

2009 DRAFTING REQUEST

Bill

Received: **11/06/2008**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Fox**

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

Drafter: **tdodge**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Fox, BB0192 -

Topic:

Personal care service agencies

Instructions:

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>
/?	rryan 11/10/2008 tdodge 11/20/2008	bkraft 11/21/2008		_____			S&L
/1			phenry 11/24/2008	_____	sbasford 11/24/2008		S&L
/2	tdodge 01/14/2009	bkraft 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		S&L
/3	tdodge 01/30/2009	bkraft 01/30/2009	phenry 01/30/2009	_____	cduerst 01/30/2009		

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/2	tdodge 01/14/2009	bkraft 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		

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13 bjk 1/30
[Handwritten signatures and initials]
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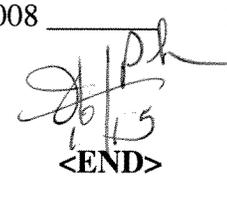
Personal care service agencies

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 11/15

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DOA:.....Sabrina Fox, BB0192 -

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For: **Administration-Budget**

By/Representing: **Sabrina Fox**

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

Drafter: **rryan**

May Contact:

Addl. Drafters:

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

Extra Copies: **TJD**

Submit via email: **NO**

Pre Topic:

DOA:.....Sabrina Fox, BB0192 -

Topic:

Personal Care agencies

Instructions:

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/?	rryan			_____			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Medicaid Personal Care Agencies & Family Care Expansion
- Tracking Code: BB0192
- SBO team: Health and Insurance
- SBO analyst: Sabrina Fox
 - Phone: 266-8593
 - Email: Sabrina.Fox@wisconsin.gov
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): High

Intent:

To develop statutory language that will:

- a) Expand agencies that can be certified as personal care provider agencies;
- b) Require that the Department certify personal care provider agencies;
- c) Allow the Department to charge for personal care certification and to set the amount of fee by policy rather than rule;
- d) Apply caregiver law to personal care provider agencies;
- e) Exempt ILCs, counties/tribes and home health agencies from the new certification requirements;
- f) Request a non-statutory provision permitting the Department to use the emergency rule procedure until the permanent rule becomes effective.

See attached.

Medicaid Personal Care Agencies & Family Care Expansion

Decision Needed

How to address a potential shortage of personal care provider agencies as counties move to Family Care.

Background

1. Wisconsin statutes do not define what types of entities can be certified to provide personal care services under Medicaid. Medicaid personal care providers are defined in the Wisconsin Administrative Code at HFS 105.17(1) as follows.

For MA certification, a personal care provider shall be a home health agency licensed under s. 50.49, Stats., and ch. HFS 133, a county department established under s. 46.215, 46.22 or 46.23, Stats., a county department established under s. 51.42 or 51.437, Stats., which has the lead responsibility in the county for administering the community options program under s. 46.27, Stats., or an independent living center as defined in s. 46.96 (1) (ah), Stats.

2. All but a few counties currently are certified as Medicaid personal care providers. Some provide services directly using nurses and personal care workers employed by the county, while others delegate the provision of services to other agencies. This delegation can range from a formal contract with another entity to allowing another agency(ies) to use the county's provider number. Some counties provide nurse supervision directly while others rely on nurses employed by a contract agency.
3. Under the fee-for-service waivers, counties have an incentive to be Medicaid personal care provider agencies in order to maximize Medicaid card services for county waiver participants. Counties may only barely cover their costs for personal care and some may not want to continue in the personal care business without the incentive of waivers.
4. If counties decide to get out of the personal care business when managed care begins, many of the providers currently using county provider numbers would be unable to operate. Some of these agencies that use county Medicaid numbers provide a considerable amount of care to current waiver participants, but are not able to be licensed directly because they do not meet the

requirements for a Medicaid personal care provider agency set out in rule. Some of these agencies are Community Living Alliance, Dungarvin, Gemini Employee Leasing, Indianhead Community Action Agency, Lori Knapp, and REM.

