



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1382/P1
TJD&CMH:cjs:rs

P2

In: 1/26/09
and BB0429

TODAY

stays

DOA:.....Palchik, BB0361 - Wisconsin Quality Home Care Authority
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

LPS: please check request and make this sheet change if it has not been made yet

TJD
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Do NOT

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

Analysis by the Legislative Reference Bureau
HEALTH AND HUMAN SERVICES
OTHER HEALTH AND HUMAN SERVICES

This is a preliminary draft. Analysis will be provided in a subsequent draft.

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

- 2 SECTION 1. 7.33 (1) (c) of the statutes is amended to read:
- 3 7.33 (1) (c) "State agency" has the meaning given under s. 20.001 (1) and
- 4 includes an authority created under subch. II of ch. 114 or ch. 52, 231, 232, 233, 234,
- 5 or 237.
- 6 SECTION 2. 13.172 (1) of the statutes is amended to read:
- 7 13.172 (1) In this section, "agency" means an office, department, agency,
- 8 institution of higher education, association, society, or other body in state

SECTION 2

1 government created or authorized to be created by the constitution or any law, that
2 is entitled to expend moneys appropriated by law, including the legislature and the
3 courts, and any authority created in subch. II of ch. 114 or subch. III of ch. 149 or in
4 ch. 52, 231, 233, 234, or 279.

5 **SECTION 3.** 13.48 (13) (a) of the statutes is amended to read:

6 13.48 (13) (a) Except as provided in par. (b) or (c), every building, structure or
7 facility that is constructed for the benefit of or use of the state, any state agency,
8 board, commission or department, the University of Wisconsin Hospitals and Clinics
9 Authority, the Fox River Navigational System Authority, the Wisconsin Quality
10 Home Care Authority, or any local professional baseball park district created under
11 subch. III of ch. 229 if the construction is undertaken by the department of
12 administration on behalf of the district, shall be in compliance with all applicable
13 state laws, rules, codes and regulations but the construction is not subject to the
14 ordinances or regulations of the municipality in which the construction takes place
15 except zoning, including without limitation because of enumeration ordinances or
16 regulations relating to materials used, permits, supervision of construction or
17 installation, payment of permit fees, or other restrictions.

18 **SECTION 4.** 13.62 (2) of the statutes is amended to read:

19 13.62 (2) "Agency" means any board, commission, department, office, society,
20 institution of higher education, council, or committee in the state government, or any
21 authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 232,
22 233, 234, 237, or 279, except that the term does not include a council or committee
23 of the legislature.

24 **SECTION 5.** 13.94 (4) (a) 1. of the statutes is amended to read:

1 13.94 (4) (a) 1. Every state department, board, examining board, affiliated
2 credentialing board, commission, independent agency, council or office in the
3 executive branch of state government; all bodies created by the legislature in the
4 legislative or judicial branch of state government; any public body corporate and
5 politic created by the legislature including specifically the Wisconsin Quality Home
6 Care Authority, the Fox River Navigational System Authority, the Lower Fox River
7 Remediation Authority, and the Wisconsin Aerospace Authority, a professional
8 baseball park district, a local professional football stadium district, a local cultural
9 arts district and a long-term care district under s. 46.2895; every Wisconsin works
10 agency under subch. III of ch. 49; every provider of medical assistance under subch.
11 IV of ch. 49; technical college district boards; development zones designated under
12 s. 560.71; every county department under s. 51.42 or 51.437; every nonprofit
13 corporation or cooperative or unincorporated cooperative association to which
14 moneys are specifically appropriated by state law; and every corporation, institution,
15 association or other organization which receives more than 50% of its annual budget
16 from appropriations made by state law, including subgrantee or subcontractor
17 recipients of such funds.

18 **SECTION 6.** 13.95 (intro.) of the statutes is amended to read:

19 **13.95 Legislative fiscal bureau.** (intro.) There is created a bureau to be
20 known as the "Legislative Fiscal Bureau" headed by a director. The fiscal bureau
21 shall be strictly nonpartisan and shall at all times observe the confidential nature
22 of the research requests received by it; however, with the prior approval of the
23 requester in each instance, the bureau may duplicate the results of its research for
24 distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director's
25 designated employees shall at all times, with or without notice, have access to all

1 state agencies, the University of Wisconsin Hospitals and Clinics Authority, the
2 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
3 the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
4 Authority, and the Fox River Navigational System Authority, and to any books,
5 records, or other documents maintained by such agencies or authorities and relating
6 to their expenditures, revenues, operations, and structure.

7 **SECTION 7.** 16.002 (2) of the statutes is amended to read:

8 16.002 (2) "Departments" means constitutional offices, departments, and
9 independent agencies and includes all societies, associations, and other agencies of
10 state government for which appropriations are made by law, but not including
11 authorities created in subch. II of ch. 114 or subch. III of ch. 149 and in chs. 52, 231,
12 232, 233, 234, 235, 237, and 279.

13 **SECTION 8.** 16.004 (4) of the statutes is amended to read:

14 16.004 (4) FREEDOM OF ACCESS. The secretary and such employees of the
15 department as the secretary designates may enter into the offices of state agencies
16 and authorities created under subch. II of ch. 114 or subch. III of ch. 149 and under
17 chs. 52, 231, 233, 234, 237, and 279, and may examine their books and accounts and
18 any other matter that in the secretary's judgment should be examined and may
19 interrogate the agency's employees publicly or privately relative thereto.

20 **SECTION 9.** 16.004 (5) of the statutes is amended to read:

21 16.004 (5) AGENCIES AND EMPLOYEES TO COOPERATE. All state agencies and
22 authorities created under subch. II of ch. 114 or subch. III of ch. 149 and under chs.
23 52, 231, 233, 234, 237, and 279, and their officers and employees, shall cooperate with
24 the secretary and shall comply with every request of the secretary relating to his or
25 her functions.

1 **SECTION 10.** 16.004 (12) (a) of the statutes is amended to read:

2 16.004 (12) (a) In this subsection, “state agency” means an association,
3 authority, board, department, commission, independent agency, institution, office,
4 society, or other body in state government created or authorized to be created by the
5 constitution or any law, including the legislature, the office of the governor, and the
6 courts, but excluding the University of Wisconsin Hospitals and Clinics Authority,
7 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
8 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home
9 Care Authority, and the Fox River Navigational System Authority.

10 **SECTION 11.** 16.045 (1) (a) of the statutes is amended to read:

11 16.045 (1) (a) “Agency” means an office, department, independent agency,
12 institution of higher education, association, society, or other body in state
13 government created or authorized to be created by the constitution or any law, that
14 is entitled to expend moneys appropriated by law, including the legislature and the
15 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
16 ch. 149 or in ch. 52, 231, 232, 233, 234, 235, 237, or 279.

17 **SECTION 12.** 16.15 (1) (ab) of the statutes is amended to read:

18 16.15 (1) (ab) “Authority” has the meaning given under s. 16.70 (2), but
19 excludes the University of Wisconsin Hospitals and Clinics Authority, the Lower Fox
20 River Remediation Authority, the Wisconsin Quality Home Care Authority, and the
21 Health Insurance Risk-Sharing Plan Authority.

22 **SECTION 13.** 16.41 (4) of the statutes is amended to read:

23 16.41 (4) In this section, “authority” means a body created under subch. II of
24 ch. 114 or subch. III of ch. 149 or under ch. 52, 231, 233, 234, 237, or 279.

