 185; 2023 a. 183.

Cross-reference: See also chs. DHS 13 and 129, Wis. adm. code.

Sub. (4r) provides for a hearing examiner to make a determination of abuse. That determination is the final agency determination. Kennedy v. DHSS, 199 Wis. 2d 442, 544 N.W.2d 917 (Ct. App. 1996), 95-1072.

146.60 Notice of release of genetically engineered organisms into the environment.

(1) DEFINITIONS. In this section:

(a) "Confidential information" means information entitled to confidential treatment under sub. (6) (a) 1. or 2.

(b) "Coordinated framework" means the coordinated framework for regulation of biotechnology set forth in 51 Fed. Reg. 23302 to 23350 (June 26, 1986), as amended by 52 Fed. Reg. 22892 to 22915 (June 16, 1987), and subsequent amendments to the coordinated framework for regulation of biotechnology.

(c) "Departments" means the department of agriculture, trade and consumer protection and the department of natural resources.

(d) "Federal regulator" means a federal agency or a designee of a federal agency which is responsible for regulating a release into the environment under the coordinated framework.

(e) "Regulated release" means a release into the environment for which the coordinated framework requires that the person proposing to commence the release into the environment do any of the following:

1. Notify a federal regulator of the release into the environment.

2. Secure the approval of or a permit or license from a federal regulator as a condition of commencing the release into the environment.

3. Secure a determination by a federal regulator of the need for notification, approval, licensing or permitting by the federal regulator, if the determination is part of a procedure specified in the coordinated framework.

(f) "Release into the environment" means the introduction or use in this state of an organism or pathogen anywhere except within an indoor facility which is designed to physically contain the organism or pathogen, including a laboratory, greenhouse, growth chamber or fermenter.

(g) "Reviewing department" means the department designated in sub. (2) to review a regulated release.

(2) DEPARTMENT DESIGNATION. (a) The department of natural resources shall be the reviewing department for any regulated release subject to 15 USC 2601 to 2629.

(b) The department of agriculture, trade and consumer protection shall be the reviewing department for any regulated release subject to any federal requirement in the coordinated framework, except a requirement under 15 USC 2601 to 2629.

(c) If a regulated release is subject to 15 USC 2601 to 2629 and to any other federal requirement in the coordinated framework, both departments shall be reviewing departments and shall enter into a memorandum of understanding designating one of them to be the lead reviewing department.

(3) NOTIFICATION. (a) Except as provided under sub. (7), no person may commence a regulated release unless the person provides to the reviewing department for that regulated release all of the following information within 7 days after the person submits or should have submitted the information specified in subd. 1. to a federal regulator, whichever is sooner:

1. A copy of all information which the person is required to submit to the federal regulator and which is not confidential information.

2. A summary of any confidential information which the person submits or is required to submit to a federal regulator. The summary shall be sufficient enough to enable the reviewing department to prepare the comment authorized under sub. (4) and to provide information to the public and shall have minimal extraneous and irrelevant information.

(b) A reviewing department may request that a person submit to it part or all of any of the confidential information that is the subject of the summary submitted to that reviewing department

under par. (a) 2. That person shall submit the information to the reviewing department no later than 3 working days after receiving the request.

(c) Notwithstanding sub. (6) (a):

1. If the department of natural resources receives information under this subsection or sub. (4) (c), it shall provide the department of agriculture, trade and consumer protection with a copy of the information.

2. If the department of agriculture, trade and consumer protection receives information under this subsection or sub. (4) (c), it shall provide the department of natural resources with a copy of the information.

(3m) PUBLIC NOTICE. No later than 5 working days after receiving information under sub. (3), the reviewing department shall send written notice of receipt of the information to the county board chairperson in a county without a county executive or county administrator or the county executive or county administrator and to the town board chairperson, village president or mayor of any town, village or city in which the release is proposed. No later than 5 working days after sending notice under this subsection, the reviewing department shall cause publication of a class 1 notice under ch. 985 in the county to which the notice is sent.

(4) COMMENT. The reviewing department may prepare a formal comment on the regulated release for submission to the federal regulator for that regulated release. The reviewing department shall submit that comment within the time established by the federal regulator for that regulated release. The comment shall address the criteria for notification or the granting of approval, a permit or a license under the applicable requirement in the coordinated framework and for the protection of the public health and the environment. To assist in the preparation of a comment, the reviewing department may do any of the following:

(a) Hold an informational meeting on the proposed regulated release.

(b) Provide an opportunity for the public to comment on the proposed regulated release.

(c) Request information on the proposed regulated release from the person providing the information under sub. (3), in addition to the information provided under sub. (3). That person is not required to submit that information to the reviewing department.

(d) Conduct a technical review of the proposed regulated release.

(e) Seek the assistance of the University of Wisconsin System faculty and academic staff or the department of health services in reviewing the proposed regulated release.

(5) MEMORANDUM OF UNDERSTANDING. Within 6 months after June 13, 1989, the department of natural resources shall enter into a memorandum of understanding with the department of agriculture, trade and consumer protection setting forth the procedures and responsibilities of the departments in the administration of this section. The memorandum shall establish procedures that minimize the duplication of effort between the departments and for the person providing information under sub. (3).

(6) CONFIDENTIAL TREATMENT OF RECORDS. (a) Except as provided in pars. (b) and (c), the departments shall keep confidential any information received under this section if the person submitting the information notifies the departments that any of the following applies to that information:

1. The federal regulator to which the information has been submitted has determined that the information is entitled to confidential treatment and is not subject to public disclosure under 5 USC 552 or under the coordinated framework.

2. The person submitting the information to the departments has submitted a claim to the federal regulator that the information is entitled to confidential treatment under 5 USC 552 or under the coordinated framework, and the federal regulator has not made a determination on the claim.

(b) Paragraph (a) shall not prevent the departments from exchanging information under sub. (3) (c) or (4) (c) or from using the information for the purposes of sub. (4) (d) or (e), subject to the requirements under par. (d). Any person receiving such information is subject to the penalty specified under sub. (9) (b) for the unauthorized release of that information.

(c) The departments shall allow public access to any information which has been granted confidentiality under par. (a) if any of the following occurs:

1. The person providing the information to the departments expressly agrees to the public access to the information.

2. After information has been granted confidentiality under par. (a) 2., the federal regulator makes a determination that the information is not entitled to confidential treatment under 5 USC 552 or under the coordinated framework.

3. Either of the departments determines that:

a. The person providing the information to the departments has not submitted that information under par. (a) or a claim under par. (a) 2. to the federal regulator; or

b. The federal regulator to which the information has been submitted has determined that the information is not entitled to confidential treatment and is subject to public disclosure under 5 USC 552 or under the coordinated framework.

(d) 1. The departments shall establish procedures to protect information required to be kept confidential under par. (a). Under the procedure, the departments may not submit any information under sub. (4) (d) or (e) to any person who is not an employee of either of the departments unless that person has signed an agreement which satisfies the requirements of subd. 2.

2. The agreement required under subd. 1. shall provide that information which is the subject of the agreement is subject to confidential treatment, shall prohibit the release or sharing of the information with any other person except at the direction of the reviewing department and in compliance with this section, shall acknowledge the penalties in sub. (9), s. 134.90 and any other applicable state law identified by the departments for the unauthorized disclosure of the information and shall contain a statement that the person receiving the information, any member of his or her immediate family or any organization with which he or she is associated has no substantial financial interest in the regulated release which is the subject of the information. Any person submitting the information under sub. (3) or (4) may waive any of the requirements under this subdivision.

(7) EXEMPTIONS. (a) This section does not apply to any of the following which is intended for human use and regulated under 21 USC 301 to 392 or 42 USC 262:

1. Drug.
2. Cosmetic.
3. Medical device.
4. Biological product.

(b) A reviewing department may waive part or all of the requirements under sub. (3) for a specified regulated release if the reviewing department determines that the satisfaction of that requirement is not necessary to protect the public health or the environment.

(c) A reviewing department may exempt a class of regulated releases from part or all of any requirement under sub. (3) if the department determines that the satisfaction of that requirement or

part of a requirement is not necessary to protect the public health or the environment.

(8) ENFORCEMENT. The attorney general shall enforce subs. (3) and (6). The circuit court for Dane County or for the county where a violation occurred in whole or in part has jurisdiction to enforce this section by injunctive and other relief appropriate for enforcement. In an enforcement action under this section, if it is determined that a person commenced a regulated release and did not comply with sub. (3), the court shall issue an injunction directing the person to prevent or terminate the regulated release.

(9) PENALTIES. (a) Any person who fails to submit the information required under sub. (3) and has not commenced a regulated release shall forfeit not more than $100 for each violation. Any person who commences or continues a regulated release without having submitted the information required under sub. (3) shall forfeit not less than $10 nor more than $25,000 for each violation. Each day of continued violation under this paragraph is a separate offense.

(ag) Any person who intentionally violates sub. (3) after commencing a regulated release shall be fined not less than $100 nor more than $25,000 or imprisoned for not more than one year in the county jail or both.

(am) For a 2nd or subsequent violation under par. (ag), a person may be fined not more than $50,000 or imprisoned for not more than 9 months or both.

(ao) Each day of continued violation under pars. (ag) and (am) is a separate offense.

(b) Any person who intentionally violates any requirement under sub. (6) (a) or (b) shall be fined not less than $50 nor more than $50,000 or imprisoned for not less than one month nor more than 6 months or both.

(bm) In pars. (ag) and (b), "intentionally" has the meaning given under s. 939.23 (3).

(c) Paragraphs (a) and (ag) do not apply to any person who provides the information required under sub. (3) to either of the departments.

(10) RELATION TO OTHER LAWS. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

History: 1989 a. 15; 1993 a. 213; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2001 a. 109; 2007 a. 20 s. 9121 (6) (a).

146.615 Advanced practice clinician training grants.

(1) In this section:

(a) "Advanced practice clinician" means a physician assistant or an advanced practice nurse, including a nurse practitioner, certified nurse-midwife, clinical nurse specialist, or certified registered nurse anesthetist.