Number of Agencies

5. There are currently 84 Medicaid certified personal care provider agencies (provider type 86—only 77 had personal care claims paid in 2007). Sixty of these are county agencies, as defined above, and they are located in 58 counties. Six ILCs are certified as personal care provider agencies. Another eighteen agencies are certified as personal care providers. This includes 7 county health departments and 11 other agencies. Some of these agencies are also certified as home health agencies (provider type 44) or licensed as home health agencies by DQA although they do not have Medicaid certification to provide home health. A small number do not appear to fit the requirements of the Administrative Code cited above.
6. There are 112 dually certified home health/personal care agencies (provider type 48—95 had claims paid in 2007). These include some county agencies such as health departments, but the majority of the dually certified providers are private agencies. This number also includes thirteen out-of-state providers primarily from border counties in Wisconsin's neighboring states.
7. Two counties do not have a personal care agency within their borders, although they may be served by agencies from neighboring counties. Another 25 counties have only personal care provider agencies that are operated by the county.

Volume of PC Provided¹

8. Personal care only (type 86) agencies accounted for 69.6% of personal care paid claims in 2007. Dually certified (type 48) agencies provided 30.4% of the services. County agencies accounted for 42.89% of the total and ILCs provided 20.2% of the total. Private agencies (both 48 and 86) provided 36.91% of the personal care in 2007.
9. The largest single provider agency was Independent First in Milwaukee Co. with \$18 million in paid claims, followed by Dane County with almost \$12 million and Society's Assets with \$8 million. Clarity Care and Homemakers, both home health agencies in Oshkosh, had over \$6 million in paid claims each. Over half of the dually certified home health agencies had less than \$100,000 in paid personal care claims in 2007.

Current Language

Wisconsin statutes do not define what types of entities can be certified to provide personal care services under Medicaid. Medicaid personal care providers are defined in the Wisconsin Administrative Code at HFS 105.17(1)

¹ Based on dollar value of procedure code T1019 billed in calendar year 2007.

Proposed Change

Request statutory language to:

- a) Expand agencies that can be certified as personal care provider agencies;
- b) Require that the Department certify personal care provider agencies;
- c) Allow the Department to charge for personal care certification, and to set the amount of fee by policy rather than rule;
- d) Apply caregiver law to personal care provider agencies;
- e) Exempt ILCs, counties/tribes, and home health agencies from the new certification requirements;
- f) Request a non-statutory provision permitting the Department to use the emergency rule procedure until the permanent rule becomes effective.

Desired Effective Date: Upon passage
Agency: DHS
Agency Contact: Andy Forsaith
Phone: 266-7684

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

1. To be fully informed of all rules and regulations affecting the recipient;
2. To be fully informed of services to be provided by the nurse and of related charges, including any charges for services for which the recipient may be responsible;
3. To be fully informed of one's own health condition, unless medically contraindicated, and to be afforded the opportunity to participate in the planning of services, including referral to a health care institution or other agency;
4. To refuse treatment to the extent permitted by law and to be informed of the medical consequences of that refusal;
5. To confidential treatment of personal and medical records and to approve or refuse their release to any individual, except in the case of transfer to a health care facility;
6. To be taught, and have the family or other persons living with the recipient taught, the treatment required, so that the recipient can, to the extent possible, help himself or herself, and the family or other party designated by the recipient can understand and help the recipient;
7. To have one's property treated with respect; and
8. To complain about care that was provided or not provided, and to seek resolution of the complaint without fear of recrimination.

(c) *Universal precautions.* A nurse shall have the necessary orientation, education and training in epidemiology, modes of transmission and prevention of HIV and other blood-borne or body fluid-borne infections and shall follow universal blood and body-fluid precautions for each recipient for whom services are provided. The nurse shall employ protective measures recommended by the federal centers for disease control (CDC), including those pertaining to medical equipment and supplies, to minimize the risk of infection from HIV and other blood-borne pathogens.

Note: A copy of the CDC recommended universal precautions may be obtained from the Bureau of Quality Assurance, P.O. Box 2969, Madison, Wisconsin 53701.