25 **SECTION 14.** 16.417 (1) (b) of the statutes is amended to read:

1 16.417 (1) (b) "Authority" means a body created under subch. II of ch. 114 or
2 ch. 52, 231, 232, 233, 234, 235, 237, or 279.

3 **SECTION 15.** 16.52 (7) of the statutes is amended to read:

4 16.52 (7) PETTY CASH ACCOUNT. Petty cash account. With the approval of the
5 secretary, each agency that is authorized to maintain a contingent fund under s.
6 20.920 may establish a petty cash account from its contingent fund. The procedure
7 for operation and maintenance of petty cash accounts and the character of
8 expenditures therefrom shall be prescribed by the secretary. In this subsection,
9 "agency" means an office, department, independent agency, institution of higher
10 education, association, society, or other body in state government created or
11 authorized to be created by the constitution or any law, that is entitled to expend
12 moneys appropriated by law, including the legislature and the courts, but not
13 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
14 52, 231, 233, 234, 237, or 279.

15 **SECTION 16.** 16.528 (1) (a) of the statutes is amended to read:

16 16.528 (1) (a) "Agency" means an office, department, independent agency,
17 institution of higher education, association, society, or other body in state
18 government created or authorized to be created by the constitution or any law, that
19 is entitled to expend moneys appropriated by law, including the legislature and the
20 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
21 ch. 149 or in ch. 52, 231, 233, 234, 237, or 279.

22 **SECTION 17.** 16.53 (2) of the statutes is amended to read:

23 16.53 (2) IMPROPER INVOICES. If an agency receives an improperly completed
24 invoice, the agency shall notify the sender of the invoice within 10 working days after
25 it receives the invoice of the reason it is improperly completed. In this subsection,

1 “agency” means an office, department, independent agency, institution of higher
2 education, association, society, or other body in state government created or
3 authorized to be created by the constitution or any law, that is entitled to expend
4 moneys appropriated by law, including the legislature and the courts, but not
5 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
6 52, 231, 233, 234, 237, or 279.

7 **SECTION 18.** 16.54 (9) (a) 1. of the statutes is amended to read:

8 16.54 (9) (a) 1. “Agency” means an office, department, independent agency,
9 institution of higher education, association, society or other body in state
10 government created or authorized to be created by the constitution or any law, which
11 is entitled to expend moneys appropriated by law, including the legislature and the
12 courts, but not including an authority created in subch. II of ch. 114 or subch. III of
13 ch. 149 or in ch. 52, 231, 233, 234, 237, or 279.

14 **SECTION 19.** 16.70 (2) of the statutes is amended to read:

15 16.70 (2) “Authority” means a body created under subch. II of ch. 114 or subch.
16 III of ch. 149 or under ch. 52, 231, 232, 233, 234, 235, 237, or 279.

17 **SECTION 20.** 16.765 (1) of the statutes is amended to read:

18 16.765 (1) Contracting agencies, the University of Wisconsin Hospitals and
19 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
20 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
21 Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and
22 the Bradley Center Sports and Entertainment Corporation shall include in all
23 contracts executed by them a provision obligating the contractor not to discriminate
24 against any employee or applicant for employment because of age, race, religion,
25 color, handicap, sex, physical condition, developmental disability as defined in s.

1 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin and,
2 except with respect to sexual orientation, obligating the contractor to take
3 affirmative action to ensure equal employment opportunities.

4 **SECTION 21.** 16.765 (2) of the statutes is amended to read:

5 16.765 (2) Contracting agencies, the University of Wisconsin Hospitals and
6 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
7 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
8 Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and
9 the Bradley Center Sports and Entertainment Corporation shall include the
10 following provision in every contract executed by them: "In connection with the
11 performance of work under this contract, the contractor agrees not to discriminate
12 against any employee or applicant for employment because of age, race, religion,
13 color, handicap, sex, physical condition, developmental disability as defined in s.
14 51.01 (5), sexual orientation or national origin. This provision shall include, but not
15 be limited to, the following: employment, upgrading, demotion or transfer;
16 recruitment or recruitment advertising; layoff or termination; rates of pay or other
17 forms of compensation; and selection for training, including apprenticeship. Except
18 with respect to sexual orientation, the contractor further agrees to take affirmative
19 action to ensure equal employment opportunities. The contractor agrees to post in
20 conspicuous places, available for employees and applicants for employment, notices
21 to be provided by the contracting officer setting forth the provisions of the
22 nondiscrimination clause".

23 **SECTION 22.** 16.765 (4) of the statutes is amended to read:

24 16.765 (4) Contracting agencies, the University of Wisconsin Hospitals and
25 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin

1 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
2 Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and
3 the Bradley Center Sports and Entertainment Corporation shall take appropriate
4 action to revise the standard government contract forms under this section.

5 **SECTION 23.** 16.765 (5) of the statutes is amended to read:

6 16.765 (5) The head of each contracting agency and the boards of directors of
7 the University of Wisconsin Hospitals and Clinics Authority, the Fox River
8 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
9 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
10 Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center
11 Sports and Entertainment Corporation shall be primarily responsible for obtaining
12 compliance by any contractor with the nondiscrimination and affirmative action
13 provisions prescribed by this section, according to procedures recommended by the
14 department. The department shall make recommendations to the contracting
15 agencies and the boards of directors of the University of Wisconsin Hospitals and
16 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
17 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
18 Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and
19 the Bradley Center Sports and Entertainment Corporation for improving and
20 making more effective the nondiscrimination and affirmative action provisions of
21 contracts. The department shall promulgate such rules as may be necessary for the
22 performance of its functions under this section.

23 **SECTION 24.** 16.765 (6) of the statutes is amended to read:

24 16.765 (6) The department may receive complaints of alleged violations of the
25 nondiscrimination provisions of such contracts. The department shall investigate

1 and determine whether a violation of this section has occurred. The department may
2 delegate this authority to the contracting agency, the University of Wisconsin
3 Hospitals and Clinics Authority, the Fox River Navigational System Authority, the
4 Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority,
5 the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care
6 Authority, or the Bradley Center Sports and Entertainment Corporation for
7 processing in accordance with the department's procedures.

8 **SECTION 25.** 16.765 (7) (intro.) of the statutes is amended to read:

9 16.765 (7) (intro.) When a violation of this section has been determined by the
10 department, the contracting agency, the University of Wisconsin Hospitals and
11 Clinics Authority, the Fox River Navigational System Authority, the Wisconsin
12 Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower
13 Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, or
14 the Bradley Center Sports and Entertainment Corporation, the contracting agency,
15 the University of Wisconsin Hospitals and Clinics Authority, the Fox River
16 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
17 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation
18 Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports
19 and Entertainment Corporation shall:

20 **SECTION 26.** 16.765 (7) (d) of the statutes is amended to read:

21 16.765 (7) (d) Direct the violating party to take immediate steps to prevent
22 further violations of this section and to report its corrective action to the contracting
23 agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River
24 Navigational System Authority, the Wisconsin Aerospace Authority, the Health
25 Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation

1 Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports
2 and Entertainment Corporation.

