

2007 DRAFTING REQUEST

Bill

Received: **01/17/2007**

Received By: **dkennedy**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8593**

By/Representing: **Milioto**

This file may be shown to any legislator: **NO**

Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **robin.ryan@legis.wisconsin.gov**

Pre Topic:

DOA:.....Milioto, BB0359 -

Topic:

Quality home care funded by grants for community programs

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	dkennedy 01/17/2007	wjackson 01/17/2007		_____			State
/1			pgreensl 01/18/2007	_____	sbasford 01/18/2007		

FE Sent For:

<END>

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FE Sent For:

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2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Quality Home Care Commission
- Tracking Code: BB0359
- SBO team: Health
- SBO analyst: Steve Milioto
 - Phone: 266-8593
 - Email: Steve.Milioto@Wisconsin.gov
- Agency acronym: DHFS
- Agency number: 435

Revise s. 46.48 to allow the department to fund the Quality Home Care Commission.
(See attached paper.)

Priority: High

Milioto, Steve - DOA

From: Bove, Fredi-Ellen [BOVEFE@dhfs.state.wi.us]
Sent: Monday, December 04, 2006 11:32 AM
To: Johnston, James - DOA; Milioto, Steve - DOA
Cc: Frye, Judith E - DHFS; Wilhelm, Charles A - DHFS; Forsaith, Andrew C - DHFS; Helgerson, Jason A - DHFS; Hermes, Ron - DHFS; Wong, Donna J - DHFS
Subject: Possible Biennial Budget Item: Quality Home Cmsn

Attachments: qualityhomecareagreement.pdf



qualityhomecareagr
reement.pdf (...)

As I believe you are aware, at the direction of the Governor's Office, in September 2006, Secretary Helene Nelson and County Executive Kathleen Falk signed an intergovernmental cooperation agreement creating a Quality Home Care Commission, a separate entity from the state or county that will provide certain services to consumers and providers of home care and personal care services. A copy of the agreement is attached.

Annual costs for the Cmsn. are estimated to be \$167,000. Per the agreement with the Gov.'s Office and DOA, DHFS is funding the initial year, FY07, costs through the internal reallocation of one-time funding. DDES program staff involved in the initial discussions of this issue have the understanding that there was an understanding among DHFS, DOA, and the Gov.'s Office that future, permanent funding for the Cmsn. would be addressed in the Gov.'s biennial budget (i.e., \$167,000/year in FY08 and FY09). I am in the process of seeking clarification from Jason as to whether this understanding is correct.

However, given the fact that you will be starting your biennial budget briefings very shortly, I am sending you this e-mail now to give you a heads-up that this is a possible biennial budget issue for the Gov.'s budget.

(You may already have this on your list of possible biennial budget items for consideration for the Gov., since DOA was involved in the fall discussions on this issue.) If you have substantive questions on the item, please contact Donna Wong, who is the lead on the issue. I will convey any further clarification I get from Jason.

Copy to : Kay Jun &
Chuck Wilhelm

8827

Return to Jonk

INTERGOVERNMENTAL COOPERATION AGREEMENT

Between

The Wisconsin State Department of Health and Family Services

and

Dane County

Agreement for the creation of the Wisconsin Quality Home Care Commission

This cooperative contract is entered into pursuant to the authority granted under Wisconsin Stat. § 66.0301 for the purpose of establishing the Wisconsin Quality Home Care Commission as a separate legal entity for the furnishing of services.

I. INTRODUCTION AND PURPOSE

A. Wisconsin has a national reputation as a leader in innovative and flexible home and community-based services. To sustain these initiatives and meet the needs of the elderly and people with disabilities, the Department of Health and Family Services has identified the need to recruit significant numbers of individuals to provide supportive home and personal care services to these populations in their homes. Successful home-based services for the elderly and people with disabilities require the continuity and flexibility that can be achieved through intergovernmental cooperation.

B. The Department of Health and Family Services is responsible for statewide administration and supervision of home and community based services including supportive home care and personal care services pursuant to Wis. Stat. Chapter 46. Similarly Counties and Family Care Districts, where established, are responsible for the delivery of home and community based services including supportive home care and personal care services in their areas of jurisdiction pursuant to Wis. Stat. Chapter 46.