(d) *Medical record.* The nurse shall maintain a medical record for each recipient. The record shall document the nature and scope of all services provided and shall be systematically organized and readily accessible to authorized department personnel. The medical record shall document the recipient's condition, problems, progress and all services rendered, and shall include:

1. Recipient identification information;
2. Appropriate hospital information, including discharge information, diagnosis, current patient status and post-discharge plan of care;
3. Recipient admission evaluation and assessment;
4. All medical orders, including the physician's written plan of care and all interim physician's orders;
5. A consolidated list of medications, including start and stop dates, dosage, route of administration and frequency. This list shall be reviewed and updated for each nursing visit, if necessary;
6. Progress notes posted as frequently as necessary to clearly and accurately document the recipient's status and services provided. In this paragraph, "progress note" means a written notation, dated and signed by a member of the health team providing covered services, that summarizes facts about care furnished and the recipient's response during a given period of time;
7. Clinical notes written the day service is provided and incorporated into the clinical record within 7 days after the visit or recipient contact. In this paragraph, "clinical note" means a notation of a contact with a recipient that is written and dated by a member of the home health team providing covered services, and that describes signs and symptoms, treatment and drugs administered and the patient's reaction, and any changes in physical or emotional condition;

8. Written summaries of the recipient's care provided by the nurse to the physician at least every 62 days; and

9. Written authorizations from the recipient or the recipient's guardian when it is necessary for the nurse to procure medical supplies or equipment needed by the recipient, unless the recipient's care is being provided by an MA-certified home health agency.

(e) *Back-up and emergency procedures.* 1. The recipient shall be informed of the identity of the agency-assigned alternate nurse before the alternate nurse provides services.

2. The nurse shall document a plan for recipient-specific emergency procedures in the event a life-threatening situation or fire occurs or there are severe weather warnings. This plan shall be made available to the recipient and all caregivers prior to initiation of these procedures.

3. The nurse shall take appropriate action and immediately notify the recipient's physician, guardian, if any, and any other responsible person designated in writing by the patient or guardian of any significant accident, injury or adverse change in the recipient's condition.

(f) *Discharge of the recipient.* A recipient shall be discharged from services provided by the nurse upon the recipient's request, upon the decision of the recipient's physician, or if the nurse documents that continuing to provide services to the recipient presents a direct threat to the nurse's health or safety and further documents the refusal of the attending physician to authorized discharge of the recipient with full knowledge and understanding of the threat to the nurse. The nurse shall recommend discharge to the physician and recipient if the recipient does not require services or requires services beyond the nurse's capability. The nurse provider shall issue a notification of discharge to the recipient or guardian, if possible at least 2 calendar weeks prior to cessation of skilled nursing services, and shall, in all circumstances, provide assistance in arranging for the continuity of all medically necessary care prior to discharge.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (intro.), (1) and (2), r. and recr. (3), cr. (4) and (5), Register, April, 1988, No. 388, eff. 7-1-88; emerg. r. and recr. (1) and (2), cr. (6), eff. 7-1-92; r. and recr. (1) and (2), cr. (6) to (10), Register, February, 1993, No. 446, eff. 3-1-93; correction in (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 2000, No. 538.

HFS 105.17 Personal care providers. (1) REQUIREMENTS. For MA certification, a personal care provider shall be a home health agency licensed under s. 50.49, Stats., and ch. HFS 133, a county department established under s. 46.215, 46.22 or 46.23, Stats., a county department established under s. 51.42 or 51.437, Stats., which has the lead responsibility in the county for administering the community options program under s. 46.27, Stats., or an independent living center as defined in s. 46.96 (1) (ah), Stats. A certified provider shall:

- (a) Possess the capacity to enter into a legally binding contract;
- (b) Present a proposal to the department to provide personal care services that:
 1. Documents cost-effective provision of services;
 2. Documents a quality assurance mechanism and quality assurance activities;
 3. Demonstrates that employees possess knowledge of and training and experience with special needs, including independent living needs, of the recipient group or groups receiving services;
- (c) Document adequate resources to maintain a cash flow sufficient to cover operating expenses for 60 days;
- (d) Document a financial accounting system that complies with generally accepted accounting principles;
- (e) Maintain the records identified in sub. (4);
- (f) Document a system of personnel management if more than one personal care worker is employed;
- (g) Maintain the following records for each recipient:

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

1. The nursing assessment, physician prescription, plan of care, personal care worker's assignment and record of all assignments, and record of registered nurse supervisory visits;

2. The record of all visits by the personal care worker, including observations and assigned activities completed and not completed; and