3 **SECTION 27.** 16.765 (8) of the statutes is amended to read:

4 16.765 (8) If further violations of this section are committed during the term
5 of the contract, the contracting agency, the Fox River Navigational System Authority,
6 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
7 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home
8 Care Authority, or the Bradley Center Sports and Entertainment Corporation may
9 permit the violating party to complete the contract, after complying with this section,
10 but thereafter the contracting agency, the Fox River Navigational System Authority,
11 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
12 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home
13 Care Authority, or the Bradley Center Sports and Entertainment Corporation shall
14 request the department to place the name of the party on the ineligible list for state
15 contracts, or the contracting agency, the Fox River Navigational System Authority,
16 the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan
17 Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home
18 Care Authority, or the Bradley Center Sports and Entertainment Corporation may
19 terminate the contract without liability for the uncompleted portion or any materials
20 or services purchased or paid for by the contracting party for use in completing the
21 contract.

22 **SECTION 28.** 16.85 (2) of the statutes is amended to read:

23 16.85 (2) To furnish engineering, architectural, project management, and other
24 building construction services whenever requisitions therefor are presented to the
25 department by any agency. The department may deposit moneys received from the

1 provision of these services in the account under s. 20.505 (1) (kc) or in the general
2 fund as general purpose revenue — earned. In this subsection, “agency” means an
3 office, department, independent agency, institution of higher education, association,
4 society, or other body in state government created or authorized to be created by the
5 constitution or any law, which is entitled to expend moneys appropriated by law,
6 including the legislature and the courts, but not including an authority created in
7 subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, or 279.

8 **SECTION 29.** 16.865 (8) of the statutes is amended to read:

9 16.865 (8) Annually in each fiscal year, allocate as a charge to each agency a
10 proportionate share of the estimated costs attributable to programs administered by
11 the agency to be paid from the appropriation under s. 20.505 (2) (k). The department
12 may charge premiums to agencies to finance costs under this subsection and pay the
13 costs from the appropriation on an actual basis. The department shall deposit all
14 collections under this subsection in the appropriation account under s. 20.505 (2) (k).
15 Costs assessed under this subsection may include judgments, investigative and
16 adjustment fees, data processing and staff support costs, program administration
17 costs, litigation costs, and the cost of insurance contracts under sub. (5). In this
18 subsection, “agency” means an office, department, independent agency, institution
19 of higher education, association, society, or other body in state government created
20 or authorized to be created by the constitution or any law, that is entitled to expend
21 moneys appropriated by law, including the legislature and the courts, but not
22 including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch.
23 52, 231, 232, 233, 234, 235, 237, or 279.

24 **SECTION 30.** 19.42 (10) (s) of the statutes is created to read:

1 19.42 (10) (s) The executive director and ^{members of the} board of directors of the Wisconsin
2 Quality Home Care Authority. ✓

Insert 13-3 →

3 **SECTION 31.** 46.284 (4) (m) of the statutes is created to read:

4 46.284 (4) (m) Comply with any agreements under subch. V of ch. 111 relating
5 to a provider, as defined in 46.2898 (1) ^{ec} (d), hired directly by an enrollee.

6 **SECTION 32.** 46.2898 of the statutes is created to read:

7 **46.2898 Quality home care. (1) DEFINITIONS.** In this section:

8 (a) "Authority" means the Wisconsin Quality Home Care Authority.

9 (b) "Care management organization" has the meaning given in s. 46.2805 (1).

x

10 (c) ^e (d) "Provider" means an individual providing home care services who is not any
11 of the following:

12 1. An employee of a home health agency, licensed under s. 50.49, who is hired
13 through that home health agency.

14 2. An employee of a personal care provider agency who is hired through that
15 personal care provider agency.

16 3. A health care provider, as defined in s. 146.997 (1) (d) acting in his or her
17 professional capacity.

Insert 13-18 →

x
x

18 (d) ^e (e) "Qualified provider" means a provider who meets the qualifications for
19 payment through the family care benefit ^{Program} under s. 46.286, the Program ^{of} for
20 All-Inclusive Care for the Elderly operated under 42 USC 1396u-4, or a medical ^{an amendment to the} state
21 assistance waiver program operated under a waiver from the secretary of the ^{medical} federal ^{assistance} ^{Plan} ^{under} ^{42 USC 1396n} ⁽¹⁾
22 ^{U.S.} department of health and human services under 42 USC 1396n (c) or 42 USC 1396n

23 (b) and (c) and any qualification criteria established in the rules promulgated under
24 sub. (7) and who the authority determines is eligible for placement on the registry
25 maintained by the authority under s. 52.20 (1).

1 **(2) COUNTY PARTICIPATION.** (a) A county board of supervisors may require a
 2 county department under 46.215, 46.22, 46.23, 51.42, or 51.437 to follow procedures
 3 under this section and to pay providers in accordance with agreements under subch.
 4 V of ch. 111.

5 (b) If a county acts under par. (a) ^{it} shall notify the department and the authority
 6 of its action.

7 **(3) REQUIREMENTS FOR BENEFIT.** If a county has acted under sub. (2) (a) or
 8 provides the family care benefit or the Program of All-Inclusive Care for the Elderly,
 9 then an adult resident of that county who is a recipient of a medical assistance benefit
 10 through the family care benefit under s. 46.286, through the Program of
 11 All-Inclusive Care for the Elderly under 42 USC 1396u-4, or through a program
 12 operated under a waiver from the secretary of the federal department of health and
 13 human services under 42 USC 1396n (c) or 42 USC 1396n (b) and (c), and who is
 14 self-directing some or all of his or her home care services may receive the portion of
 15 the benefit that is provided for home care services only if he or she hires the provider
 16 under this section.

17 **(4) DUTIES OF HOME CARE PAYORS.** Care management organizations, the state, ^{and}
 18 counties, and fiscal intermediaries that pay for the provision of home care services
 19 to individuals, or individuals who hire providers, shall inform the authority of the
 20 name, address, and telephone numbers of any provider hired by an individual
 21 receiving home care services.

22 **(5) DUTIES OF CONSUMERS:** A recipient of home care services ^{as described under sub. (3)} who hires a provider
 23 shall:

Insert
14-7

1 (a) Hire only a provider who has been placed on the registry maintained by the
2 authority under s. 52.20 (1) or whose name has been submitted to the authority
3 under par. (b).

4 (b) If a potential provider has not been placed on the registry maintained by
5 the authority under s. 52.20 (1), provide the name, address, and telephone number
6 of the potential provider to the authority for evaluation of eligibility for the registry
7 and for inclusion in the collective bargaining process under subch. V of ch. 111.

8 *Compensate* (c) ~~Treat~~ providers in accordance with ^{any} collective bargaining agreements under
9 subch. V of ch. 111. *that applies to home care providers*

10 (d) Inform the authority of the name, address, and telephone number of any
11 provider that he or she fires.

12 **(6) PROVIDERS.** (a) A qualified provider providing home care services under this
13 section shall be subject to the collective bargaining agreement that applies to home
14 care providers under subch. V of ch. 111.

15 (b) A qualified provider may choose to be placed on the registry maintained by
16 the authority under s. 52.20 (1).

17 **(7) DEPARTMENT RULE-MAKING.** The department may promulgate rules defining
18 terms, including the term "home care services," establishing the qualification
19 criteria that apply under sub. (1) ^{e d} (e), and establishing procedures for implementation
20 of this section.

21 **SECTION 33.** 46.48 (9) of the statutes is repealed.