C. Successful home and community based services programs throughout Wisconsin can be improved by enhanced cooperation between the Department of Health and Family Services and the various counties of the State. Intergovernmental cooperation is encouraged and authorized among public agencies for the furnishing of services and the joint exercise of any power or duty required or authorized by law. The Department of Health and Family Services and the various Counties are "municipalities" as that term is defined in Wis. Stat. § 66.0301 and are authorized pursuant to that law to contract for the creation of a commission. A Family Care District established pursuant to Wis. Stat. § 46.2895 is a "municipality" as that term is defined in Wis. Stat. § 66.0301 and is authorized pursuant to that law to contract for the creation of a commission.

D. The purpose of this Agreement is to create and empower the Wisconsin Quality Home Care Commission ("the Commission") to implement certain, specified powers and duties of each of the Parties to improve the quality and accessibility of supportive home care and personal care services as specified in this Agreement and to serve certain, specified employer functions for persons employed to provide these services to the elderly and individuals with disabilities financed through the Medicaid program and other federal and state programs. The Commission shall promote and coordinate effective supportive home care and personal care services. The Commission shall:

- 1) Be governed by a board, a majority of whose members are consumers and who are receiving supportive home care and personal care services and/or

advocates for consumers of supportive home care and personal care services;

- 2) Support and preserve consumer selection, direction and removal of supportive home care and personal care workers;
- 3) Support supportive home care and personal care workers through methods aimed at encouraging competence, quality services, and improved retention through increased job satisfaction.

II. DEFINITIONS

A. Commission means the Wisconsin Quality Home Care Commission that is established by this Agreement.

B. Consumer means a person receiving supportive home care and/or personal care services as a beneficiary of the Medicaid program or another publicly funded program.

C. Department means the Department of Health and Family Services.

D. Eligible Public Agency means a County of the State of Wisconsin or a Family Care District.

E. Party means the Department or an Eligible Public Agency that is signatory to this Agreement.

F. Provider means an individual who is designated by the Commission as eligible to provide supportive home care and/or personal care services to a Consumer, who is selected by a Consumer to provide such services, and who is paid through the Commission to provide such services.

G. Supportive Home Care and Personal Care Services includes a range of services for consumers who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community, and that meet the criteria under the Department's Medicaid and home and community-based waivers programs.

III. COMMISSION DUTIES

A. Duties. The Commission shall carry out the powers and authorities of the Department and the other Parties to provide supportive home and personal care services. The Commission's powers and authorities shall be limited to those specifically enumerated in this Agreement, and the Commission's duties shall include:

- 1) Facilitating the consistent provision of supportive home care and personal care services for Consumers who elect to jointly employ Providers with

the Commission, including Consumers who are beneficiaries of the Community Options Program or other programs offering supportive home and personal care, or for other individuals who seek to obtain similar services for a medical or physical disability, cognitive impairment, or other reasons.

- 2) Supporting the joint employment by Consumers of Providers selected by Consumers. The relationship between the Commission and its Providers shall be consistent with the principles of Consumer self-direction, preserving the Consumers' exclusive right to select, direct, and remove at will the Provider who renders Supportive Home Care and Personal Care Services to that Consumer.
- 3) Assisting Consumers in making their decision on whom to employ to provide supportive home and personal care services, how the services will be provided, and how long the employed Provider will render the services, as long as the Provider selected by the Consumer meets the minimum requirements of the payer of the services.
- 4) Providing employer-related services, including payroll; determining and negotiating of wages and benefits; Social Security (FICA); worker's compensation and unemployment insurance for its employees, including providers, to the extent required by law; and for adjusting the grievances of Providers with regard to matters within the control of the Commission. The Commission shall ensure that Providers in Dane County who would have been covered by the Dane County Living Wage Ordinance prior to the execution of this Agreement shall, following the execution of this Agreement, receive wages that are consistent with Dane County's Living Wage requirements.
- 5) Facilitating and coordinating orientation processes to assist Providers in the performance of authorized services, with the consent of and direction from Consumers or their representatives.
- 6) Working to protect the confidential status of information relating to Consumers, subject to waiver by the Consumers or their representatives.
- 7) Developing recruitment and retention programs to expand the pool of Providers that may provide supportive home and personal care services to Consumers.
- 8) Establishing and maintaining one or more registries of Providers that Consumers requiring services may use to locate potential Providers who meet a set of qualification criteria.

IV. CREATION OF THE COMMISSION

A. Creation of and Legal Status of Commission. The Commission is established as a separate legal entity to be known as the "Wisconsin Quality Home Care Commission" for the purpose of administering and executing this Agreement and shall have the powers granted to it under this Agreement. For no purposes under state or federal law, other than as specifically set forth in this Agreement, shall the Commission be considered part of a Party or the State, or a political subdivision of a Party or the State.