3. A copy of written agreements between the personal care provider and RN supervisor, if applicable;

(h) Employ or contract with personal care workers to provide personal care services;

(i) Employ trained workers as described under sub. (3), or train or arrange and pay for training of employed or subcontracted personal care workers as necessary;

(j) Employ or contract with at least one registered nurse;

(k) Supervise the provision of personal care services;

(L) Ensure that qualifications and requirements of the registered nurse supervisor and personal care worker under subs. (2) and (3) are met or are being met;

(m) Bill the medical assistance program for personal care services, for registered nurse supervisory visits and for disposable medical supplies;

(n) Give full consideration to a recipient's preferences for service arrangements and choice of personal care workers;

(o) Document a grievance mechanism to resolve recipients' complaints about personal care services, including a personal care provider's decision not to hire a recipient's choice of a personal care worker;

(p) Perform all functions and provide all services specified in a written personal care provider contract between the personal care provider and personal care workers under contract, and maintain a copy of that contract on file. Document performance of personal care workers under contract by maintaining time sheets of personal care workers which will document the types and duration of services provided, by funding source;

(q) Provide a written plan of operation describing the entire process from referral through delivery of services and follow-up;

(r) Provide the personal care worker with the basic materials and equipment needed to deliver personal care services;

(s) Cooperate with other health and social service agencies in the area and with interested community referral groups to avoid duplication of services and to provide coordination of personal care services to recipients; and

(t) Evaluate each personal care worker's work performance on a periodic basis.

(2) QUALIFICATIONS AND DUTIES OF THE REGISTERED NURSE SUPERVISOR. (a) *Qualifications.* An RN supervisor under contract with or employed by a personal care provider shall have the following qualifications:

1. Be licensed in Wisconsin pursuant to s. 441.06, Stats.;

2. Be a public health nurse or be currently or previously employed by a home health agency, an independent living center or a hospital rehabilitation unit; and

3. Provide documentation of experience in providing personal care services in the home.

(b) *Duties.* The RN supervisor shall perform the following duties:

1. Evaluate the need for service and make referrals to other services as appropriate;

2. Secure written orders from the recipient's physician. These orders are to be renewed once every 3 months unless the physician specifies that orders covering a period of time up to one year are appropriate, or when the recipient's needs change, whichever occurs first;

3. Develop a plan of care for the recipient, giving full consideration to the recipient's preferences for service arrangements and

choice of personal care workers, interpret the plan to the personal care worker, include a copy of the plan in the recipient's health record, and review the plan at least every 60 days and update it as necessary;

4. Develop appropriate time and service reporting mechanisms for personal care workers and instruct the workers on their use;

5. Give the worker written instructions about the services to be performed and demonstrate to the worker how to perform the services; and

6. Evaluate the competency of the worker to perform the services.

(3) QUALIFICATIONS AND DUTIES OF PERSONAL CARE WORKERS.

(a) *Qualifications.* Personal care workers shall have the following qualifications:

1. Be trained in the provision of personal care services. Training shall consist of a minimum of 40 classroom hours, at least 25 of which shall be devoted to personal and restorative care, or 6 months of equivalent experience. Training shall emphasize techniques for and aspects of caring for the population served by the provider;

2. Provide documentation of required training to the personal care provider for the provider's records;

3. Be a person who is not a legally responsible relative of the recipient under s. 49.90 (1), Stats.; and

4. Be a person who has not been convicted of a crime which directly relates to the occupation of providing personal care or other health care services.

(b) *Duties.* Personal care workers shall perform the following duties:

1. Perform tasks assigned by the RN supervisor;

2. Report in writing to the RN supervisor on each assignment;

3. Report any changes in the recipient's condition to the RN supervisor; and

4. Confer as required with the RN supervisor regarding the recipient's progress.

(4) ANNUAL REVIEW OF PERSONAL CARE PROVIDERS. The department's bureau of quality compliance shall conduct an annual on-site review of each personal care provider. Records to be reviewed include:

(a) Written personnel policies;

(b) Written job descriptions;

(c) A written plan of operations indicating the entire process from making referrals through delivery of services and follow-up;

(d) A written statement defining the scope of personal care services provided, including the population being served, service needs and service priorities;

(e) A written record of personal care workers' 40 hours of training;

(f) Workers' time sheets;

(g) Health care records of recipients;

(h) Contracts with workers and other agencies; and

(i) Records of supervisory visits.