(b) "Clinic" has the meaning given in s. 146.903 (1) (b).

(c) "Hospital" has the meaning given in s. 50.33 (2).

(d) "Rural clinic" means a clinic that is located in a city, town, or village in this state that has a population of less than 20,000.

(e) "Rural hospital" means a hospital that is located in a city, town, or village in this state that has a population of less than 20,000.

(2) Beginning in fiscal year 2018-19, from the appropriation under s. 20.435 (1) (fk), subject to sub. (3), the department shall distribute grants to hospitals and clinics that provide new training opportunities for advanced practice clinicians. The department shall distribute the grants under this section to hospitals and clinics that apply, in the form and manner determined by the department, to receive grants and that satisfy the criteria under sub. (3).

(3) (a) The department may distribute up to $50,000 per fiscal year per hospital or clinic.

(b) If the department distributes a grant to a hospital or clinic that has not previously received a grant under this section, the hospital or clinic receiving the grant may use the grant to create the education and infrastructure for training advanced practice clinicians or for activities authorized under par. (c). In distributing grants under this section, the department shall give preference to advanced practice clinician clinical training programs that include rural hospitals and rural clinics as clinical training locations.

(c) If the department distributes a grant to a hospital or clinic that has previously received a grant under this section, the department shall require the hospital or clinic to use the grant to pay for the costs of operating a clinical training program for advanced practice clinicians, which may include any of the following:

1. Required books and materials.
2. Tuition and fees.
3. Stipends for reasonable living expenses.
4. Preceptor costs, including preceptor compensation attributable to training, certification requirements, travel, and advanced practice clinician training.

(d) A recipient awarded a grant under this section shall match through its own funding sources the amount of the grant distributed by the department for the purposes of operating an advanced practice clinician rotation.

(4) A hospital or clinic sponsoring a training program for advanced practice clinicians supported by a grant under this section may determine what, if any, posteducation requirements must be fulfilled by participants in the training program for advanced practice clinicians.

History: 2017 a. 59; 2021 a. 240 s. 30.

146.616 Allied health professional education and training grants.

(1) In this section:

(a) "Allied health professional" means any individual who is a health care provider other than a physician, dentist, pharmacist, chiropractor, or podiatrist and who provides diagnostic, technical, therapeutic, or direct patient care and support services to the patient.

(b) "Clinic" has the meaning given in s. 146.903 (1) (b).

(c) "Hospital" has the meaning given in s. 50.33 (2).

(d) "Rural clinic" means a clinic that is located in a city, town, or village in this state that has a population of less than 20,000.

(e) "Rural hospital" means a hospital that is located in a city, town, or village in this state that has a population of less than 20,000.

(2) Beginning in fiscal year 2018-19, from the appropriation under s. 20.435 (1) (fi), subject to subs. (3) to (5), the department shall distribute grants to hospitals, health systems, and educational entities that form health care education and training consortia for allied health professionals. The department shall distribute the grants under this section to hospitals, health systems, and educational entities that apply, in the form and manner determined by the department, to receive a grant and that satisfy the requirements established by the department under sub. (4).

(3) (a) The department may distribute up to $125,000 per fiscal year per consortium to be used for any of the following:

1. Curriculum and faculty development.
2. Tuition reimbursement.
3. Clinical site or simulation expenses.

(b) A recipient awarded a grant under this section shall match through its own funding sources the amount of the grant distributed by the department for the purposes of operating an allied health professional training consortium.

(4) The department shall determine the requirements for the

formation of health care education and training consortia for allied health professionals.

(5) In distributing grants under this section, the department shall give preference to rural hospitals, health systems with a rural hospital or rural clinic, and rural educational entities.

History: 2017 a. 59; 2023 a. 19.

146.618 Treatment program grants. From s. 20.435 (5) (bg) or any available federal moneys, the department shall distribute a total of $750,000 in grants in each fiscal year to support treatment programs. Grant recipients shall use moneys awarded under this section for supervision, training, and resources, including salaries, benefits, and other related costs.

History: 2019 a. 9; 2021 a. 58.

146.62 Rural hospital loan program. (1) DEFINITION. In this section:

(a) "Hospital" has the meaning given under s. 50.33 (2).

(b) "Rural" means outside a metropolitan statistical area, as specified under 42 CFR 412.62 (f) (ii) (A).

(4) DEPARTMENTAL DUTIES. The department shall negotiate with each recipient of a loan made under s. 146.62 (2) and (3), 1989 stats., the schedule of repayments and collect the loan repayments as they are due. Loan repayments shall be deposited in the general fund. Except as provided in sub. (5), repayment for each loan shall begin no later than 12 months after the project funded under the loan begins operation.

(5) LOAN FORGIVENESS. If a rural hospital that receives a loan under s. 146.62 (2) and (3), 1989 stats., is unable to undertake the proposed project, the rural hospital may submit to the department a final report concerning the feasibility of loan repayment. The department shall review the report and may forgive all or part of the loan.

History: 1989 a. 31; 1991 a. 39; 1993 a. 16; 2011 a. 258.

146.63 Grants to establish graduate medical training programs. (1) DEFINITION. In this section, "rural hospital" means a hospital, as defined under s. 50.33 (2), that is not located in a 1st class city.

(2) DEPARTMENTAL DUTIES. (a) Subject to subs. (4) and (5), the department shall distribute grants from the appropriation under s. 20.435 (4) (bf) to assist rural hospitals and groups of rural hospitals in procuring infrastructure and increasing case volume to the extent necessary to develop accredited graduate medical training programs. The department shall distribute the grants under this paragraph to rural hospitals and groups of rural hospitals that apply to receive a grant under sub. (3) and that satisfy the criteria established by the department under par. (b) and the eligibility requirement under sub. (6).

(b) The department shall establish criteria for approving and distributing grants under par. (a) and criteria for approving plans under sub. (3).

(3) GRANT APPLICATION. A rural hospital or group of rural hospitals may apply, in the form and manner determined by the department, to receive a grant under sub. (2) (a). The rural hospital or group of rural hospitals shall include in the application a plan to use the funds to procure infrastructure or increase case volume to the extent necessary to develop an accredited graduate medical training program at the rural hospital or group of rural hospitals and a plan to satisfy the matching requirement under sub. (4).

(4) MATCHING FUNDS. The department may not distribute a grant under sub. (2) (a) unless the rural hospital or group of rural hospitals offers to provide matching funds in an amount determined by the department.

(5) TERM OF GRANTS. The department may not distribute a grant under sub. (2) (a) for a term that is more than 5 years to a rural hospital or group of rural hospitals.

(6) ELIGIBILITY. A rural hospital or group of rural hospitals may receive a grant under sub. (3) if the plan to use the funds involves developing an accredited graduate medical training program in a specialty.

History: 2013 a. 20; 2019 a. 9; 2023 a. 19, 185.

146.64 Grants to support graduate medical training programs. (1) DEFINITION. In this section, "hospital" has the meaning given under s. 50.33 (2).

(2) DEPARTMENTAL DUTIES. (a) Subject to par. (c) and sub. (4), the department shall distribute grants to hospitals to fund the addition of positions to existing accredited graduate medical training programs. The department shall distribute the grants under this paragraph to all of the following:

1. Hospitals that apply to receive a grant under sub. (3) and that satisfy the criteria established by the department under par. (b) and the eligibility requirement under sub. (4).

2. Hospitals that received a grant under this paragraph in the immediately preceding fiscal year, unless the hospital no longer satisfies the criteria established by the department under par. (b), the hospital no longer has an accredited graduate medical training program, or the hospital has notified the department that the hospital no longer wishes to receive the grant. The department may not require a hospital under this subdivision to apply for a grant under this paragraph.

(b) The department shall establish criteria for approving and distributing grants under par. (a).

(c) 1. The department shall distribute funds for grants under par. (a) from the appropriation under s. 20.435 (4) (bf). The department may not distribute more than $75,000 from the appropriation under s. 20.435 (4) (bf) to fund a given position in a graduate medical training program in a given state fiscal year.

2. If the department receives matching federal medical assistance funds, the department shall distribute those funds for grants under par. (a) in addition to any funds distributed under subd. 1.

(d) The department shall seek federal medical assistance funds to match the grants distributed under par. (a). If the department receives those funds, the department shall distribute them as provided in par. (c) 2.

(3) GRANT APPLICATION. Except as provided in sub. (2) (a) 2., a hospital may apply, in the form and manner determined by the department, to receive a grant under sub. (2) (a).

(3m) GRANT NONRENEWAL. A hospital that receives a grant under sub. (2) (a) shall notify the department, in the manner determined by the department, if the hospital no longer satisfies the criteria established by the department under sub. (2) (b), the hospital no longer has an accredited graduate medical training program, or the hospital no longer wishes to receive the grant.

(4) ELIGIBILITY. A hospital that has an accredited graduate medical training program in a specialty may apply to receive a grant under sub. (3).

History: 2013 a. 20; 2019 a. 9; 2023 a. 185.

146.645 Grants to support the establishment or operation of graduate medical training consortia. (1) DEFINITIONS. In this section:

(a) "Graduate medical training consortium" means an independent, nonprofit organization formed by 2 or more entities to operate as a sponsoring institution for accredited graduate medical training programs at rural hospitals in this state.

(b) "Rural hospital" has the meaning given in s. 146.63 (1).

(c) "Sponsoring institution" means an entity that oversees,

supports, and administers one or more accredited graduate medical training programs.

(2) DEPARTMENTAL DUTIES. (a) The department shall distribute grants from the appropriation under s. 20.435 (4) (bf) to support the operational expenses of graduate medical training consortia. Subject to par. (c) and sub. (3), the department shall distribute grants to all of the following:

1. Graduate medical training consortia that apply to receive a grant under sub. (4) and that satisfy the criteria established by the department under par. (b) and the eligibility requirement under sub. (3).