22 **SECTION 34.** Chapter 52 of the statutes is created to read:

23 **CHAPTER 52**

24 **QUALITY HOME CARE**

25 **52.01 Definitions.** In this chapter:

*Insert
15-22*

- 1 (1) "Authority" means the Wisconsin Quality Home Care Authority.
- 2 (2) "Board" means the board of directors of the authority.
- 3 (3) "Care management organization" has the meaning given in s. 46.2805 (1).
- 4 (4) "Department" means the department of health services.
- 5 *Inc. 16-6* (5) "Family care benefit" means the benefit program described in s. 46.286. *Program*
- 6 *(The* (6) "Medical assistance waiver program" means a program operated under a
7 waiver from the secretary of the federal department of health and human services *U.S.*
8 under 42 USC 1396n (c) or 42 USC 1396n (b) and (c).
- 9 *(2) e* (7) "Program of All-Inclusive Care for the Elderly" means the program
10 operated under 42 USC 1396u-4.

Inc. 16-11
11 **52.05 Creation and organization of authority.** (1) CREATION AND
12 MEMBERSHIP OF BOARD. There is created a public body corporate and politic to be
13 known as the "Wisconsin Quality Home Care Authority." The members of the board
14 shall consist of the following members:

- 15 (a) The secretary of the department of health services or his or her designee.
- 16 (b) The secretary of the department of workforce development or his or her
17 designee.
- 18 (c) The following, to be appointed by the governor to serve 3 year terms:
- 19 1. One representative from the state assembly.
- 20 2. One representative from the state senate.
- 21 3. One representative of the care management organizations.
- 22 4. One representative of county departments, under 46.215, 46.22, 46.23,
23 51.42, or 51.437, selected from counties that do not provide the family care benefit. *where* *Program*
24 5. One representative of the board for people with developmental disabilities. *is not available*
- 25 6. One representative of the council on physical disabilities.

1 7. One representative of the council on mental health.

2 8. One representative of the board on aging and long-term care.

3 9. Eleven individuals, each of whom is a current or former recipient of home
4 care services through the family care benefit ^{Program} or a medical assistance waiver program
5 or an advocate for or representative of consumers of home care services.

6 (3) CHAIRPERSON. Annually, the governor shall appoint one member of the
7 board to serve as the chairperson.

8 (4) EXECUTIVE COMMITTEE. ^(a) The board shall elect an executive committee. The
9 executive committee shall consist of the chair of the board, the secretary of the
10 department of health services or his or her designee, the secretary of the department
11 of workforce development or his or her designee, and 3 persons selected from board
12 members appointed under sub. (1) (c) 9. ^(b) The executive committee may do the
13 following:

14 1. ^(a) Hire an executive director who is not a member of the board and serves at
15 the pleasure of the board.

16 2. ^(b) Hire employees to carry out the duties of the authority.

17 3. ^(c) Engage in contracts for services to carry out the duties of the authority.

18 (5) TERM. The terms of members of the board appointed under sub. (1) (c) shall
19 expire on July 1.

20 (6) QUORUM. A majority of the members of the board constitutes a quorum for
21 the purpose of conducting its business and exercising its powers and for all other
22 purposes, notwithstanding the existence of any vacancies. Action may be taken by
23 the board upon a vote of a majority of the members present. Meetings of the members
24 of the board may be held anywhere within or without the state.

1 (7) VACANCIES. Each member of the board shall hold office until a successor is
2 appointed and qualified unless the member vacates or is removed from his or her
3 office. A member who serves as a result of holding another office or position vacates
4 his or her office as a member when he or she vacates the other office or position. A
5 member who ceases to qualify for office vacates his or her office. A vacancy on the
6 board shall be filled in the same manner as the original appointment to the board for
7 the remainder of the unexpired term, if any.

8 (8) COMPENSATION. The members of the board ^{are not entitled to} shall receive no compensation
9 for the performance of their duties. The authority may reimburse members of the
10 board for actual and necessary expenses incurred in the discharge of their official
11 duties as provided by the board.

12 (9) EMPLOYMENT OF BOARD MEMBER. It is not a conflict of interest for a board
13 member to engage in private or public employment or in a profession or business,
14 except to the extent prohibited by law, while serving as a member of the board.

15 **52.10 Powers of authority.** The authority shall have all the powers
16 necessary or convenient to carry out the purposes and provisions of this chapter and
17 s. 46.2898. In addition to all other powers granted the authority under this chapter,
18 the authority may:

19 (1) Adopt policies and procedures to govern its proceedings and to carry out its
20 duties as specified in this chapter.

21 (2) Employ, appoint, engage, compensate, transfer, or discharge necessary
22 personnel.

23 (3) Make or enter into contracts, including contracts for the provision of legal
24 or accounting services.

25 (4) Award grants for the purposes set forth in this chapter.

1 (5) Buy, lease, or sell real or personal property.

2 (6) Sue and be sued.

3 (7) Accept gifts, grants, or assistance funds and use them for the purposes of
4 this chapter.

5 (8) Collect fees for its services.

6 **52.20 Duties of authority.** The authority shall:

7 (1) Establish and maintain a registry of home care providers and provide
8 referral services for individuals meeting the criteria in s. 46.2898 (3) in need of home
9 care services.

10 (2) Apply qualification criteria for home care providers who seek placement on
11 the registry and develop criteria and an appeal process for denial of placement on or
12 removal of a provider from the registry consistent with the terms of the medical
13 assistance waiver programs, the family care benefit or the Program of All-Inclusive
14 Care for the Elderly, as determined by the department.

15 (3) Comply with any conditions necessary for individuals receiving home care
16 services to receive federal medical assistance funding through a medical assistance
17 waiver program, the family care benefit or the Program of All-Inclusive Care for the
18 Elderly.

19 (4) Develop and operate recruitment and retention programs to expand the
20 pool of home care providers qualified and available to provide home care services to
21 consumers.

22 (5) Maintain a list of home care providers included in a collective bargaining
23 unit under s. 111.825 (2g).

Determine the eligibility of individuals for placement on the registry. For purposes of determining eligibility, The authority shall apply the criteria described in s. 46.2898(1)(d), including any qualifying criteria established by the department under s. 46.2898(7). The authority shall also

established by the department under s. 46.2898(7)

to provide home care services

an amendment to the state medical assistance plan under 42 USC

1396n(j)

an amendment to the state medical assistance plan under 42 USC 1396n(j)

Program

SECTION 34

(a)
for remaining qualified provider under s. 46.2898 (1)(d)

1 (6) Notify home care providers providing home care services of any procedures
2 set forth by the department or the authority and of the terms of a collective
3 bargaining agreement under subch. V of ch. 111.

4 (7) Provide orientation activities and skills training for home care providers.

5 (8) Provide training and support for individuals hiring a home care provider
6 ^{regarding} in the duties and responsibilities of employers and skills needed to be effective
7 employers.

8 (9) Inform consumers of the ^{experience} background and qualifications of home care
9 providers on the registry and home care providers identified by individual recipients
10 of home care services for employment.

11 (10) Develop and operate a system of backup and respite referrals to home care
12 providers and a 24-hour per day call service for recipients of home care services.

13 (11) Report annually to the governor on the number of home care providers on
14 the registry and the number of home care providers providing services under the
15 authority.

16 (12) Conduct activities to improve the supply and quality of home care
17 providers.

INS
20-18

18 **SECTION 35.** 70.11 (41s) of the statutes is created to read:

19 70.11 (41s) WISCONSIN QUALITY HOME CARE AUTHORITY. All property owned by
20 the Wisconsin Quality Home Care Authority, provided that use of the property is
21 primarily related to the purposes of the authority.