History: Cr. Register, April, 1988, No. 388, eff. 7-1-88; emerg. am. (1) (intro.), eff. 7-1-88; am. (1) (intro.), Register, December, 1988, No. 396, eff. 1-1-89; am. (3) (a) 1., Register, February, 1993, No. 446, eff. 3-1-93; correction in (1) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register, December, 1999, No. 528.

HFS 105.19 Nurses in independent practice.

(1) QUALIFICATIONS. (a) For MA certification to perform skilled nursing services as a nurse in independent practice providing home health services under s. HFS 107.11 (6) or private duty nursing services under s. HFS 107.12, the nurse shall be:

1. Licensed as a registered nurse pursuant to s. 441.06, Stats.;



State of Wisconsin
2009 - 2010 LEGISLATURE

In: 11/20/08

LRB-0660/2

TJD:.....

Lijk
RmNR

DOA:.....Sabrina Fox, BB0192 - Personal care service agencies ✓

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

LPS - Please fix request sheet.
- Please check spelling.

D-N

SAV
X-ref ✓

do not gen.

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

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES ✓
MEDICAL ASSISTANCE ✓

Under current law, personal care services are a covered benefit for certain beneficiaries of the Medical Assistance Program. This bill allows DHS to charge a fee to certify providers of personal care services and allows DHS to promulgate emergency rules for certification of providers of personal care services. ✓

For further information see the *state and local* 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. 49.45 (42) of the statutes is renumbered 49.45 (42) (d).

3 SECTION 2. 49.45 (42) (d) 3. of the statutes is created to read:

4 49.45 (42) (d) 3. The provider of the ^{personal care} services ^{is} must be one of the following:

5 a. An independent living center meeting the criteria to receive a grant under

6 s. 46.96. ✓

- ① b. A county department under 46.215, 46.22, or 46.23. ✓
- ② c. A federally recognized American Indian tribe or band certified to provide
- 3 services to medical assistance beneficiaries. ✓
- ④ d. A home health agency licensed under s. 50.49. ✓
- ⑤ e. A person certified to provide personal care services under sub. (2) (a) 11. ✓

as defined in s. 50.065 (1)(cr) ✓

6 SECTION 3. 49.45 (42) (c) of the statutes is created to read:

7 49.45 (42) (c) The department may charge a fee to certify a provider of personal
8 care services, as defined in s. 50.065 (1) (cr), under sub. (2) (a) 11. ✓

9 SECTION 9122. Nonstatutory provisions; Health Services. ✓

10 (1) PERSONAL CARE PROVIDER AGENCY; RULES. Using the procedure under section
11 227.24 of the statutes, the department of health services may promulgate rules
12 establishing criteria for certification of agencies that provide personal care services
13 under the Medical Assistance Program, which ^{e shall} will remain in effect until the date on
14 which permanent rules take effect but ^{e not to exceed the period} no longer than authorized under section
15 227.24 (1) (c) and (2) of the statutes. ^{e Notwithstanding} Notwithstanding section 227.24 (1) (a), (2) (b),
16 and (3) of the statutes, the department is not required to provide evidence that
17 promulgating a rule under this subsection as an emergency rule is necessary for the
18 preservation of public peace, health, safety, or welfare and is not required to provide
19 a finding of emergency for a rule promulgated under this ^{e subsection} paragraph. ✓

(END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0660/2nd

TJD:.....

Lbjk

Date

To Sabrina Fox:

Please review this draft to make sure it complies with your intent. Much of what DHS seeks to accomplish can be done through their rulemaking process. ✓

I have not added additional language to the caregiver law for this draft. Last year the caregiver law was amended to include providers of personal care services, and this amendment recently went into effect. The caregiver law now covers "an agency that employs or contracts with an individual to provide personal care services" and also covers the individuals employed by that agency. Adding additional language to the caregiver law would be duplicative. If DHS would like more explicit language in the caregiver law to cover personal care provider agencies than currently exists, please let me know. ✓

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0660/1dn
TJD:bjk:ph

November 24, 2008

To Sabrina Fox:

Please review this draft to make sure it complies with your intent. Much of what DHS seeks to accomplish can be done through their rulemaking process.