2. A graduate medical training consortium that received a grant under this paragraph in the immediately preceding fiscal year, unless the graduate medical training consortium no longer satisfies the criteria established by the department under par. (b) or the eligibility requirement under sub. (3), the consortium is not accredited as a sponsoring institution by the Accreditation Council for Graduate Medical Education, or any successor organization, or another accrediting body as determined by the department, or the consortium has notified the department that the consortium no longer wishes to receive the grant.

(b) The department shall establish criteria for approving and distributing grants under par. (a). The department may not require a consortium under par. (a) 2. to apply for a grant under that subdivision.

(c) 1. The department shall distribute up to $375,000 in annual grants under par. (a) from the appropriation under s. 20.435 (4) (bf).

2. If the department receives matching federal Medical Assistance funds, the department shall distribute those funds for grants under par. (a) in addition to any funds distributed under subd. 1.

(d) In awarding grants under par. (a), the department shall give preference to graduate medical training consortia that are the sponsoring institutions for graduate medical training programs in rural hospitals that have limited or no direct access to graduate medical training funding from the federal centers for medicare and medicaid services or have reached the maximum available amount of graduate medical training funding from the federal centers for medicare and medicaid services.

(3) ELIGIBILITY. A graduate medical training consortium may only receive a grant under this section if the graduate medical training consortium includes at least one partner rural hospital or health system.

(4) GRANT APPLICATION. Except as provided in sub. (2) (a) 2., a graduate medical training consortium may apply, in the manner determined by the department, to receive a grant under sub. (2) (a). A graduate medical training consortium shall identify all of the partner rural hospitals and health systems in the consortium in its grant application.

(5) GRANT NONRENEWAL. A graduate medical training consortium that receives a grant under sub. (2) (a) shall notify the department, in the manner determined by the department, if the consortium no longer satisfies the criteria established by the department under sub. (2) (b) or the eligibility requirement under sub. (3), the consortium is not accredited as a sponsoring institution by the Accreditation Council for Graduate Medical Education, or any successor organization, or another accrediting body as determined by the department, or the consortium no longer wishes to receive the grant.

(6) ACCREDITATION. A graduate medical training consortium shall, within 12 months of receiving a grant under sub. (2) (a), obtain and maintain accreditation as a sponsoring institution by the Accreditation Council for Graduate Medical Education, or any successor organization, or another accrediting body as determined by the department.

(7) EFFECT ON GRADUATE MEDICAL TRAINING EXPANSION GRANTS. The receipt of a grant under this section by a graduate medical training consortium does not affect the eligibility for a grant under s. 146.64 of any hospital that has an accredited graduate medical training program facilitated, organized, or implemented by the graduate medical training consortium.

History: 2023 a. 185.

146.65 Rural health dental clinics. (1) From the appropriation account under s. 20.435 (1) (dm), the department shall distribute moneys as follows:

(a) In each fiscal year, not more than $232,000, to the rural health dental clinic located in Ladysmith that provides dental services to persons who are developmentally disabled or elderly or who have low income, in the counties of Rusk, Price, Taylor, Sawyer, and Chippewa.

(b) In each fiscal year, not more than $355,600, to the rural health dental clinic located in Menomonie that provides dental services to persons who are developmentally disabled or elderly or who have low income, in the counties of Barron, Chippewa, Dunn, Pepin, Pierce, Polk, and St. Croix.

(c) In each fiscal year, not more than $400,000, to a rural health clinic in Chippewa Falls to provide dental services to persons who are developmentally disabled or elderly or who have low income, in the area surrounding Chippewa Falls, including the counties of Chippewa, Dunn, Barron, Taylor, Clark, and Eau Claire.

(2) The department shall also seek federal funding to support the operations of the rural health dental clinics under sub. (1).

History: 2001 a. 16; 2003 a. 33; 2005 a. 25; 2009 a. 28.

146.66 Low-income dental clinics. (1) From the appropriation account under s. 20.435 (1) (dk), in each fiscal year, the department shall award grants to no fewer than 9 nonprofit dental clinics that meet the eligibility requirements under sub. (2) and are located in this state.

(2) To be eligible for a grant under sub. (1), a nonprofit dental clinic must satisfy all of the following requirements:

(a) The clinic does not receive federal funds under 42 USC 254b.

(b) The clinic's primary purpose is to provide dental care to low-income patients, which may include any of the following individuals:

1. Recipients of medical assistance, as defined in s. 49.43 (8).

2. Low-income individuals who do not qualify for medical assistance, as defined in s. 49.43 (8).

3. Individuals under the age of 18.

4. Individuals over the age of 65.

5. Individuals with disabilities.

(3) The department shall seek federal funding to support the operations of dental clinics that receive grants under sub. (1) and shall request that the federal department of health and human services encourage collaborative arrangements between private dentists and health centers that receive federal funds under 42 USC 254b.

History: 2011 a. 32.

146.68 Grant for colposcopies and other services. From the appropriation account under s. 20.435 (1) (dg), the department shall provide $75,000 in each fiscal year to an entity that satisfies the following criteria to provide colposcopic exami-

nations and to provide services to medical assistance recipients or persons who are eligible for medical assistance:

(1) The entity is located in the western or northern public health region of the state, as determined by the department.

(2) The entity provides Papanicolaou tests, and at least 50 percent of the persons for whom the entity provides Papanicolaou tests are recipients of medical assistance or are eligible for medical assistance.

History: 2007 a. 20; 2009 a. 28.

146.69 Grants for the Surgical Collaborative of Wisconsin. The department shall award a grant in an amount of $150,000 per fiscal year to the Surgical Collaborative of Wisconsin.

NOTE: This section is repealed eff. 7-1-25 by 2023 Wis. Act 19.

History: 2023 a. 19.

146.71 Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death shall be made in accordance with accepted medical standards.

History: 1981 c. 134.

To determine whether an infant was "born alive" under s. 939.22 (16) for purposes of the homicide laws, courts apply this section. State v. Cornelius, 152 Wis. 2d 272, 448 N.W.2d 434 (Ct. App. 1989).

146.81 Health care records; definitions. In ss. 146.81 to 146.84:

(1) "Health care provider" means any of the following:

(a) A nurse licensed under ch. 441.

(b) A chiropractor licensed under ch. 446.

(c) A dentist or dental therapist who is licensed under ch. 447 or who holds a compact privilege under subch. II of ch. 447.

NOTE: Par. (c) is shown as amended by 2023 Wis. Acts 87 and 88 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(d) A physician, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

(dc) A naturopathic doctor or limited-scope naturopathic doctor licensed under ch. 466.

(dg) A physical therapist or physical therapist assistant who is licensed under subch. III of ch. 448 or who holds a compact privilege under subch. XI of ch. 448.

NOTE: Par. (dg) is shown as affected by 2021 Wis. Acts 23 and 251 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The cross-reference to subch. XI of ch. 448 was changed from subch. X of ch. 448 by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of subch. X of ch. 448.

(dr) A podiatrist licensed under subch. IV of ch. 448.

(em) A dietitian certified under subch. V of ch. 448.

(eq) An athletic trainer licensed under subch. VI of ch. 448.

(es) An occupational therapist or occupational therapy assistant who is licensed under subch. VII of ch. 448 or who holds a compact privilege under subch. XII of ch. 448.

NOTE: The cross-reference to subch. XII of ch. 448 was changed from subch. XI of ch. 448 by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of subch. XI of ch. 448.

(et) A genetic counselor licensed under subch. VIII of ch. 448.

(eu) A physician assistant who is licensed under subch. IX of ch. 448 or who holds a compact privilege under subch. XIII of ch. 448.

NOTE: The cross-reference to subch. IX of ch. 448 was changed from subch. VIII of ch. 448 by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of subch. VIII of ch. 448.

(f) An optometrist licensed under ch. 449.

(fm) A pharmacist or pharmacy technician licensed or registered under ch. 450.

(g) An acupuncturist certified under ch. 451.

(h) A psychologist who is licensed under ch. 455, who is exercising the temporary authorization to practice, as defined in s. 455.50 (2) (o), in this state, or who is practicing under the authority to practice interjurisdictional telepsychology, as defined in s. 455.50 (2) (b).

(hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under subch. I of ch. 457 or a professional counselor who is exercising the privilege to practice, as defined in s. 457.50 (2) (s), in this state.

(hm) A speech-language pathologist or audiologist who is licensed under subch. II of ch. 459 or who holds a compact privilege under subch. III of ch. 459, or a speech and language pathologist licensed by the department of public instruction.

(hp) A massage therapist or bodywork therapist licensed under ch. 460.

(i) A partnership of any providers specified under pars. (a) to (hp).

(j) A corporation or limited liability company of any providers specified under pars. (a) to (hp) that provides health care services.

(k) A cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility.

(L) A hospice licensed under subch. VI of ch. 50.

(m) An inpatient health care facility, as defined in s. 50.135 (1).

(n) A community-based residential facility, as defined in s. 50.01 (1g).

(p) A rural medical center, as defined in s. 50.50 (11).

(q) An ambulance service provider, as defined in s. 256.01 (3).

(r) An emergency medical services practitioner, as defined in s. 256.01 (5).

(s) An emergency medical responder, as defined in s. 256.01 (4p).

(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

(a) The name of the patient whose record is being disclosed.

(b) The type of information to be disclosed.

(c) The types of health care providers making the disclosure.

(d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.

(e) The individual, agency or organization to which disclosure may be made.

(f) The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.

(h) The time period during which the consent is effective.

(3) "Patient" means a person who receives health care services from a health care provider.

(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider; and all records made by an ambulance service provider, as defined in s. 256.01 (3), an emergency medical services practitioner, as defined in s. 256.01 (5), or an emergency medical responder, as defined in s. 256.01 (4p), in administering

emergency care procedures to and handling and transporting sick, disabled, or injured individuals. "Patient health care records" includes billing statements and invoices for treatment or services provided by a health care provider and includes health summary forms prepared under s. 302.388 (2). "Patient health care records" does not include those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (5g) or (5j), 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), records related to sales of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained by pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125.