22 **SECTION 36.** 71.26 (1) (be) of the statutes is amended to read:

23 71.26 (1) (be) *Certain authorities.* Income of the University of Wisconsin
24 Hospitals and Clinics Authority, of the Health Insurance Risk-Sharing Plan

1 Authority, of the Wisconsin Quality Home Care Authority, and of the Fox River
2 Navigational System Authority, and of the Wisconsin Aerospace Authority.

3 **SECTION 37.** 77.54 (9a) (a) of the statutes is amended to read:

4 77.54 **(9a)** (a) This state or any agency thereof, the University of Wisconsin
5 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health
6 Insurance Risk-Sharing Plan Authority, the Wisconsin Quality Home Care
7 Authority, and the Fox River Navigational System Authority.

8 **SECTION 38.** 100.45 (1) (dm) of the statutes is amended to read:

9 100.45 **(1)** (dm) "State agency" means any office, department, agency,
10 institution of higher education, association, society or other body in state
11 government created or authorized to be created by the constitution or any law which
12 is entitled to expend moneys appropriated by law, including the legislature and the
13 courts, the Wisconsin Housing and Economic Development Authority, the Bradley
14 Center Sports and Entertainment Corporation, the University of Wisconsin
15 Hospitals and Clinics Authority, the Wisconsin Health and Educational Facilities
16 Authority, the Wisconsin Aerospace Authority, the Wisconsin Quality Home Care
17 Authority, and the Fox River Navigational System Authority.

18 **SECTION 39.** 101.177 (1) (d) of the statutes is amended to read:

19 101.177 **(1)** (d) "State agency" means any office, department, agency,
20 institution of higher education, association, society, or other body in state
21 government created or authorized to be created by the constitution or any law, that
22 is entitled to expend moneys appropriated by law, including the legislature and the
23 courts, the Wisconsin Housing and Economic Development Authority, the Bradley
24 Center Sports and Entertainment Corporation, the University of Wisconsin
25 Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin

1 Quality Home Care Authority, and the Wisconsin Health and Educational Facilities
2 Authority, but excluding the Health Insurance Risk-Sharing Plan Authority and the
3 Lower Fox River Remediation Authority.

4 SECTION 40. 111.81 (3h) of the statutes is created to read:

5 111.81 (3h) "Consumer" means a person to whom a home care provider
6 provides services at the will of the person.

see meeting all the criteria under s. 46.2898(3) which services are paid for through family care

****NOTE: Per the comments from OSER, I put the providers under SELRA, not MERA, OK?

7 SECTION 41. 111.81 (7) (g) of the statutes is created to read:

8 111.81 (7) (g) For purposes of this subchapter only, home care providers. This
9 paragraph does not make home care providers state employees for any other purpose
10 except collective bargaining.

11 SECTION 42. 111.81 (9k) of the statutes is created to read:

12 111.81 (9k) "Home care provider" means a qualified provider under s. 46.2898

13 (1) (e) ^(d) ✓

MS 22-14

14 SECTION 43. 111.825 (2g) of the statutes is created to read:

15 111.825 (2g) A collective bargaining unit for home care providers shall be
16 structured as a single statewide collective bargaining unit.

MS 22-17

17 SECTION 44. 111.825 (3) of the statutes is amended to read:

18 111.825 (3) The commission shall assign employees to the appropriate
19 collective bargaining units set forth in subs. (1), (1m) ~~and~~, (2), and (2g).

20 SECTION 45. 111.825 (4) of the statutes is amended to read:

21 111.825 (4) Any labor organization may petition for recognition as the exclusive
22 representative of a collective bargaining unit specified in sub. (1), (1m) ~~or~~, or (2g)
23 in accordance with the election procedures set forth in s. 111.83, provided the petition

1 is accompanied by a 30% showing of interest in the form of signed authorization
2 cards. Each additional labor organization seeking to appear on the ballot shall file
3 petitions within 60 days of the date of filing of the original petition and prove,
4 through signed authorization cards, that at least 10% of the employees in the
5 collective bargaining unit want it to be their representative.

6 **SECTION 46.** 111.83 (1) of the statutes is amended to read:

7 111.83 (1) Except as provided in ~~sub.~~ subs. (5) and (5m), a representative
8 chosen for the purposes of collective bargaining by a majority of the employees voting
9 in a collective bargaining unit shall be the exclusive representative of all of the
10 employees in such unit for the purposes of collective bargaining. Any individual
11 employee, or any minority group of employees in any collective bargaining unit, may
12 present grievances to the employer in person, or through representatives of their own
13 choosing, and the employer shall confer with said employee or group of employees in
14 relation thereto if the majority representative has been afforded the opportunity to
15 be present at the conference. Any adjustment resulting from such a conference may
16 not be inconsistent with the conditions of employment established by the majority
17 representative and the employer.

18 **SECTION 47.** 111.83 (5m) of the statutes is created to read:

19 111.83 (5m) (a) This subsection applies only to a collective bargaining unit
20 specified in s. 111.825 (2g).

21 (b) Upon the filing of a petition with the commission indicating a showing of
22 interest of at least 30 percent of the home care providers included in the collective
23 bargaining unit under s. 111.825 (2g) to be represented by a labor organization or to
24 change the existing representative, the commission shall hold an election in which
25 the home care providers may vote on the question of representation. The labor

1 organization named in the petition shall be included on the ballot. Within 60 days
2 of the time that the petition is filed, another petition may be filed with the
3 commission indicating a showing of interest of at least 10 percent of the home care
4 providers who are included in the collective bargaining unit under s. 111.825 (2g) to
5 be represented by another labor organization, in which case the name of that labor
6 organization shall also be included on the ballot.

INS
24-7
7 (c) If at an election held under par. (b), a majority of home care providers voting
8 in the collective bargaining unit vote for a single labor organization, the labor
9 organization shall be the exclusive representative for all home care providers in that
10 collective bargaining unit. If no single labor organization receives a majority of the
11 votes cast, the commission may hold one or more runoff elections under sub. (4) until
12 one labor organization receives a majority of the votes cast.

INS
24-11
13 SECTION 48. 111.905 of the statutes is created to read:

14 **111.905 Rights of consumer. (1)** This subchapter does not interfere with the
15 rights of the consumer to hire, discharge, suspend, promote, retain, lay off, supervise,
16 or discipline home care providers or to set terms, conditions, and duties of
17 employment.

18 (2) A home care provider is an at will provider of home care services to a
19 consumer and this subchapter does not interfere with that relationship.

20 SECTION 49. 111.91 (1) (cg) of the statutes is created to read:

21 111.91 (1) (cg) The representative of home care providers in the collective
22 bargaining unit specified under s. 118.81 (2g) may not bargain collectively with
23 respect to any matter other than wages and fringe benefits.

24 SECTION 50. 111.91 (2c) of the statutes is created to read:

1 111.91 (2c) In addition to the prohibited subjects under sub. (2), the employer
2 is prohibited from bargaining with a collective bargaining unit formed under s.
3 111.825 (2g) on any of the following:

4 (a) Policies.

5 (b) Work rules.

6 (c) Hours of employment.