I have not added additional language to the caregiver law for this draft. Last year the caregiver law was amended to include providers of personal care services, and this amendment recently went into effect. The caregiver law now covers "an agency that employs or contracts with an individual to provide personal care services" and also covers the individuals employed by that agency. Adding additional language to the caregiver law would be duplicative. If DHS would like more explicit language than currently exists in the caregiver law to cover personal care provider agencies, please let me know.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Fox, Sabrina E - DOA [Sabrina.Fox@wisconsin.gov]
Sent: Tuesday, December 30, 2008 1:39 PM
To: Dodge, Tamara
Subject: FW: LRB Draft Personal Care Services
Attachments: 09-06601.pdf; 09-06601dn.pdf

Hello Tamara:

Please see the comments below from DHS regarding LRB Draft Person Care Agencies, 0660/1.

Let me know if you have any questions.

Thanks,
 Sabrina

From: Forsaith, Andrew C - DHS
Sent: Tuesday, December 30, 2008 1:13 PM
To: Fox, Sabrina E - DOA
Cc: Pancook, Michael J - DHS; Gebhart, Neil R - DHS; Bove, Fredi-Ellen E - DHS; Walters, Jane A - DHS; Propsom, Gail F - DHS; Moore, Marlia K - DHS; Pancook, Michael J - DHS; Megna, Richard H - DHS
Subject: RE: LRB Draft Personal Care Services

Sabrina,

Thanks for sharing the attached draft on personal care agency certification. Here are our comments:

1. Page 1, lines 4 to 5: We are concerned about the cross-reference to the definition of personal care services in §50.065(1)(cr). Not all of the services listed in that definition are covered by Medicaid under all circumstances. There is no clear WI statutory definition of PC services for purposes of Medicaid. With this in mind, we would request this provision could be revised to read as follows:

49.45(42)(c) The department may charge a fee to certify under sub. (2)(a)11 a provider of personal care services under s. 49.46 (2) (b) 6. j.

Also, we should specify that the fee revenue should be deposited in the appropriation under s. 20.435(6)(jm).

2. Page 2, lines 2 to 11:

B. The phrase "a co dept under s. 46.215, 46.22 or 46.23" is not broad enough to encompass all types of county agencies that provide PC services. We recommend instead using language that mirrors the current language of the MA PC provider certification rule: "a county department established under s. 46.215, 46.22 , 46.23, 51.42. or 51.437, Stats."

C. We are not comfortable using the word "person" in proposed §49.45(42)(d)3.e. because it might suggest the dept intends to allow individuals to be certified. As a legal term, "person" includes not only individuals but also corporations and other legal entities. Thus, the dept could prohibit individuals from being certified as MA PC providers thru certification criteria. However, to avoid any suggestion that the legislature intended individuals to be eligible for MA PC certification (and also in light of the above discussion relating to the definition of PC services), we recommend revising this provision to read as follows:

12/30/2008

"e. An entity certified under sub. (2)(a)11. as meeting certification criteria developed by the department, as a provider of personal care services under s. 49.46 (2) (b) 6. j."

Also, just as one side note to the drafter, the new 49.45(42)(c) is a bit unusual in that it adds certification criteria to the section of the statute that specifies benefit coverage for MA. We don't have a recommendation for a better place to put this language -- there is no good place to put the pc provider language. We just wanted to note that for any future proposals, we shouldn't be in the habit of adding provider criteria to s. 49.45.

Please let me know if you have any questions.

In: 1/14/09

stays / RMR

DOA:.....Fox, BB0192 - Personal care service agencies

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

D-N
Insert

SA ✓
X-REF ✓
Insert

do not gen.

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

Under current law, personal care services are a covered benefit for certain beneficiaries of the Medical Assistance Program. This bill allows DHS to charge a fee to certify providers of personal care services and allows DHS to promulgate emergency rules for certification of providers of personal care services.