B. Title to Commission Assets. Except as otherwise provided in this Agreement, the Commission shall have exclusive title to all of its property and no Party shall have an ownership interest in Commission property.

C. Compliance with Law. The Commission shall comply with all federal and state laws, rules, regulations, and orders applicable to this Agreement, as well as with any duties or obligations that may from time to time be transferred to it from any of the Parties.

D. Relationship of Parties. The Parties agree that no Party shall be responsible, in whole or in part, for the acts of the employees, agents, and servants of any other Party, whether acting separately or in conjunction with the implementation of this Agreement. The Parties shall only be bound and obligated under this Agreement as expressly agreed to by each Party. No Party may obligate any other Party. No officer, employee, agent, or servant of the Commission, including Providers, shall be or shall be deemed to be an officer, employee, agent, or servant of a Party or the State for any reason.

E. No Third-Party Beneficiaries. Except as otherwise provided in this Agreement, this Agreement does not create in any Person, other than a Party, and is not intended to create by implication or otherwise, any direct or indirect benefit, obligation, duty, promise, right to be indemnified (such as contractually, legally, equitably, or by implication), right to be subrogated to any Party's rights under this Agreement, and/or any other right or benefit. Neither the Commission, the Commission's officers or employees, or any Provider shall have a right to be indemnified by any of the Parties or the State, for any purpose.

F. Venue. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling and venue shall be in a Wisconsin County Circuit Court.

V. COMMISSION BOARD, EXECUTIVE COMMITTEE, AND PROGRAM DIRECTOR

A. Appointment of Commission Board. The Commission shall be governed by the Commission Board, a board of directors that shall be appointed within thirty (30) calendar days of the Effective Date. The term of Board members shall be for four (4)

years. The Commission Board shall consist of the following members, appointed as follows:

- 1) Two (2) members appointed by a Party, other than the Department, and an additional two (2) members appointed by that Party if it utilizes the services of more than four hundred (400) Providers. Members appointed under this paragraph shall be residents of the appointing Party;
- 2) The Secretary of the Department or his or her designated representative from within the Department; and
- 3) For each member appointed by another Party, one member appointed by, and at the pleasure of, the Governor of this State; and
- 4) A majority of Board members shall designate one (1) member on the Commission Board as its chair to serve in that capacity at the pleasure of the Board; and
- 5) To ensure a majority of the Board shall be Consumers, Consumer Representatives, or Consumer Advocates, at least half of the members appointed by a Party, other than the Department, shall be Consumers receiving supportive home care and personal care services, or Representatives or Advocates of Consumers receiving supportive home care and personal care services, and at least half plus one of the members appointed by the Governor shall be Consumers receiving supportive home care and personal care services, or Representatives or Advocates of Consumers receiving supportive home care and personal care services.

B. Vacancies. A vacancy on the Commission Board shall be filled in the same manner as the original appointment for the balance of the unexpired term.

C. Meetings. The Commission Board shall conduct its first meeting no earlier than ten (10) and no later than forty-five (45) days calendar days after the appointment of the Commission Board, provided that a quorum of the Commission Board has been appointed. The Commission Board shall meet at least annually and hold such other meetings as it may determine at the place, date, and time as the Board shall determine.

D. Quorum and Voting. A majority of the Commission Board members appointed and serving shall be required to constitute a quorum for the transaction of business. The Board shall act by a majority vote at a meeting at which a quorum is present. A quorum shall be necessary for the transaction of business by the Commission Board.

E. Commission Board Responsibilities. The Commission Board shall do all of the following by a majority vote of its members appointed and serving:

- 1) Adopt bylaws, rules, and procedures governing the Board and its actions and meetings. Initial bylaws shall be adopted within six (6) months of the first meeting of the Commission Board.

- 2) Elect officers. Initial officers shall be appointed within thirty (30) days of the first meeting of the Commission Board.
- 3) Select and retain a Program Director.
- 4) Approve policies to implement day-to-day operation of the Commission, including policies governing any staff.
- 5) Provide for a system of accounts to conform to a uniform system required by law, and review and approve the Commission's budget.
- 6) Provide for an annual audit.
- 7) Adopt personnel policies and procedures.
- 8) Adopt policies and procedures for contracting and procurement.
- 9) Take such other actions and steps as shall be necessary or advisable to accomplish the purposes of this Agreement.
- 10) Make a written Annual Report to the Parties and otherwise assure that the Parties are kept up to date with the activities of the Commission.
- 11) Review the acts of the Executive Committee if one exists.