7 (d) Any right of the consumer under s. 111.905

8 **SECTION 51.** 111.92 (1) (a) of the statutes is amended to read:

9 111.92 (1) (a) Any tentative agreement reached between the office, acting for
10 the state, and any labor organization representing a collective bargaining unit
11 specified in s. 111.825 (1) ~~or~~, (2) (a) to (e), or (2g) shall, after official ratification by the
12 labor organization, be submitted by the office to the joint committee on employment
13 relations, which shall hold a public hearing before determining its approval or
14 disapproval. If the committee approves the tentative agreement, it shall introduce
15 in a bill or companion bills, to be put on the calendar or referred to the appropriate
16 scheduling committee of each house, that portion of the tentative agreement which
17 requires legislative action for implementation, such as salary and wage adjustments,
18 changes in fringe benefits, and any proposed amendments, deletions or additions to
19 existing law. Such bill or companion bills are not subject to ss. 13.093 (1), 13.50 (6)
20 (a) and (b) and 16.47 (2). The committee may, however, submit suitable portions of
21 the tentative agreement to appropriate legislative committees for advisory
22 recommendations on the proposed terms. The committee shall accompany the
23 introduction of such proposed legislation with a message that informs the legislature
24 of the committee's concurrence with the matters under consideration and which
25 recommends the passage of such legislation without change. If the joint committee

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25-8
→

1 on employment relations does not approve the tentative agreement, it shall be
2 returned to the parties for renegotiation. If the legislature does not adopt without
3 change that portion of the tentative agreement introduced by the joint committee on
4 employment relations, the tentative agreement shall be returned to the parties for
5 renegotiation.

Ins
266 → **SECTION 52.** 281.75 (4) (b) 3. of the statutes is amended to read:

7 281.75 (4) (b) 3. An authority created under subch. II of ch. 114 or ch. 52, 231,
8 233, 234, or 237.

SECTION 53. 285.59 (1) (b) of the statutes is amended to read:

10 285.59 (1) (b) "State agency" means any office, department, agency, institution
11 of higher education, association, society or other body in state government created
12 or authorized to be created by the constitution or any law which is entitled to expend
13 moneys appropriated by law, including the legislature and the courts, the Wisconsin
14 Housing and Economic Development Authority, the Bradley Center Sports and
15 Entertainment Corporation, the University of Wisconsin Hospitals and Clinics
16 Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace
17 Authority, the Wisconsin Quality Home Care Authority, and the Wisconsin Health
18 and Educational Facilities Authority.

SECTION 54. 704.31 (3) of the statutes is amended to read:

20 704.31 (3) This section does not apply to a lease to which a local professional
21 baseball park district created under subch. III of ch. 229, the Wisconsin Quality
22 Home Care Authority, or the Fox River Navigational System Authority is a party.

**SECTION 9155m. Nonstatutory provisions; Wisconsin Quality Home
24 Care Authority.**

1 (1) INITIAL TERMS OF WISCONSIN QUALITY HOME CARE AUTHORITY BOARD.
2 Notwithstanding the length of terms specified for the members of the board of the
3 Wisconsin Quality Home Care Authority specified in section 52.05 (1) (c) of the
4 statutes, as created by this act, the initial members shall be appointed for the
5 following terms:

6 (a) The members specified under section 52.05 (1) (c) 1. and 3. of the statutes,
7 as created by this act, and 3 members specified under section 52.05 (1) (c) 9. of the
8 statutes, as created by this act, for terms that expire on July 1, 2010.

9 (b) The members specified under section 52.05 (1) (c) 2., 4., and 6. of the
10 statutes, as created by this act, and 4 members specified under section 52.05 (1) (c)
11 9. of the statutes, as created by this act, for terms that expire July 1, 2011.

12 (c) The members specified under section 52.05 (1) (c) 5., 7., and 8. of the statutes,
13 as created by this act, and 4 members specified under section 52.05 (1) (c) 9. of the
14 statutes, as created by this act, for terms that expire July 1, 2012.

15 (2) INITIAL CHAIRPERSON OF WISCONSIN QUALITY HOME CARE AUTHORITY BOARD.
16 The secretary of the department of health services, or his or her designee, shall serve
17 as the initial chairperson of the board until such time as the governor designates a
18 member of the board to serve as its chair.

19 (END)

Handwritten notes:
④ SECTION 9155m. Effective Dates: Wisconsin Quality Home Care Authority.
D-N

Handwritten notes:
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27-18

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1382/P2dnTJD

TJD:/.....

ejs

To Laurie Palchik:

Please review this redraft with regards to the following:

1. Considering the comments on the last draft, I will reiterate my statement from the last drafter's note. The entity in this draft does not need to be, and probably should not be, an authority. Typically, an authority is created to do something the state cannot do, such as issue bonds or guarantee debt, or something that just should not be done by a state entity. As we have discussed and received comments on this draft, the independence of and responsibility given to the Wisconsin Quality Home Care Authority has been decreasing. The Wisconsin Quality Home Care Authority is looking more and more like a part of the state.
2. I have inserted the liability provision as mentioned in the comments, but please note that this provision may not have the intended effect on a court interpreting it. Since, per the latest comments, DHS is making the decision about qualifying providers, there are not many decisions that will be made by the authority independently of DHS. This means that a court may look at the actual relationship between the authority and the state and may determine that the authority is really just doing what the state decides and that the state should ultimately be liable.
3. Are there any procedures for a provider to have his or her name included on the authority's registry? Is there specific information the provider must supply or a format for supplying the information?
4. I would like final clarification on the qualifying of providers. As I understand from the comments, DHS sets the qualification criteria for providers. May the authority set any additional criteria? Who determines whether the provider is qualified?
5. I was thinking there should be an initial applicability provision included in this draft. Individuals who have hired providers may have a contract with that provider already. If this bill conflicts with those contracts, then a court may construe it as an unconstitutional impairment of those contracts under article I, section 12, of the Wisconsin Constitution and article I, section 10, of the U.S. Constitution. A way to address this problem would be to include an initial applicability provision that would apply this bill to contracts entered into or renewed after the effective date of the bill. Please let me know if you would like me to insert an initial applicability provision. ✓

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

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INSERT 13-3

SECTION 1. 19.42 (13) (o) of the statutes is created to read:

19.42 (13) (o) The executive director of the Wisconsin Quality Home Care Authority.

INSERT 13-18

4. An employee of a company or agency providing supportive home care.

5. An employee of an independent living center, as defined in s. 46.96 (1) (ah).

6. An employee of a county agency or department under s. 46.215, 46.22, 46.23, 51.42, or 51.437.

INSERT 14-7

(3) ^{Requirements for benefit.} ~~A recipient of~~ ^{adult} home care services ^{and} who meets all of the following criteria may receive a benefit for home care services only if he or she complies with sub. (5):

(a) The individual is a resident of one of the following:

1. A county that has acted under sub. (2) (a).

2. A county in which the Family Care Program, under s. 46.286, is available.

3. A county in which the Program ^{for} All-Inclusive Care for the Elderly, ^{2 of} under 42 USC 1396u-4, is available.

4. A county in which the self-directed services option program under 42 USC 1396n (c) is available or in which a program operated under an amendment to the state medical assistance plan under 42 USC 1396n (j) is available.

1 (b) The individual self-directs all or part of his or her home care services and
2 is the employer of record of a provider.

3 (c) The individual is receiving a home care benefit under one of the following: *eligible to receive*

4 1. The Family Care Program under s. 46.286.

5 2. The Program of All-Inclusive Care for the Elderly, under 42 USC 1396u-4.