For further information see the *state and local* 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:

Insert 1-2

2 SECTION 1. 49.45 (42) of the statutes is renumbered 49.45 (42) (d).

3 SECTION 2. 49.45 (42) (c) of the statutes is created to read:

4 49.45 (42) (c) The department may charge a fee to certify a provider of personal

5 care services, as defined in s. 50.065 (1) (cr), under sub. (2) (a) 11.

Insert 1-5

described under para (d) 30 eo

SECTION 3. 49.45 (42) (d) 3. of the statutes is created to read:

49.45 (42) (d) 3. The provider of the personal care services is one of the following:

a. An independent living center meeting the criteria to receive a grant under s. 46.96.

b. A county department under s. 46.215, 46.22, or 46.23^{51.42 or 51.437}

c. A federally recognized American Indian tribe or band certified to provide services to medical assistance beneficiaries.

d. A home health agency licensed under s. 50.49.

Any other entity

e. A person certified to provide personal care services, as defined in s. 50.065

(1) (c) under sub. (2) (a) 11^{le}

SECTION 9122. Nonstatutory provisions; Health Services.

(1) PERSONAL CARE PROVIDER AGENCY; RULES. Using the procedure under section 227.24 of the statutes, the department of health services may promulgate rules establishing criteria for certification of agencies that provide personal care services under the Medical Assistance Program, which shall remain in effect until the date on which permanent rules take effect, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(END)

D-W

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0660/2ins
TJD:bjk:ph

1 INSERT 1-2

2 **SECTION 1.** 20.435 (6) (jm) of the statutes is amended to read:

3 20.435 **(6)** (jm) *Licensing and support services.* The amounts in the schedule
4 for the purposes specified in ss. 48.685 (2) (am) and (b) 1., (3) (a) and (b), and (5) (a),
5 49.45 (47), 50.02 (2), 50.025, 50.065 (2) (am) and (b) 1., (3) (a) and (b), and (5), 50.13,
6 50.135, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.981, and 146.40 (4r) (b)
7 and (er), and subch. IV of ch. 50 and to conduct health facilities plan and rule
8 development activities, for accrediting nursing homes, convalescent homes, and
9 homes for the aged, to conduct capital construction and remodeling plan reviews
10 under ss. 50.02 (2) (b) and 50.36 (2), and for the costs of inspecting, licensing or
11 certifying, and approving facilities, issuing permits, and providing technical
12 assistance, that are not specified under any other paragraph in this subsection. All
13 moneys received under ss. 48.685 (8), 49.45 (42) (c), 49.45 (47) (c), 50.02 (2), 50.025,
14 50.065 (8), 50.13, 50.36 (2), 50.49 (2) (b), 50.495, 50.52 (2) (a), 50.57, 50.93 (1) (c), and
15 50.981, all moneys received from fees for the costs of inspecting, licensing or
16 certifying, and approving facilities, issuing permits, and providing technical
17 assistance, that are not specified under any other paragraph in this subsection, and
18 all moneys received under s. 50.135 (2) shall be credited to this appropriation
19 account.