(5) "Person authorized by the patient" means the parent, guardian, or legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m), or (4n), the guardian of a patient adjudicated incompetent in this state, the personal representative, spouse, or domestic partner under ch. 770 of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse or domestic partner survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89; 2005 a. 262, 387; 2007 a. 108; 2009 a. 28, 165, 209, 355; 2015 a. 195 s. 83; 2015 a. 265; 2017 a. 12; 2019 a. 100; 2021 a. 23 ss. 19, 20, 71; 2021 a. 100, 123, 130, 131, 251; 2023 a. 55, 56, 81, 87, 88; s. 13.92 (1) (bm) 2.; s. 13.92 (2) (i).

A letter written by a person not licensed as a health care provider under sub. (1) was not a record under sub. (4) prepared under the supervision of a health care provider under sub. (1) (j) when the person was employed by a corporation that employed health care professionals but the corporation's shareholders were not health care providers. Hart v. Bennet, 2003 WI App 231, 267 Wis. 2d 919, 672 N.W.2d 306, 02-2933.

When a health care provider denied access to records on the ground that the patient was possibly incompetent to consent to the release of the records, it was obligated under sub. (5) to petition for a temporary guardian for the patient. Szymczak v. Terrace at St. Francis, 2006 WI App 3, 289 Wis. 2d 110, 709 N.W.2d 103, 04-2067.

The plaintiff in this case failed to state a claim that the defendant health care provider violated s. 146.83 (4) (b). The plaintiff did not allege that the defendant withheld any record when it alleged that the defendant concealed the results of an internal investigation into why and under what authority its employees had accessed the plaintiff's health care records. Any records the defendant might have kept regarding its internal investigation would not have related to the plaintiff's health or any treatment or services received. Accordingly, such information, even if reduced to a record, would not have constituted a patient health care record, as that term is defined in sub. (4). Wall v. Pahl, 2016 WI App 71, 371 Wis. 2d 716, 886 N.W.2d 373, 15-1230.

The context of the definition of "person authorized by the patient" in sub. (5) indicates that "any person authorized in writing by the patient" is a stand-alone category, separate and apart from the remaining categories, containing no limitations beyond those expressly written. This language requires only a person with a written authorization from the patient. The statute does not require that the authorization be an authorization to make health care decisions on behalf of the patient. Moya v. Aurora Healthcare, Inc., 2017 WI 45, 375 Wis. 2d 38, 894 N.W.2d 405, 14-2236.

Under sub. (4), "patient health care record" means "all records," including electronic records. Nothing in s. 146.836 changes that definition as applied to s. 146.83 (3f), nor any other statute. Banuelos v. University of Wisconsin Hospitals & Clinics Authority, 2023 WI 25, 406 Wis. 2d 439, 988 N.W.2d 627, 20-1582.

146.815 Contents of certain patient health care records. (1) Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient's occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient's usual occupation.

(2) (a) If a hospital inpatient's health problems may be related to the inpatient's occupation or past occupations, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient's health problems may be related to the occupation or past occupations of the inpatient's parents, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(3) The department shall provide forms that may be used to record information specified under sub. (2) and shall provide guidelines for determining whether to prepare the occupational history required under sub. (2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

History: 1981 c. 214.

146.816 Uses and disclosures of protected health information. (1) In this section:

(a) "Business associate" has the meaning given in 45 CFR 160.103.

(b) "Covered entity" has the meaning given in 45 CFR 160.103.

(c) "Disclosure" has the meaning given in 45 CFR 160.103 and includes redisclosures and rereleases of information.

(d) "Health care operations" has the meaning given in 45 CFR 164.501.

(e) "Payment" has the meaning given in 45 CFR 164.501.

(f) "Protected health information" has the meaning given in 45 CFR 160.103.

(g) "Treatment" has the meaning given in 45 CFR 164.501.

(h) "Treatment facility" has the meaning given in s. 51.01 (19).

(i) "Use" has the meaning given in 45 CFR 160.103.

(2) Sections 51.30 (4) (a) and (e) and 146.82 and rules promulgated under s. 51.30 (12) do not apply to a use, disclosure, or request for disclosure of protected health information by a covered entity or its business associate that meets all the following criteria:

(a) The covered entity or its business associate makes the use, disclosure, or request for disclosure in compliance with 45 CFR 164.500 to 164.534.

(b) The covered entity or its business associate makes the use, disclosure, or request for disclosure in any of the following circumstances:

1. For purposes of treatment.

2. For purposes of payment.

3. For purposes of health care operations.

4. For purposes of disclosing information about a patient in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

5. For purposes of disclosing under s. 175.32 any threat made by a patient regarding violence in or targeted at a school in a good faith effort to prevent or lessen a serious and imminent threat to the health or safety of a student or school employee or the public.

(3) A covered entity that is a treatment facility shall comply with the notice of privacy practices obligations under 45 CFR 164.520, including the obligation to include in plain language in the notice of privacy practices a statement of the individual's

rights with respect to protected health information and a brief description of how the individual may exercise those rights including the right to request restrictions on uses and disclosures of protected health information about the individual to carry out treatment, payment, or health care operations as provided in 45 CFR 164.522.

(4) The department shall make a comprehensive and accessible document written in commonly understood language that explains health information privacy rights available to all applicable health care facilities in the state and on the department's Internet site.

History: 2013 a. 238; 2017 a. 140, 143.

146.817 Preservation of fetal monitor tracings and microfilm copies. (1) In this section, "fetal monitor tracing" means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

(2) (a) Unless a health care provider has first made and preserved a microfilm copy of a patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient's fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars. (a) and (b) shall be sent to the patient's last-known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within 30 days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.

History: 1987 a. 27, 399, 403.

146.819 Preservation or destruction of patient health care records. (1) Except as provided in sub. (4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with ss. 146.81 to 146.835.

(b) Provide for the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par. (a), and for the deletion or destruction of some of the records, as specified in par. (b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub. (1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last-known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub. (1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least 35 days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, to the last-known address of the patient to whom the records pertain or the last-known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) A community-based residential facility or nursing home licensed under s. 50.03.

(b) A hospital approved under s. 50.35.

(c) A hospice licensed under s. 50.92.

(d) A home health agency licensed under s. 50.49 (4).

(f) A local health department, as defined in s. 250.01 (4), that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

History: 1991 a. 269; 1993 a. 27; 1999 a. 9.

Cross-reference: See also ch. Med 21, Wis. adm. code.

146.82 Confidentiality of patient health care records. (1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 253.12 (2), 255.40, or 979.01; records generated and disclosed to the controlled substances board pursuant to s. 961.385; testimony authorized under s. 905.04 (4) (h); or releases made for purposes of health care operations, as defined in 45 CFR 164.501, and as authorized under 45 CFR 164, subpart E.

(2) ACCESS WITHOUT INFORMED CONSENT. (a) Notwithstanding sub. (1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. 256.15, including medical staff members, employees or persons serving in training programs or participating

in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for billing, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To an elder-adult-at-risk agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) and (5) or to an adult-at-risk agency designated under s. 55.043 (1d) for purposes of s. 55.043. The health care provider may release information by initiating contact with the elder-adult-at-risk agency or adult-at-risk agency without receiving a request for release of the information from the elder-adult-at-risk agency or adult-at-risk agency.

8. To the department under s. 255.04 and to the persons specified under s. 255.04 (3). The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 48.9795 or 54.10 or s. 880.33, 2003 stats.

b. Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62 (1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., or if the patient is a minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 48.9795 or 54.10 or s. 880.33, 2003 stats., the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good-faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, if the patient files a submission of controversy under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To an agency, as defined in s. 48.981 (1) (ag), a sheriff or police department, or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with an agency, sheriff or police department, or district

attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose the report or record, except to the persons, for the purposes, and under the conditions specified in s. 48.981 (7).

11m. To a court conducting a termination of parental rights proceeding under s. 48.42, to an agency, district attorney, corporation counsel or other appropriate official under s. 48.09 performing official duties relating to such a proceeding, or to the attorney or guardian ad litem for any party to such a proceeding for purposes of conducting, preparing for, or performing official duties relating to the proceeding, if that person identifies the subject of the record by name. A person to whom a report or record is disclosed under this subdivision may not further disclose the report or record, except for the purposes specified in this subdivision.

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply:

a. The employee or agent has responsibility for preparation or storage of patient health care records.

b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under s. 940.22.

14. To a representative of the board on aging and long-term care, in accordance with s. 49.498 (5) (e).

15. To the department under s. 48.60 (5) (c), 50.02 (5) or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 48.60 (5) (a), 50.035 (5) (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long-term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long-term care facility, as specified in s. 16.009 (4) (b), or an individual 60 years of age or older who is an enrollee of the family care program, the Family Care Partnership Program, the program of all-inclusive care for the elderly, or the self-directed services option.

17. To the department under s. 50.53 (2).

18. Following the death of a patient, to a coroner, deputy coroner, medical examiner or medical examiner's assistant, for the purpose of completing a medical certificate under s. 69.18 (2) or investigating a death under s. 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in a supervised independent living arrangement, including a placement under s. 48.205, 48.21, 938.205, or 938.21, or for whom placement in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in a supervised independent living arrangement is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, to the foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or juvenile correctional facility in which the child or juvenile is placed, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, to the foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or juvenile correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.

19. To a procurement organization, as defined in s. 157.06 (2) (p), for the purpose of conducting an examination to ensure the medical suitability of a body part that is or could be the subject of an anatomical gift under s. 157.06.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

22. By a person specified in subd. 21. to a correctional officer of the department of corrections who has custody of or is responsible for the supervision of a prisoner, to a person designated by a jailer to have custodial authority over a prisoner, or to a law enforcement officer or other person who is responsible for transferring a prisoner to or from a prison or jail, if the patient health care record indicates that the prisoner has a communicable disease and disclosure of that information is necessary for the health and safety of the prisoner or of other prisoners, of the person whom the information is disclosed, or of any employee of the prison or jail.