F. Executive Committee. If the size of the Commission Board exceeds twenty (20) members, an executive committee of eleven (11) members shall be appointed. The members of the Executive Committee shall include the Secretary of the Department or her or his designee, five (5) members appointed by, and at the pleasure of, the Governor, and five (5) members appointed by, and at the pleasure of, a majority of the Commission Board. To ensure a majority of the Executive Committee shall be Consumers, Consumer Representatives, or Consumer Advocates, at least three (3) of the five (5) members appointed by the Governor shall be Consumers receiving supportive home care and personal care services, or Representatives or Advocates of Consumers receiving supportive home care and personal care services, and at least three (3) of the five (5) members appointed by the Commission Board shall be Consumers receiving supportive home care and personal care services, or Representatives or Advocates of Consumers receiving supportive home care and personal care services. Of the five (5) members appointed by the Commission Board, one (1) shall be the chair of the Commission Board, who shall also serve as chair of the Executive Committee.

G. Term of Office of Executive Committee. Except as otherwise provided under this paragraph, the members of the Executive Committee shall serve for a term of four (4) years. To provide for staggered terms for the members initially appointed, three (3) members shall be appointed for a term of four (4) years, three (3) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of one (1) year.

H. Executive Committee Authority and Meetings. If an Executive Committee is appointed, it shall exercise all the powers of the Commission Board except E(11). It shall meet at the place, date, and time as it may determine but not less than quarterly. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business.

I. Compensation. The members of the Commission Board and Executive Committee shall receive no compensation for the performance of their duties. A Board or Committee member may engage in private or public employment, or in a profession or business, except to the extent prohibited by law. The Commission may reimburse members of the Board and Executive Committee for actual and necessary expenses incurred (examples of actual and necessary expenses may include but not be limited to: travel, mileage, meals, day care and respite care) in the discharge of their official duties as provided by the Board or Committee.

J. Program Director. Not later than six (6) months after the first meeting of the Commission Board, the Board, or the Executive Committee if one exists, shall select and retain a Program Director. The Program Director shall administer the affairs of the Commission in accordance with the operating budget adopted by the Commission Board or the Executive Committee, general policy guidelines established by the Board or the Executive Committee, other applicable governmental procedures and policies, and this Agreement. The Program Director shall be responsible for the day-to-day operations of the Commission; the control, management, and oversight of the Commission's functions; and supervision of all Commission employees. All terms and conditions of the Program Director's employment; shall be specified in a written contract between the Program Director and the Board, provided that the Program Director shall serve at the pleasure of the Commission Board or, if one exists, the Executive Committee.

VI. POWERS OF THE COMMISSION

A. Powers. In carrying out its purposes, the Commission may perform any power, privilege or authority that is specifically enumerated in this Agreement. The Commission shall not have the power to bind a Party, unless otherwise agreed to by the Party, or act in conflict with a Party. The Commission's powers shall include:

- 1) Make or enter into contracts, including, but not limited to, contracts for the provision of legal or accounting services.
- 2) Employ agencies or employees.
- 3) Acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property, including, but not limited to, equipment and office space.
- 4) Incur debts, liabilities, or obligations that, except as expressly authorized by the Parties, do not constitute the debts, liabilities, or obligations of any of the Parties.

- 5) Cooperate with other public agency(ies).
- 6) Make loans from the proceeds of gifts, grants, assistance funds, or bequests.
- 7) Form other entities necessary to further the purposes of the Agreement.
- 8) Sue and be sued in the name of the Commission.
- 9) Employ, appoint, engage, compensate, transfer, or discharge necessary personnel, subject to the personnel policies established by the Commission.
- 10) Bargain collectively and enter into agreements with labor organizations that represent its employees, including Providers. The Commission, its employees, and Providers paid through the Commission shall fulfill their responsibilities under the Municipal Employment Relations Act, Wis. Stat. §§ 111.70 to 111.77, including the limitations on the right to strike contained therein. Consistent with Wis. Adm. ERC 11.02, it is the intention of the Parties to this Agreement that any labor organization may petition to represent employees of the Commission, including Providers in any appropriate unit subject to WERC determination.
- 11) Accept gifts, grants, assistance funds, or bequests and use the same for the purposes of this Agreement.
- 12) Respond for any liabilities that might be incurred through performance of this Agreement and insure against any such liability.
- 13) Engage auditors to perform independent audits of the financial statements and other activities of the Commission.
- 14) Invest surplus funds or proceeds of grants, gifts, or bequests and adopt an investment policy in connection with the funds or proceeds.
- 15) Employ legal, financial, and technical experts, other officers, agents, or employees, and accept voluntary provision of such services and function from donor individuals and entities.
- 16) Study, develop, and prepare the reports or plans the Commission considers necessary to further the purposes of this Agreement and monitor and evaluate performance under this Agreement.
- 17) Purchase and maintain insurance to protect members of the Commission Board or officers or employees of the Commission from personal loss or accountability from liability asserted by any Person for any acts or omissions of the Commission.