History: 1971 c. 125 ss. 138 to 155, 522 (1); 1971 c. 211, 215, 302, 307, 322; 1973 c. 90, 198, 243; 1973 c. 284 s. 32; 1973 c. 308, 321, 322, 333, 336; 1975 c. 39 ss. 153 to 173, 732 (1), (2); 1975 c. 41 s. 52; 1975 c. 82, 224, 292; 1975 c. 413 s. 18; 1975 c. 422, 423; 1975 c. 430 ss. 1, 2, 80; 1977 c. 29 ss. 236 to 273, 1657 (18); 1977 c. 112; 1977 c. 203 s. 106; 1977 c. 213, 233, 327; 1977 c. 354 s. 101; 1977 c. 359; 1977 c. 418 ss. 129 to 137, 924 (18) (d), 929 (55); 1977 c. 428 s. 115; 1977 c. 447; 1979 c. 32 s. 92 (11); 1979 c. 34, 48; 1979 c. 102 s. 237; 1979 c. 111, 175, 177; 1979 c. 221 ss. 118g to 133, 2202 (20); 1979 c. 238, 300, 331, 361; 1981 c. 20 ss. 301 to 356b, 2202 (20) (b), (d), (g); 1981 c. 93 ss. 3 to 8, 186; 1981 c. 298, 314, 317, 359, 390; 1983 a. 27 ss. 318 to 410, 2202 (20); 1983 a. 192, 199, 245; 1983 a. 333 s. 6; 1983 a. 363, 398, 410, 427; 1983 a. 435 ss. 2, 3, 7; 1983 a. 538; 1985 a. 24, 29, 56, 73, 120, 154, 176, 255, 281, 285, 332; 1987 a. 27, 339, 368, 398, 399, 402; 1987 a. 403 ss. 25, 256; 1987 a. 413; 1989 a. 31, 53; 1989 a. 56 ss. 13, 259; 1989 a. 102; 1989 a. 107 ss. 11, 13, 17 to 37; 1989 a. 120, 122, 173, 199, 202, 318, 336, 359; 1991 a. 6, 39, 189, 269, 275, 290, 315, 322; 1993 a. 16, 27, 76, 98, 99, 168, 183, 377, 437, 445, 446, 450, 469, 479, 490, 491; 1995 a. 27 ss. 806 to 961r, 9126 (19); 1995 a. 77, 98; 1995 a. 216 ss. 26, 27; 1995 a. 266, 276, 289, 303, 404, 417, 440, 448, 464, 468; 1997 a. 27 ss. 211, 214, 216, 217, 527 to 609; 1997 a. 35, 105, 231, 237, 280, 293; 1999 a. 5, 9, 32, 52, 84, 103, 109, 113, 133, 185, 186; 2001 a. 16, 69, 103, 105; 2003 a. 33, 139, 186, 318, 320, 326, 327; 2005 a. 15, 22; 2005 a. 25 ss. 299 to 331, 2498 to 2500, 2510; 2005 a. 74, 107, 199, 228, 264, 388, 406, 434; 2007 a. 20 ss. 331 to 422, 9121 (6) (a); 2007 a. 39, 88, 107, 111, 130; s. 13.92 (2) (i).

1 INSERT 1-5

2 ~~NG~~ Fees collected under this paragraph shall be credited to the appropriation
3 account under s. 20.435 (6) (jm).

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0660/2dn

TJD:bjk:ph

L stays

Date

To Sabrina Fox:

> This is a redraft of the personal care services budget draft. Please review to make sure it complies with your intent because I have not incorporated the Andrew Forsaith's recommendations exactly as he worded them.

For ease of drafting and for consistency, I have left the new provisions in s. 49.45 (42) at this time. I agree that s. 49.45 may not be the ideal section to put provider criteria and that there does not seem to be a better place to put the requirements. I drafted the initial requirements in s. 49.45 (42) because paragraph (a) of the current statute already contained a requirement on providers and because s. 49.45 (47) contained similar provisions regarding adult day care centers. If you or the department would like the provider requirements moved, I could create a new section. I should then move all of the provider requirements for other benefits out of s. 49.45 for consistency. I could do a reorganization like this in this bill or in remedial legislation.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0660/2dn
TJD:bjk:jf

January 15, 2009

To Sabrina Fox:

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0660/2³
TJD:bjk:jf
stay
RMR

In: 1/30/09

DOA:.....Fox, BB0192 - Personal care service agencies

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

D-N

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do not gen.

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

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES

MEDICAL ASSISTANCE

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3 20.435 (6) (jm) *Licensing and support services.* The amounts in the schedule
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7 assistance, that are not specified under any other paragraph in this subsection. All
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12 assistance, that are not specified under any other paragraph in this subsection, and
13 all moneys received under s. 50.135 (2) shall be credited to this appropriation
14 account.

15 **SECTION 2.** 49.45 (42) of the statutes is renumbered 49.45 (42) (d).

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17 49.45 (42) (c) The department may charge a fee to certify a provider of personal
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17 (END)

D-N

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0660/3dn

TJD:bjk:ff

L. Stapp

Date

1/93

This draft reconciles LRB-0660/2 and LRB-0659 with respect to the treatment of ~~section~~ 20.435 (6) (jm). AA Both LRB-0660 and LRB-0659 should continue to appear in the compiled bill.

SO

TJD

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0660/3dn
TJD:bjk:ph

January 30, 2009

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DOA:.....Fox, BB0192 - Personal care service agencies

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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