(c) Notwithstanding sub. (1), patient health care records shall be released to appropriate examiners and facilities in accordance with s. 971.17 (2) (e), (4) (c), and (7) (c). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17.

(cm) Notwithstanding sub. (1), patient health care records shall be released, upon request, to appropriate persons in accordance with s. 980.031 (4) and to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the treatment records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning records made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(3) REPORTS MADE WITHOUT INFORMED CONSENT. (a) Notwithstanding sub. (1), a physician, a naturopathic doctor, a limited-scope naturopathic doctor, a physician assistant, or an ad-

vanced practice nurse prescriber certified under s. 441.16 (2) who treats a patient whose physical or mental condition in the physician's, naturopathic doctor's, limited-scope naturopathic doctor's, physician assistant's, or advanced practice nurse prescriber's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

NOTE: Par. (a) is shown as amended by 2021 Wis. Acts 23 and 130 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(b) Notwithstanding sub. (1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(4) RELEASE OF A PORTION OF A RECORD TO CERTAIN PERSONS. (a) In this subsection:

1. "Immediate family" has the meaning given in s. 350.01 (8m).

2. "Incapacitated" has the meaning given in s. 50.94 (1) (b).

(b) Notwithstanding sub. (1), a health care provider may release a portion, but not a copy, of a patient health care record, to the following, under the following circumstances:

1. Any person, if the patient or a person authorized by the patient is not incapacitated, is physically available, and agrees to the release of that portion.

2. Any of the following, as applicable, if the patient and person authorized by the patient are incapacitated or are not physically available, or if an emergency makes it impracticable to obtain an agreement from the patient or from the person authorized by the patient, and if the health care provider determines, in the exercise of his or her professional judgment, that release of a portion of the patient health care record is in the best interest of the patient:

a. A member of the patient's immediate family, another relative of the patient, a close personal friend of the patient, or an individual identified by the patient, that portion that is directly relevant to the involvement by the member, relative, friend, or individual in the patient's care.

b. Any person, that portion that is necessary to identify, locate, or notify a member of the patient's immediate family or another person that is responsible for the care of the patient concerning the patient's location, general condition, or death.

3. A victim advocate, as defined in s. 50.378 (1) (a), who is accompanying a victim of sexual assault, human trafficking, or child sexual abuse under s. 50.378 (2).

(5) REDISCLOSURE. (a) In this subsection, "covered entity" has the meaning given in 45 CFR 160.103.

(b) Notwithstanding sub. (1) and except as provided in s. 610.70 (5), a covered entity may redisclose a patient health care record it receives under this section without consent by the patient or person authorized by the patient if the redisclosure of the patient health care record is a release permitted under this section.

(c) Notwithstanding sub. (1), an entity that is not a covered entity may redisclose a patient health care record it receives under this section only under one of the following circumstances:

1. The patient or a person authorized by the patient provides informed consent for the redisclosure.

2. A court of record orders the redisclosure.

3. The redisclosure is limited to the purpose for which the patient health care record was initially received.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215, 233, 380, 399; 1989 a. 31, 102, 334, 336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105; 2003 a. 281; 2005 a. 187, 344, 387, 388, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 45, 106, 108, 130; 2009 a. 28, 276, 362; 2011 a. 32, 161; 2013 a. 20, 334; 2015 a. 55, 351; 2017 a. 59; 2019 a. 109; 2021 a. 23, 130; s. 13.92 (2) (i).

Because under s. 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an operating a motor vehicle while under the influence trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now s. 49.22] may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. State v. Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (Ct. App. 1996), 95-0792.

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. State v. Thompson, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998), 97-2744.

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. (2) provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician-patient privilege and was subject to release by "lawful court order." Crawford v. Care Concepts, Inc., 2001 WI 45, 243 Wis. 2d 119, 625 N.W.2d 876, 99-0863.

In the event of a release of confidential health information in violation of the federal Health Insurance Portability and Accounting Act of 1996 (HIPAA) or this section, the proper remedy is not suppression of the released information. Neither HIPAA nor this section provides for suppression of evidence as a remedy for a violation. Suppression is warranted only when evidence has been obtained in violation of a defendant's constitutional rights or if a statute specifically provides for suppression as a remedy. State v. Straehler, 2008 WI App 14, 307 Wis. 2d 360, 745 N.W.2d 431, 07-0822.

This section does not reach beyond protection of health care records. A nurse's verbal statements based upon the nurse's observations are not protected by this section. State v. Straehler, 2008 WI App 14, 307 Wis. 2d 360, 745 N.W.2d 431, 07-0822.

This section does not apply when a health care organization's employee merely accesses a patient health care record without disclosing any information from the record to anyone outside the organization. Interpreting this section to apply to the dissemination of patient health care records from the organization holding the records to its own employees would assuredly lead to unreasonable results. Wall v. Pahl, 2016 WI App 71, 371 Wis. 2d 716, 886 N.W.2d 373, 15-1230.

Disclosure of patient health care records in Wisconsin. Lehner. WBB Aug. 1984.

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

New Federal Privacy Rule for Health Care Providers, Part II: Balancing Federal and Wisconsin Medical Privacy Laws. Hartin. Wis. Law. June 2003.

Attorney Access To and Use of Medical Records. Stone. Wis. Law. Aug. 2003.

Practice Tips: Attorney Access to Medical Records. Stone. Wis. Law. Oct. 2003.

146.83 Access to patient health care records.

(1b) Notwithstanding s. 146.81 (5), in this section, a "person authorized by the patient" includes an attorney appointed to represent the patient under s. 977.08 if that attorney has written informed consent from the patient to view and obtain copies of the records.

(1c) Except as provided in s. 51.30 or 146.82 (2), any patient or person authorized by the patient may, upon submitting a statement of informed consent, inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(1f) (am) If a patient or person authorized by the patient requests copies of the patient's health care records under this section for use in appealing a denial of social security disability insurance, under 42 USC 401 to 433, or supplemental security income, under 42 USC 1381 to 1385, the health care provider may charge the patient or person authorized by the patient no more than the amount that the federal social security administration reimburses the department for copies of patient health care records.

(bm) If the department requests copies of a patient's health care records for use in determining eligibility for social security disability insurance, under 42 USC 401 to 433, or supplemental security income, under 42 USC 1381 to 1385, the health care provider may charge no more than the amount that the federal social security administration reimburses the department for copies of patient health care records.

(cm) Except as provided in sub. (1g), a health care provider may not charge a patient or a person authorized by the patient more than 25 percent of the applicable fee under sub. (3f) for providing one set of copies of a patient's health care records under this section if the patient is eligible for medical assistance, as defined in s. 49.43 (8). A health care provider may require that a

patient or person authorized by the patient provide proof that the patient is eligible for medical assistance before providing copies under this paragraph at a reduced charge. A health care provider may charge 100 percent of the applicable fee under sub. (3f) for providing a 2nd or additional set of copies of patient health care records for a patient who is eligible for medical assistance.

(1g) The requirement under sub. (1f) (cm) to provide one set of copies of records at a reduced charge if the patient is eligible for medical assistance does not apply if the health care provider is the department or the department of corrections.

(1m) (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent.

(b) The health care provider under par. (a) may be charged reasonable costs for the provision of the patient's health care records.

(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in s. 50.135 (1), or upon the first provision of services by the health care provider.

(3) The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.

(3f) (a) Except as provided in sub. (1f) or s. 51.30 or 146.82 (2), if a person requests copies of a patient's health care records, provides informed consent, and pays the applicable fees under par. (b), the health care provider shall provide the person making the request copies of the requested records.

(b) Except as provided in sub. (1f), a health care provider may charge no more than the total of all of the following that apply for providing the copies requested under par. (a):

1. For paper copies: $1 per page for the first 25 pages; 75 cents per page for pages 26 to 50; 50 cents per page for pages 51 to 100; and 30 cents per page for pages 101 and above.

2. For microfiche or microfilm copies, $1.50 per page.

3. For a print of an X-ray, $10 per image.

4. If the requester is not the patient or a person authorized by the patient, for certification of copies, a single $8 charge.

5. If the requester is not the patient or a person authorized by the patient, a single retrieval fee of $20 for all copies requested.

6. Actual shipping costs and any applicable taxes.

(c) 1. In this paragraph, "consumer price index" means the average of the consumer price index for all urban consumers, U.S. city average, as determined by the bureau of labor statistics of the U.S. department of labor.

2. On each July 1, beginning on July 1, 2012, the department shall adjust the dollar amounts specified under par. (b) by the percentage difference between the consumer price index for the 12-month period ending on December 31 of the preceding year and the consumer price index for the 12-month period ending on December 31 of the year before the preceding year. The department shall notify the legislative reference bureau of the adjusted amounts and the legislative reference bureau shall publish the adjusted amounts in the Wisconsin Administrative Register.

(4) No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109; 2005 a. 387; 2009 a. 28; 2011 a. 32; 2013 a. 342.

Sub. (4) (b) clearly and unambiguously applies only to the concealment or withholding of "patient health care records." "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider and had three salient facets, for purposes of this case: 1) a patient health care record must be a "record"; 2) the record must have been prepared by or under the supervision of a health care provider; and 3) the record must relate to the patient's health. Wall v. Pahl, 2016 WI App 71, 371 Wis. 2d 716, 886 N.W.2d 373, 15-1230.

The plaintiff in this case failed to state a claim that the defendant health care provider violated sub. (4) (b). The plaintiff did not allege that the defendant withheld any record when it alleged that the defendant concealed the results of an internal investigation into why and under what authority its employees had accessed the plaintiff's health care records. Any records the defendant might have kept regarding its internal investigation would not have related to the plaintiff's health or any treatment or services received. Accordingly, such information, even if reduced to a record, would not have constituted a patient health care record, as that term is defined in s. 146.81 (4). Wall v. Pahl, 2016 WI App 71, 371 Wis. 2d 716, 886 N.W.2d 373, 15-1230.