VII. RECORDS AND FINANCES

A. Financial Statements and Reports. The Commission shall cause to be prepared audited financial statements on an annual basis. Such financial statements shall be prepared in accordance with generally accepted accounting principles and accompanied by a written opinion of an independent certified public accounting firm.

B. Accounting Period. The Commission shall use the calendar year as its accounting period.

C. Audit. The Commission shall retain an independent certified public accounting firm to annually audit its financial records.

D. Funding. Funding for the Commission shall be derived from compensation for services of providers and such other funds as are appropriated for Commission purposes by a Party.

VIII. ADMISSION OF PARTIES

A. Procedure. After the effective date of this Agreement, an Eligible Public Agency may become a Party by submitting a request form pursuant to guidelines established by the Executive Board or, if one has been established, the Executive Committee, which shall approve or deny the request. If the request is approved, a resolution shall be adopted by the Eligible Public Agency authorizing the agency to enter into this Agreement.

B. Effective Date. The effective date of admission of a Party is the date on which the resolution described in A above is adopted.

C. Not an Amendment to Agreement. The admission of an additional Party(ies) shall not constitute an amendment or alternative form of this Agreement nor change the Effective Date.

IX. TERM OF AGREEMENT AND WITHDRAWAL

A. Term of Agreement. The initial term of this agreement shall be for five (5) years after the Effective Date. After the initial term, the Agreement is extended for five (5) year increments unless not extended by joint agreement of the Parties.

B. Withdrawal. A Party that wishes to withdraw shall provide written notice to the other Parties at least one (1) calendar year in advance of the effective withdrawal date.

C. Continuation. The Agreement shall survive the voluntary withdrawal of any Party.

D. Disposition upon Termination. If all the Parties agree to terminate the Agreement, the Commission shall wind up its affairs:

- 1) All of the Commission's debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination shall be paid first; and
- 2) Title to all property and assets owned by the Commission shall be distributed among the Parties, as agreed to by the Commission Board.

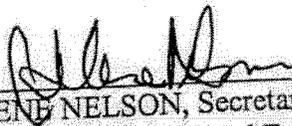
X. AMENDMENT

This Agreement may be amended at any time by mutual consent of all Parties. Amendments shall be in writing and shall become effective only after execution by duly authorized representatives of the Parties.

This Agreement is executed by the authorized representatives of the Parties on the date(s) indicated below:

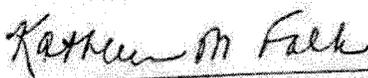
FOR THE STATE OF WISCONSIN:

Date Signed: 9/22/06

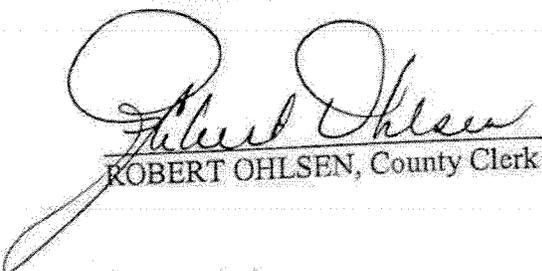

HELENE NELSON, Secretary
Department of Health and Family Services

FOR DANE COUNTY:

Date Signed: 9/20/06


KATHLEEN M. FALK, County Executive

Date Signed: 9.21.06


ROBERT OHLSEN, County Clerk



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1550/3 /

DAK/.....

Wlj

DOA:.....Milioto, BB0359 - Quality home care funded by grants for community programs

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

✓ HEALTH AND HUMAN SERVICES

✓ HEALTH

Currently, DHFS distributes numerous grants for community programs.

This bill requires DHFS to distribute at least \$167,000 in each fiscal year as a grant to an organization to provide services to consumers and providers of supportive home care and personal care.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

2 SECTION 1. 46.48 (9) of the statutes is created to read:



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1550/1

DAK:wlj:pg

DOA:.....Milioto, BB0359 - Quality home care funded by grants for
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HEALTH AND HUMAN SERVICES

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