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WISCONSIN TORT REFORM STRENGTHENS HEALTH CARE PROVIDER PEER REVIEW PROTECTIONS

The Wisconsin Health Care Quality Improvement Act ("WHCQIA"), part of Wisconsin's recently enacted tort reform bill, has revised Wis. Stat. § 146.38 to broaden peer review protections for health care providers. Section 146.38, which provides for the confidentiality of information generated or obtained during peer review or evaluation, has been expanded by WHCQIA to apply confidentiality protections to a wider range of providers, communications and proceedings.

Under WHCQIA, Section 146.38 now expressly provides that various related entities participating in those peer review processes will be afforded confidentiality protections. These statutory protections now expressly encompass peer review-related communications involving the many types of persons and entities defined as "health care providers" elsewhere in Wisconsin Statutes (Wis. Stat. § 146.81), but also authorized peer review disclosures of those providers' employers or the parent, subsidiary or affiliate organizations of those providers or their employers.

WHCQIA has also added a defined term of "incident or occurrence report" to Section 146.38 to clarify that written and oral statements and reports related to an incident, practice or situation at issue in a review or evaluation are expressly covered by the statute's peer review protections. (It is also worth noting that newly created Wis. Stat. § 904.16 provides similar confidentiality protections with respect to reports that providers are required to submit to certain regulatory agencies).

WHCQIA has not only broadened the scope of peer review protections with respect to the types individuals and entities and communications covered, but also the kinds of proceedings to which those protections apply. Whereas prior to WHCQIA's enactment, Section 146.38 only provided peer review protections barring the introduction of covered communications and information as evidence in personal injury actions, the statute now prohibits the use of such information in any civil or criminal action.

A complete copy of WHCQIA can be found here.