Because "person authorized by the patient" is defined in s. 146.81 (5) to include "any person authorized in writing by the patient," an attorney authorized by his or her client in writing via a federal Health Insurance Portability and Accountability Act release form to obtain the client's health care records is a "person authorized by the patient" under sub. (3f) (b) 4. and 5. and is therefore exempt from certification charges and retrieval fees under those subdivisions. Moya v. Aurora Healthcare, Inc., 2017 WI 45, 375 Wis. 2d 38, 894 N.W.2d 405, 14-2236.

The text of sub. (3f) (b) regulates only those charges made by health care providers. Therefore, a company that is not a health care provider but provides health care records on behalf of a health care provider is not subject to the fee restrictions in sub. (3f) (b). Neither common law principles of agency nor the plain meaning of s. 990.001 (9) supports the conclusion that an agent is personally liable for charging more for health care records than the statute permits its principal to charge. Townsend v. ChartSwap, LLC, 2021 WI 86, 399 Wis. 2d 599, 967 N.W.2d 21, 19-2034.

Although sub. (3f) provides for the imposition of fees for copies of medical records in certain formats, it does not permit health care providers to charge fees for patient records in an electronic format because it does not enumerate electronic formats as one of the three formats for which a health care provider may charge a fee. Banuelos v. University of Wisconsin Hospitals & Clinics Authority, 2023 WI 25, 406 Wis. 2d 439, 988 N.W.2d 627, 20-1582.

Wisconsin courts have applied the two-year limitations period under s. 893.93 (2) (a) to actions that principally benefit the public at large, a "statute penalty," and the six-year limitations period under s. 893.93 (1) (a) to actions that principally benefit the plaintiff at issue. Because a claim under sub. (3f) (b) is primarily private in nature and does not result in a statute penalty for the public's benefit, the six-year limitations period of s. 893.93 (1) (a) applies. Although s. 146.84 (1) (b) and (bm) authorize exemplary damages, what matters is who, on balance, the cause of action benefits—the private individual or the general public. Smith v. RecordQuest, LLC, 989 F.3d 513 (2021).

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.41 (4) (b) or 767.451 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

History: 1987 a. 355; 2005 a. 443 s. 265.

146.836 Applicability. Sections 146.815, 146.82, 146.83 (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

History: 1999 a. 78.

This section does not serve as an omnibus statute, intending to supersede in scope all statutes that reference health care records. Rather, the four enumerated statutes cover matters of content and confidentiality, and there is nothing in the text to indicate that its circumference is intended to expand beyond that narrow field. It neither limits the scope of s. 146.83 (3f) (a) nor is it rendered superfluous by the definition of "patient health care records" in s. 146.81 (4). Banuelos v. University of Wisconsin Hospitals & Clinics Authority, 2023 WI 25, 406 Wis. 2d 439, 988 N.W.2d 627, 20-1582.

146.84 Violations related to patient health care records. (1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) A custodian of records incurs no liability under par. (bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivi-

sion of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $1,000 and costs and reasonable actual attorney fees.

(c) An individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

(2) PENALTIES. (a) Whoever does any of the following may be fined not more than $25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under s. 146.82 or 146.83 (1c) or (3f) under false pretenses.

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates s. 146.83 (4).

(b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than $1,000 for each violation.

(c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(3) DISCIPLINE OF EMPLOYEES. Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended without pay.

(4) EXCEPTIONS. This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

History: 1991 a. 39; 1993 a. 445; 1999 a. 9, 79; 2009 a. 28; 2011 a. 32.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. Cruz v. All Saints Healthcare System, Inc., 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344, 00-1473.

Sub. (1) (c) specifies that only "an individual" may sue to enjoin a violation of s. 146.82 or 146.83. Not only do the provisions in ss. 146.82 to 146.84 not create a right to enjoin the planned release of records for entities such as the plaintiff business trade associations' member businesses, they expressly exclude them from that right by categorically identifying who may be a potential plaintiff. Wisconsin Manufacturers & Commerce v. Evers, 2021 WI App 35, 398 Wis. 2d 164, 960 N.W.2d 442, 20-2081.

Affirmed on other grounds. 2022 WI 38, 401 Wis. 2d 699, 977 N.W.2d 374, 20-2081.

Sub. (1) (b) provides that "any person" may be held liable for knowingly and willfully violating the provisions of s. 146.83. However, the text of s. 146.83 (3f) (b) regulates only those charges made by health care providers. Therefore, only a health care provider that charges more than the fees permissible under s. 146.83 (3f) (b) would fall within the parameters of both sub. (1) (b) and s. 146.83 (3f) (b). Although sub. (1) (b) refers to "any person," it is not an enforcement mechanism solely for s. 146.83. It also relates to violations of other statutes. Townsend v. ChartSwap, LLC, 2021 WI 86, 399 Wis. 2d 599, 967 N.W.2d 21, 19-2034.

During the time period when *Moya*, 2016 WI App 5, was the law—December 1, 2015, through May 3, 2017—a patient's attorneys were excluded from the fee exemptions under s. 146.83 (3f) (b) 4. and 5. Because the patient's attorneys were not exempt based on the law at the time, there could be no negligent, willful, or knowing violation under sub. (1) (b) or (bm) for charges issued to them under s. 146.83 (3f) (b) 4. or 5. during that time period. Fotusky v. ProHealth Care, Inc., 2023 WI App 19, 407 Wis. 2d 554, 991 N.W.2d 502, 21-1395.

Wisconsin courts have applied the two-year limitations period under s. 893.93 (2) (a) to actions that principally benefit the public at large, a "statute penalty," and the six-year limitations period under s. 893.93 (1) (a) to actions that principally benefit the plaintiff at issue. Because a claim under s. 146.83 (3f) (b) is primarily private in nature and does not result in a statute penalty for the public's benefit, the six-year limitations period of s. 893.93 (1) (a) applies. Although sub. (1) (b) and (bm) authorize exemplary damages, what matters is who, on balance, the cause of action benefits—the private individual or the general public. Smith v. RecordQuest, LLC, 989 F.3d 513 (2021).

146.87 Federal registration numbers for prescribers of controlled substances. (1) In this section:

(a) "Controlled substance" has the meaning given in s. 961.01 (4).

(b) "Federal registration number" means the registration number required under 21 USC 822 for practitioners who prescribe controlled substances.

(c) "Health care provider" has the meaning given in 42 USC 1320d (3).

(d) "Practitioner" has the meaning given in s. 450.01 (17).

(e) "Prescription order" has the meaning given in s. 450.01 (21).

(2) Beginning on the first day on which small health plans are required to comply with a U.S. Department of Health and Human Services regulation under 42 USC 1320d-2 (b) that requires use of a unique identifier for health care providers, no person may do any of the following:

(a) Require that a practitioner include his or her federal registration number on a prescription order for a drug or device that is not a controlled substance.

(b) Disclose a practitioner's federal registration number without the practitioner's consent for any purpose other than complying with or enforcing federal or state law related to controlled substances.

(c) Use a federal registration number to identify or monitor the prescribing practices of a practitioner, except for the purpose of complying with or enforcing federal or state law related to controlled substances.

(3) A person who violates this section may be required to forfeit not more than $10,000 for each violation.

History: 2003 a. 272.

146.89 Volunteer health care provider program. (1) In this section:

(d) "Governing body" means the governing body of any of the following:

1. A charter school, as defined in s. 115.001 (1).

2. A private school, as defined in s. 115.001 (3r), that participates in the choice program under s. 118.60 or the Milwaukee Parental Choice Program under s. 119.23 or that, pursuant to s. 115.999 (3), 119.33 (2) (c) 3., or 119.9002 (3) (c), is responsible for the operation and general management of a school transferred to an opportunity schools and partnership program under s. 119.33, subch. IX of ch. 115, or subch. II of ch. 119.

(g) "School" means any of the following:

1. A public elementary school, including an elementary school transferred to an opportunity schools and partnership program under s. 119.33, subch. IX of ch. 115, or subch. II of ch. 119.

2. A charter school, as defined in s. 115.001 (1).

3. A private school, as defined in s. 115.001 (3r), that participates in the choice program under s. 118.60 or the Milwaukee Parental Choice Program under s. 119.23.

(h) "School board" has the meaning given in s. 115.001 (7).

(r) "Volunteer health care provider" means an individual who is one of the following and who receives no income from the practice of his or her health care profession or who receives no in-

come 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, naturopathic doctor under ch. 466, a dentist, dental therapist, or dental hygienist under ch. 447, a registered nurse, practical nurse, or nurse-midwife under ch. 441, an optometrist under ch. 449, a physician assistant under subch. IX of ch. 448, a pharmacist under ch. 450, a chiropractor under ch. 446, a podiatrist under subch. IV of ch. 448, or a physical therapist under subch. III of ch. 448.

NOTE: The cross-reference to subch. IX of ch. 448 was changed from subch. VIII of ch. 448 by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of subch. VIII of ch. 448.

2. Certified as a dietitian under subch. V of ch. 448.

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

4. Registered as a pharmacy technician under ch. 450.

5. An individual who holds a valid, unexpired license, certification, or registration issued by another state or territory that authorizes or qualifies the individual to perform acts that are substantially the same as those acts that an individual who is described in subds. 1. to 4., except a dentist, dental therapist, or dental hygienist, is licensed or certified to perform and who performs acts that are within the scope of that license, certification, or registration.

5m. A psychologist who is licensed under ch. 455.

6. A social worker who holds a certificate granted under subch. I of ch. 457.

7. A marriage and family therapist who is licensed under subch. I of ch. 457 or a professional counselor who is licensed under subch. I of ch. 457.