6 3. A program operated under a waiver from the secretary of the federal
7 department of health and human services under 42 USC 1396n (c) or 42 USC 1396n
8 (b) and (c) or the self-directed services option operated under 42 USC 1396n (c).

9 4. A program operated under an amendment to the state medical assistance
10 plan under 42 USC 1396n (j).

11 INSERT 15-22 *^ x*

12 **SECTION 2.** 46.48 (9m) of the statutes is created to read:

13 46.48 (9m) **QUALITY HOME CARE.** The department shall award a grant to the
14 Wisconsin Quality Home Care Authority for the purpose of providing services to
15 recipients and providers of home care under s. 46.2898 and ch. 52 and for the purpose
16 of allowing the authority to award *a* grant *s* to *a* county *ies* to facilitate transition to
17 procedures established under s. 46.2898.

18 INSERT 16-~~11~~ *6 Home care*

19 (8) "Provider" means an individual who is a qualified provider under s. 46.2898

20 (1) (d).
STET

21 INSERT 20-18

or

1 **52.30 Liability limited.** (1) The state, any political subdivision of the state,
 2 any officer, employee, or agent of the state, or a political subdivision who is acting
 3 within the scope of employment or agency is not liable for any debt, obligation, act,
 4 or omission of the authority.

5 (2) All of the expenses incurred by the authority in exercising its duties and
 6 powers under this chapter shall be payable only from funds of the authority.

7 **52.40 Health data.** Any health data or identifying information collected by
 8 the elected authority is collected for the purpose of government regulatory and
 9 management functions.

***NOTE: I have added this provision in an attempt to avoid any problems with the
 privacy regulations under HIPAA.

10 INSERT 26-6

11 **SECTION 3.** 230.03 (3) of the statutes is amended to read:

12 230.03 (3) "Agency" means any board, commission, committee, council, or
 13 department in state government or a unit thereof created by the constitution or
 14 statutes if such board, commission, committee, council, department, unit, or the
 15 head thereof, is authorized to appoint subordinate staff by the constitution or
 16 statute, except a legislative or judicial board, commission, committee, council,
 17 department, or unit thereof or an authority created under subch. II of ch. 114 or
 18 subch. III of ch. 149 or under ch. 52, 231, 232, 233, 234, 235, 237, or 279. "Agency"
 19 does not mean any local unit of government or body within one or more local units

1 of government that is created by law or by action of one or more local units of
2 government.

History: 1971 c. 270; 1973 c. 333; 1977 c. 196 ss. 24, 100; 1977 c. 418; 1981 c. 20, 26; 1983 a. 27 ss. 1604, 2200 (15); 1983 a. 409, 453, 538; 1987 a. 32; 1989 a. 31; 1991 a. 101, 147; 1993 a. 16, 254; 1995 a. 27, 255; 1997 a. 27; 1999 a. 65, 87; 2001 a. 16, 103; 2003 a. 33 ss. 2385 to 2387s, 9160; 2005 a. 22, 74, 335, 393; 2007 a. 20, 97.

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1382/p2insch
CMH:.....

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Insert 22-14

SECTION 1. 111.815 (1) and (2) of the statutes are amended to read:

111.815 (1) In the furtherance of this subchapter, the state shall be considered as a single employer and employment relations policies and practices throughout the state service shall be as consistent as practicable. The office shall negotiate and administer collective bargaining agreements except that the department of health services shall negotiate and administer collective bargaining agreements specified in s. ~~118.825~~ (2g). To coordinate the employer position in the negotiation of agreements, the office, or the department of health services with regard to collective bargaining agreements specified in s. ~~118.825~~ (2g), shall maintain close liaison with the legislature relative to the negotiation of agreements and the fiscal ramifications of those agreements. Except with respect to the collective bargaining units specified in s. 111.825 (1m) and, (2) (f), and (2g), the office is responsible for the employer functions of the executive branch under this subchapter, and shall coordinate its collective bargaining activities with operating state agencies on matters of agency concern. The legislative branch shall act upon those portions of tentative agreements negotiated by the office that require legislative action. With respect to the collective bargaining units specified in s. 111.825 (1m), the University of Wisconsin Hospitals and Clinics Board is responsible for the employer functions under this subchapter. With respect to the collective bargaining unit specified in s. 111.825 (2) (f), the governing board of the charter school established by contract under s. 118.40 (2r) (cm) is responsible for the employer functions under this subchapter. With respect to the collective bargaining unit specified in s. 111.825 (2g),

of the executive
branch

1 the department of health services is responsible for the employer functions) under
2 this subchapter.

3 (2) In the furtherance of the policy under s. 111.80 (4), the director of the office
4 shall, together with the appointing authorities or their representatives, represent
5 the state in its responsibility as an employer under this subchapter except with
6 respect to negotiations in the collective bargaining units specified in s. 111.825 (1m),
7 and (2) (f), and (2g). The director of the office shall establish and maintain, wherever
8 practicable, consistent employment relations policies and practices throughout the
9 state service.

10 History: 1977 c. 196; 1983 a. 27 s. 2200 (15); 1985 a. 42; 1989 a. 31; 1995 a. 27; 2001 a. 16, 104; 2003 a. 33.

11
12 Insert 22-17

***NOTE: Laurie, as we discussed via email and voicemail, this is the equivalent
of creating a paragraph under s. 111.825 (1). We cannot create a paragraph under s.
111.825 (1) for this group because they are not classified employees (see 111.825 (1)
(intro.)). And the amendment of s. 111.825 (3) already accomplishes the other suggested
"important" change by having the commission assign the employees to the appropriate
collective bargaining units. OK?

13
14 Insert 24-7

***NOTE: I did not change % to percent because that is a style change that the LRB
has implemented. There is no substantive difference so don't be concerned.

15
16 Insert 24-14

17 SECTION 2. 111.84 (2) (c) of the statutes is amended to read:

18 111.84 (2) (c) To refuse to bargain collectively on matters set forth in s. 111.91
19 (1) with the duly authorized officer or agent of the employer which is the recognized
20 or certified exclusive collective bargaining representative of employees specified in

1 s. 111.81 (7) (a) in an appropriate collective bargaining unit or with the certified
 2 exclusive collective bargaining representative of employees specified in s. 111.81 (7)
 3 (b) to (f) (g) in an appropriate collective bargaining unit. Such refusal to bargain shall
 4 include, but not be limited to, the refusal to execute a collective bargaining
 5 agreement previously orally agreed upon.

6 **History:** 1971 c. 270; 1973 c. 212; 1983 a. 160; 1985 a. 42; 1989 a. 13, 31; 1991 a. 289; 1993 a. 492; 1995 a. 27; 2001 a. 16.

7 **Insert 25-8**

8 ******NOTE:** The prohibited subjects are included for clarity. Also, perhaps one of the
 9 prohibited subjects could have an impact on wages or benefits - this is to ensure that the
 subject does not get to the bargaining table through wages or benefits.

10 **Insert 27-18**

11 **(0) COLLECTIVE BARGAINING AGREEMENTS.** The treatment of sections 111.81 (3h),
 12 (7) (g), and (9k), 111.815 (1) and (2), 111.825 (3) and (4), 111.83 (1) and (5m), 111.84
 13 (2) (c), 111.905, 111.91 (1) (cg) and (2c), and 111.92 (1) (a) of the statutes takes effect
 on July 1, 2011.

