

## Peer Review Protections Broadened Under New Law

Mar 25 2011

Posted By: Doris E. Brosnan

Practice Area: Health Law & Medical Staff and Credentialing

Wisconsin recently expanded its peer review protection through the enactment of the Wisconsin Health Care Quality Improvement Act (WHCQIA). This new legislation is part of Wisconsin's tort reform bill and revises Wisconsin's current peer review statutes, Wis. Stat. §§146.37 & .38. In particular, WHCQIA broadens peer review protections for health care providers by, among other things, allowing related entities to share peer review information and explicitly protecting incident reports created as part of an organization's peer review process. These helpful additions to state peer review protections not only ensure that related entities can work together in monitoring quality patient care, but also add comfort to peer review processes.

The revised statute will apply to disclosures and releases made on or after February 1, 2011, even if the peer review sessions took place prior to that date.

### **Disclosure of Peer Review Information to Related Entities**

WHCQIA revised Wisconsin's current peer review statutes 146.37 and 146.38 to afford health care providers greater ability to share information obtained during the peer review process with related health care entities. Such entities include a provider's employer; parent, subsidiary, or affiliate organization; or the employer's parent, subsidiary or affiliate organization if the person who authorized the peer review consents to the disclosure. These entities are now considered "health care providers" in the sense that such entities cannot be forced to disclose peer review or evaluation information for the purpose of civil or criminal actions, and will not be held civilly liable for any damage that results from proper disclosure to other related entities.

WHCQIA also protects peer review from being introduced as evidence in criminal proceedings, as opposed to the former statute, which protected peer review in civil proceedings only.

### **Incident Reports Protected**

In addition to the expansion of peer review protections to related entities, WHCQIA includes incident reports as documents that are protected from discovery under the revised statute. Prior to this change, it was not clear under state law whether incident reports presented to the peer review committee prior to formal peer review proceedings were protected. Now, WHCQIA defines "incident or occurrence reports," as written or oral statements concerning an incident, practice, or other situation that becomes the subject of a review or evaluation as being immune from discovery. Thus, such reports are explicitly protected as peer review documents, although any person who participates in the review or evaluation still may testify in civil and criminal proceedings as to matters within his or her knowledge if the information is not obtained through participation in the peer review process.

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.