8. An advanced practice nurse who has a certificate to issue prescription orders under s. 441.16 (2).

(2) (a) Subject to par. (am), a volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency, school board, or governing body to the department and the department approves the application. If the volunteer health care provider submits a joint application with a school board or governing body, the application shall include a statement by the school board or governing body that certifies that the volunteer health care provider has received materials that specify school board or governing body policies concerning the provision of health care services to students and has agreed to comply with the policies. The department shall provide application forms for use under this paragraph.

(am) 1. A volunteer health care provider described in sub. (1) (r) 5. may submit a joint application only with a nonprofit agency to participate under this section.

2. No volunteer health care provider described in sub. (1) (r) 5. may provide services under this section for more than 60 days in any 90 day period.

(b) The department may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department and return the application to the department with the board's recommendation regarding approval.

(br) The department may not disapprove the application solely on the basis that the nonprofit agency is organized under the laws of a state other than this state.

(c) The department shall notify the volunteer health care provider and the nonprofit agency, school board, or governing body of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. The department may withdraw approval of an application for failure of the nonprofit agency to comply with this section. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency, school board, or governing body to the department. The department shall provide renewal application forms that are developed by the department and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(e) The volunteer health care provider shall maintain his or her credentials for his or her health care profession when providing any services under this section.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub. (2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par. (b) without charge, except as provided in sub. (3g) or (3m), at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub. (2) (a).

(b) Under this section, the nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including tooth extractions and other procedures done under local anesthesia only and any necessary suturing related to the extractions, performed by a dentist or dental therapist who is a volunteer health provider; and dental hygiene services, performed by a dental hygienist who is a volunteer health provider.
9. Any outpatient surgery that is permitted under the volunteer health care provider's license under sub. (1) (r) 1. and for which the provider has the necessary training, experience, equipment, and facilities.

(c) Under this section, the nonprofit agency may not provide emergency medical services, hospitalization, or surgery, except as provided in par. (b) 8.

(d) Under this section, the nonprofit agency shall provide health care services primarily to low-income persons who are uninsured and who are not recipients of any of the following:

2. Except as provided in sub. (3g) or (3m), Medical Assistance under subch. IV of ch. 49.

3. Medicare under 42 USC 1395-1395ccc.

(e) Under this section, the nonprofit agency shall assume responsibility for approving individuals to be volunteer health care providers.

(f) Under this section, the nonprofit agency shall research and validate an individual's credentials before submitting the joint application to be a volunteer health care provider.

(g) The nonprofit agency shall enter the list of volunteer health care providers providing services at that nonprofit agency into an online, electronic system developed by the department of administration.

(h) The nonprofit agency shall monitor volunteer health care providers providing services at that nonprofit agency and shall terminate a provider's participation in the program under this section with that nonprofit agency when the agency questions the credentials of that provider or when the agency disapproves of the practices of that provider.

(j) The nonprofit agency shall prepare and submit to the department an annual report that includes the types and number of health care services provided by the nonprofit agency under this section.

(3g) A nonprofit agency and volunteer health care providers providing services at the nonprofit agency that provide services to persons who are recipients of Medical Assistance may participate in the program under this section if the Medical Assistance recipients served are primarily homeless individuals, as self-reported.

(3m) A volunteer health care provider who is a dentist or dental therapist may provide dental services or a volunteer health care provider who is a dental hygienist may provide dental hygiene services, to persons who are recipients of Medical Assistance, if all of the following apply:

(a) The nonprofit agency's fees for these services apply to the recipients and to persons who are not recipients of Medical Assistance.

(b) The agency accepts discounted payments, based on ability to pay, from the persons who are not Medical Assistance recipients.

(c) The volunteer health care provider is certified under s. 49.45 (2) (a) 11. a., the department has waived the requirement for certification, or the volunteer health care provider is not required to be certified under s. 49.45 (2) (a) 11. a.

(3r) All of the following apply to a volunteer health care provider whose joint application with a school board or relevant governing body is approved under sub. (2):

(a) Before first providing health care services in a school, the volunteer health care provider shall provide to the school board or relevant governing body proof of satisfactory completion of any competency requirements that are relevant to the volunteer health care provider, as specified by the department of public instruction by rule, and shall consult with the school nurse, if any, of the school.

(b) Under this subsection, the volunteer health care provider may provide only to students from 4-year-old kindergarten to grade 6 the following health care services:

1. Except as specified in par. (c), the health care services specified in sub. (3) (b) 1. to 5. and 7., other than referrals to reproductive health care specialists, and in sub. (3) (b) 8. and 9.

2. First aid for illness or injury.

3. Except as specified in par. (c), the administration of drugs, as specified in s. 118.29 (2) (a) 1. to 3.

4. Health screenings.

5. Any other health care services designated by the department of public instruction by rule.

(c) Under this subsection, the volunteer health care provider may not provide any of the following:

1. Hospitalization.

2. Surgery, except as provided in par. (b) 2. and 5. and sub. (3) (b) 9.

3. A referral for abortion, as defined in s. 48.375.

4. A contraceptive article, as defined in s. 450.155 (1) (a).

5. A pregnancy test.

(d) Any health care services provided under par. (b) shall be provided without charge at the school and shall be available to all students from 4-year-old kindergarten to grade 6 regardless of income.

(e) Under this subsection, a volunteer health care provider may not provide instruction in human growth and development under s. 118.019.

(4) Except as provided in sub. (5), volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department for purposes of ss. 165.25 (6), 893.82 (3) and 895.46. This state agency status does not apply to a volunteer health care provider for whom the department has withdrawn approval of the application under sub. (2) (d). 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.

(5) (a) A volunteer health care provider who meets all of the following criteria is not a state agent under sub. (4):

1. The volunteer health care provider is described in sub. (1) (r) 5.

2. The volunteer health care provider has sufficient liability insurance coverage, as determined by the department of health services.

3. The volunteer health care provider submits a joint application with a nonprofit agency that has sufficient liability coverage, as determined by the department of health services.

(b) A volunteer health care provider described in par. (a) is not liable for any civil damages for any act or omission resulting from providing services under this section, unless any of the following are true:

1. The act or omission is the result of the volunteer health care provider's gross negligence or willful misconduct.

2. The act or omission violates a state statute or rule.

(6) (a) While serving as a volunteer health care provider under this section, an advanced practice nurse who has a certificate to issue prescription orders under s. 441.16 (2) is considered to meet the requirements of s. 655.23, if required to comply with s. 655.23.

(b) While serving as a volunteer health care provider under this section, an advanced practice nurse who has a certificate to issue prescription orders under s. 441.16 (2) is not required to maintain in effect malpractice insurance.

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23; 2003 a. 92; 2005 a. 188; 2007 a. 20 s. 9121 (6) (a); 2007 a. 201; 2009 a. 93, 134; 2011 a. 32, 216; 2013 a. 241, 344; 2015 a. 55, 188; 2015 a. 195 ss. 25, 26, 82; 2019 a. 57; 2021 a. 23, 100, 130; 2023 a. 55, 87; s. 13.92 (1) (bm) 2.

146.903 Disclosures required of health care providers and hospitals.

(1) DEFINITIONS. In this section:

(a) "Ambulatory surgical center" has the meaning given in 42 CFR 416.2.

(b) "Clinic" means a place, other than a residence or a hospital, that is used primarily for the provision of nursing, medical, podiatric, dental, chiropractic, or optometric care and treatment.

(br) "Health care information organization" means an organization that gathers data from health care providers or hospitals regarding utilization and quality of health care services and that produces reports on the comparative quality of health care services provided by health care providers or hospitals.

(c) "Health care provider" has the meaning given in s. 146.81 (1) (a) to (L) and includes a clinic and an ambulatory surgical center but does not include a nursing home, as defined in s. 50.01 (3).

(d) "Hospital" has the meaning given in s. 50.33 (2).

(e) "Median billed charge" means one of the following:

1. For a health care provider, the amount the health care

provider charged, before any discount or contractual rate applicable to certain patients or payers was applied, during the first 2 calendar quarters of the most recently completed calendar year, as calculated by arranging the charges in that reporting period from highest to lowest and selecting the middle charge in the sequence or, for an even number of charges, selecting the 2 middle charges in the sequence and calculating the average of the 2.

2. For a hospital, the amount the hospital charged, before any discount or contractual rate applicable to certain patients or payers was applied, during the 4 calendar quarters for which the hospital most recently reported data under ch. 153, as calculated by arranging the charges in the reporting period from highest to lowest and selecting the middle charge in the sequence or, for an even number of charges, selecting the 2 middle charges in the sequence and calculating the average of the 2.

(f) "Medicare" means coverage under part A or part B of Title XVIII of the federal Social Security Act, 42 USC 1395 to 1395dd.

(g) "Public information" means information that any person may access from a health care information organization, regardless of whether the organization charges a fee for the information.

(2) DEPARTMENT DUTIES. (a) The department shall do all of the following:

1. Categorize health care providers by type.

2. For each type of health care provider, annually identify the 25 presenting conditions for which that type of health care provider most frequently provides health care services.

3. Prescribe the methods by which health care providers shall calculate and present median billed charges and Medicare and private 3rd-party payer payments under sub. (3) (b).

(b) In performing the duties under par. (a), the department shall consult with organizations in this state that do all of the following:

1. Develop performance measures for assessing the quality of health care services.

2. Guide the collection, validation, and analysis of data related to measures described under subd. 1.

3. Report results of assessments of the quality of health care services.

4. Share best practices of organizations that provide health care services.

(3) HEALTH CARE PROVIDER DISCLOSURE OF CHARGES. (a) Except as provided in par. (g), a health care provider or the health care provider's designee shall, upon request by and at no cost to a health care consumer, disclose to the consumer within a reasonable period of time after the request, the median billed charge, assuming no medical complications, for a health care service, diagnostic test, or procedure that is specified by the consumer and that is provided by the health care provider.

