§ 146.38. Health Care Services Review; Confidentiality of Information: Miscellaneous Health Provisions

(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).