(am) A health care provider that submits data to a health care information organization shall, when it makes a disclosure to a consumer under par. (a), make available to the consumer any public information reported by the health care information organization regarding the quality of health care services provided by the health care provider compared to the quality of health care services provided by other health care providers that is relevant to the health care service, diagnostic test, or procedure specified by the consumer under par. (a). A health care provider may make the information available to the consumer by providing the consumer a paper copy of the information or by providing the consumer the address of an Internet site where the information is posted. If the health care provider submits data to more than one health care information organization and more than one of the health care information organizations reports to the health care provider public information on comparative quality that is relevant to the health care service, diagnostic test, or procedure, the health care provider is required under this paragraph to make available to the consumer public information reported by only one of the health care information organizations.

(b) Except as provided in par. (g), a health care provider shall prepare a single document that lists the following charge information, assuming no medical complications, for diagnosing and treating each of the 25 presenting conditions identified for the health care provider's provider type under sub. (2):

1. The median billed charge.

2. If the health care provider is certified as a provider of Medicare, the Medicare payment to the provider.

3. The average allowable payment from private, 3rd-party payers.

(bm) A health care provider that submits data to a health care information organization shall make available with the document required under par. (b) any public information reported by the health care information organization regarding the quality of health care services provided by the health care provider compared to the quality of health care services provided by other health care providers that is relevant to a presenting condition for which the provider is required to list charge information under par. (b). A health care provider may make the information available by attaching it to the document or by including the address of an Internet site where the information is posted with the document. If the health care provider submits data to more than one health care information organization and more than one of the health care information organizations reports to the health care provider public information on comparative quality that is relevant to a presenting condition, the health care provider is required under this paragraph to make available public information reported by only one of the health care information organizations for the presenting condition.

(c) Except as provided in par. (g), a health care provider or the health care provider's designee shall, upon request by and at no cost to a health care consumer, provide the consumer a copy of the document prepared under par. (b) and the information described under par. (bm).

(d) Except as provided in par. (g), a health care provider shall annually update the document under par. (b).

(e) Information provided upon request under par. (a) or included on the document under par. (b) does not constitute a legally binding estimate of the charge for a specific patient or the amount that a 3rd-party payer will pay on behalf of the patient.

(f) Except as provided in par. (g), a health care provider shall prominently display, in the area of the health care provider's practice or facility that is most commonly frequented by health care consumers, a statement informing the consumers that they have the right to receive charge information as provided in pars. (a) and (b) and, if applicable, the information described under par. (bm), from the health care provider and, if the requirements, if any, under s. 632.798 (2) (d) are met, a good faith estimate, from their insurers or self-insured health plans, of the insured's total out-of-pocket cost according to the insured's benefit terms for the specified health care service in the geographic region in which the health care service will be provided.

(g) The requirements under pars. (a) to (f) do not apply to any of the following:

1. A health care provider that practices individually or in association with not more than 2 other individual health care providers.

2. A health care provider that is an association of 3 or fewer individual health care providers.

(4) HOSPITAL DISCLOSURE OF CHARGES. (a) Each hospital

shall prepare a single document that lists the following charge information, assuming no medical complications, for inpatient care for each of the 75 diagnosis related groups identified under s. 153.21 (3) and the following charge information for each of the 75 outpatient surgical procedures identified under s. 153.21 (3):

1. The median billed charge.

2. The average allowable payment under Medicare.

3. The average allowable payment from private, 3rd-party payers.

(am) A hospital that submits data to a health care information organization shall make available with the document required under par. (a) any public information reported by the health care information organization regarding the quality of health care services provided by the hospital compared to the quality of health care services provided by other hospitals that is relevant to a diagnosis related group or outpatient surgical procedure for which the hospital is required to list charge information under par. (a). A hospital may make the information available by attaching it to the document or by including the address of an Internet site where the information is posted with the document. If a hospital submits data to more than one health care information organization and more than one of the health care information organizations reports to the hospital public information on comparative quality that is relevant to a diagnosis related group or outpatient surgical procedure, the hospital is required under this paragraph to make available public information reported by only one of the health care information organizations for the diagnosis related group or outpatient surgical procedure.

(b) A hospital shall, upon request by and at no cost to a health care consumer, provide the consumer a copy of the document prepared under par. (a) and the information described under par. (am).

(c) A hospital shall update the document under par. (a) every calendar quarter.

(d) Information included on the document under par. (a) does not constitute a legally binding estimate of the charge for a specific patient or the amount that a 3rd-party payer will pay on behalf of the patient.

(e) Each hospital shall prominently display, in the area of the hospital that is most commonly frequented by health care consumers, a statement informing the consumers that they have the right to receive a copy of the document under par. (a) and, if applicable, the information described under par. (am), from the hospital and, if the requirements, if any, under s. 632.798 (2) (d) are met, a good faith estimate, from their insurers or self-insured health plans, of the insured's total out-of-pocket cost according to the insured's benefit terms for the specified health care service in the geographic region in which the health care service will be provided.

(5) PENALTY. (a) Whoever violates sub. (3) or (4) may be required to forfeit not more than $250 for each violation.

(b) The department may directly assess forfeitures provided for under par. (a). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the alleged violator. The notice shall specify the amount of the forfeiture assessed, the violation, and the statute or rule alleged to have been violated, and shall inform the alleged violator of the right to a hearing under par. (c).

(c) An alleged violator may contest an assessment of a forfeiture by sending, within 10 days after receipt of notice under par. (b), a written request for a hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days after receipt of the request for a hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227. In any petition for judicial review of a decision by the division, the party, other than the petitioner, who was in the proceeding before the division shall be the named respondent.

(d) All forfeitures shall be paid to the department within 10 days after receipt of notice of assessment or, if the forfeiture is contested under par. (c), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(e) The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this subsection if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews. The only issue to be contested in any such action is whether the forfeiture has been paid.

History: 2009 a. 146.

146.905 Reduction in fees prohibited. (1) Except as provided in sub. (2), a health care provider, as defined in s. 146.81 (1) (a) to (p), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225; 2009 a. 28.

146.91 Long-term care insurance. (1) In this section, "long-term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long-term care insurance, the office of the commissioner of insurance, the board on aging and long-term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long-term care insurance, based on the purchasers' ability to pay.

(b) Reinsuring by the state of policies issued in this state by long-term care insurers.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub. (2).

(6) The department, with the advice of the council on long-term care insurance, may examine use of tax incentives for the sale and purchase of long-term care insurance.

History: 1987 a. 27; 1989 a. 56; 2007 a. 20.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in s. 155.01 (7).

(b) "Inpatient health care facility" has the meaning given in s. 252.14 (1) (d).

(c) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) PATIENT-DESIGNATED VISITORS. (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par. (b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1) (a) to (p), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109; 2009 a. 28.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Disciplinary action" has the meaning given in s. 230.80 (2).

(c) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.50, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist or dental therapist who is licensed under ch. 447 or who holds a compact privilege under subch. II of ch. 447.

NOTE: Subd. 3. is shown as amended by 2023 Wis. Acts 87 and 88 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

4. A physician, physician assistant, podiatrist, perfusionist, physical therapist, physical therapist assistant, occupational therapist, occupational therapy assistant, or genetic counselor licensed under ch. 448; a physical therapist or physical therapist assistant who holds a compact privilege under subch. XI of ch. 448; an occupational therapist or occupational therapy assistant who holds a compact privilege under subch. XII of ch. 448; or a physician assistant who holds a compact privilege under subch. XIII of ch. 448.

NOTE: The cross-reference to subch. XI of ch. 448 was changed from subch. X of ch. 448 and the cross-reference to subch. XII of ch. 448 was changed from subch. XI of ch. 448 by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of subchs. X and XI of ch. 448.

4m. A naturopathic doctor licensed under ch. 466.

5. A respiratory care practitioner [licensed or] certified under ch. 448.

NOTE: Subd. 5. is shown as affected by 2021 Wis. Acts 23 and 123 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The language in brackets was inserted by 2021 Wis. Act 23 but rendered without effect by the treatment by 2021 Wis. Act 123. Corrective legislation is pending.

6. A dietitian certified under subch. V of ch. 448.

7. An optometrist licensed under ch. 449.

8. A pharmacist or pharmacy technician licensed or registered under ch. 450.

9. An acupuncturist certified under ch. 451.

10. A psychologist who is licensed under ch. 455, who is exercising the temporary authorization to practice, as defined in s. 455.50 (2) (o), in this state, or who is practicing under the authority to practice interjurisdictional telepsychology, as defined in s. 455.50 (2) (b).

11. A social worker, marriage and family therapist or professional counselor certified under subch. I of ch. 457 or a professional counselor who is exercising the privilege to practice, as defined in s. 457.50 (2) (s), in this state.

12. A speech-language pathologist or audiologist who is licensed under subch. II of ch. 459 or who holds a compact privilege under subch. III of ch. 459, or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodywork therapist licensed under ch. 460.

14. An emergency medical services practitioner licensed under s. 256.15 (5) or an emergency medical responder.

15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. A cooperative health care association organized under s. 185.981 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. VI of ch. 50.

19. A rural medical center, as defined in s. 50.50 (11).

20. A home health agency, as defined in s. 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or

standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard-setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.54 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation and not more than $10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than $100 for each offense.

History: 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105; 2003 a. 33; 2005 a. 22; 2007 a. 20 s. 9121 (6) (a); 2007 a. 130; 2009 a. 165, 355; 2015 a. 265; 2017 a. 12; 2019 a. 100; 2021 a. 23 ss. 23, 71; 2021 a. 100, 123, 130, 131, 251; 2023 a. 55, 56, 81, 87, 88; s. 13.92 (1) (bm) 2.; s. 13.92 (2) (i); s. 35.17 correction in (1) (d) 6.

This section applies only to employees, a category that does not include interns who do not receive compensation or tangible benefits. Because the plaintiff received no compensation or tangible benefits, she was not an employee of the defendant and was not entitled to anti-retaliation protection under sub. (3) (a). Masri v. LIRC, 2014 WI 81, 356 Wis. 2d 405, 850 N.W.2d 298, 12-1047.

Wisconsin Health Care Workers: Whistleblower Protection. Neuser. Wis. Law. Mar. 2004.