Handwritten note: Δ - Δ em dash

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1382/P2dn
TJD:cjs:md

January 26, 2009

To Laurie Palchik:

Please review this redraft with regards to the following:

1. Considering the comments on the last draft, I will reiterate my statement from the last drafter's note. The entity in this draft does not need to be, and probably should not be, an authority. Typically, an authority is created to do something the state cannot do, such as issue bonds or guarantee debt, or something that just should not be done by a state entity. As we have discussed and received comments on this draft, the independence of and responsibility given to the Wisconsin Quality Home Care Authority has been decreasing. The Wisconsin Quality Home Care Authority is looking more and more like a part of the state.
2. I have inserted the liability provision as mentioned in the comments, but please note that this provision may not have the intended effect on a court interpreting it. Since, per the latest comments, DHS is making the decision about qualifying providers, there are not many decisions that will be made by the authority independently of DHS. This means that a court may look at the actual relationship between the authority and the state and may determine that the authority is really just doing what the state decides and that the state should ultimately be liable.
3. Are there any procedures for a provider to have his or her name included on the authority's registry? Is there specific information the provider must supply or a format for supplying the information?
4. I would like final clarification on the qualifying of providers. As I understand from the comments, DHS sets the qualification criteria for providers. May the authority set any additional criteria? Who determines whether the provider is qualified?
5. I was thinking there should be an initial applicability provision included in this draft. Individuals who have hired providers may have a contract with that provider already. If this bill conflicts with those contracts, then a court may construe it as an unconstitutional impairment of those contracts under article I, section 12, of the Wisconsin Constitution and article I, section 10, of the U.S. Constitution. A way to address this problem would be to include an initial applicability provision that would apply this bill to contracts entered into or renewed after the effective date of the bill. Please let me know if you would like me to insert an initial applicability provision.

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Dodge, Tamara

From: Palchik, Laurie A - DOA [laurie.palchik@wisconsin.gov]
Sent: Wednesday, January 28, 2009 9:58 AM
To: Dodge, Tamara
Subject: RE: LRB Draft: 09-1382/P2 Wisconsin Quality Home Care Authority

Sounds good.

I talked with Gail Propsom at DHS about the items we discussed this morning. Gail will double-check on the question of "who determines whether the provider is qualified", but after discussing, our thoughts are this, DHS and the counties determine through the waivers what qualifications must be set and met. It is DHS/county responsibility to set qualifications, but the Authority could have a role in assuring that providers "meet" the qualifications "set" by DHS and the counties. I don't know if that answers the question, but the Authority will never set qualifications, they could only have a role in qualifying or determining that set qualifications are met.

On the initial applicability provision, yes go ahead and include that in the non-stat language as we discussed this morning.

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From: Dodge, Tamara [mailto:Tamara.Dodge@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 9:51 AM
To: Palchik, Laurie A - DOA
Subject: RE: LRB Draft: 09-1382/P2 Wisconsin Quality Home Care Authority

I checked with Cathlene and we should have comments back on the redraft we send today by tomorrow morning.
- Tami

Tamara J. Dodge

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From: Palchik, Laurie A - DOA [mailto:laurie.palchik@wisconsin.gov]
Sent: Wednesday, January 28, 2009 8:16 AM
To: Hanaman, Cathlene; Dodge, Tamara
Subject: FW: LRB Draft: 09-1382/P2 Wisconsin Quality Home Care Authority

Additional comments from DHS for the QHCA draft.

DHS Comments on LRB – 1382/P2 – 1/27/2009

- As we requested, the drafter added the executive director to the definition of 'state public office' for purposes of the ch. 19 ethics. However, by not adding the members of the Authority to the new paragraph, it could create arguments as to whether the "positions appointed by the governor" piece of the definition is truly meant to cover the board members. Therefore, we suggest modifying the following to add the underlined: ✓

19.42 (13) (o) The executive director and members of the board of directors of the Wisconsin Quality Home Care Authority.

- **46.2898(3), p 14, lines 16 – 18:** This provision apparently would deny a FC or waiver participant Medicaid funding for home care services if the participant does not pay home care providers according to the CBA negotiated under ch. 111. This provision should be made subject to CMS approval, if it is not already. I don't think we can limit benefits under FC and the waivers in this manner without CMS approval. In the absence of such approval, if a participant were to pay a home care provider less than the negotiated amount, and as a result the participant's eligibility for benefits were terminated, I don't believe the Dept could sustain the termination upon appeal.

- **111.815(1), p 24 line 7 to p 25 line 6:** The Dept's duties to negotiate and administer the CBA and otherwise carry out employer functions under ch 111 with respect to home care workers should also be made subject to approval by CMS. } Cathlene

- ✓ • The money for the Dane Co Home Care Commission runs from the Dept through the WI Authority. This would be a problem in that we need to fund Dane County before the authority is established. We propose to redraft the relevant paragraph as follows:

46.48 (9m) QUALITY HOME CARE. The department shall award a grant to the Wisconsin Quality Home Care Authority for the purpose of providing services to recipients and providers of home care under s. 46.2898 and ch. 52 and may award a grant to counties to facilitate transition to procedures established under s. 46.2898.

• Initial App - ✓

- Would it be possible to request emergency rule making authority for the rules to be promulgated under s. 46.2898(7)? ✓
- We had included this item in our original comments. Did the drafter address this item?

16. In 46.2898(5) a consumer may hire a provider who is on the registry or whose name is given to the authority for evaluation of eligibility for the registry. There's a gap because there's no provision for what happens if the authority does not find the person eligible for inclusion. I assume the intent is that a person can be a provider while s/he is being evaluated so there's no delay for the consumer getting services, but then there should be language to cover the contingency that the person isn't registry-eligible. ✓

Dodge, Tamara

From: Palchik, Laurie A - DOA [laurie.palchik@wisconsin.gov]
Sent: Wednesday, January 28, 2009 10:46 AM
To: Dodge, Tamara; Hanaman, Cathlene
Subject: FW: Your questions on QHCA
Importance: High

Comments based on our remaining questions and discussion this morning.

-----Original Message-----

From: Propsom, Gail F - DHS
Sent: Wednesday, January 28, 2009 10:41 AM
To: Palchik, Laurie A - DOA
Cc: Forsaith, Andrew C - DHS; Bove, Fredi-Ellen E - DHS; Gebhart, Neil R - DHS; Holmes, Rea L - DHS
Subject: Your questions on QHCA
Importance: High

Hi Laurie, I talked with Neil Gebhart, Andy Forsaith and Fredi Bove regarding the questions you asked this morning. Here are the consensus responses.

1. What agency sets the qualifications for home care provided, DHS or the QHCA?

We agree that as the Medicaid agency, DHS has to determine what the qualifications are for Medicaid providers. If the QHCA set qualifications that were higher than those reflected in our state plan or approved waivers, CMS could object because we would be restricting the provider pool and refusing to pay willing providers. The QHCA, however, could make the determination whether a given individual meets the qualifications set by the Department. We would want to make sure that they are being applied fairly and equitably. Counties and MCOs apply state standards now on our behalf.

2. Do we need initial applicability language to ensure that we aren't breaking existing contracts?

We think that this is a good idea. Because of the nature of self-directed care, these would typically be informal agreements between a Medicaid recipient and an individual provider. They could not be long term binding sorts of agreements because the payment would be contingent on the recipient's continuing eligibility for Medicaid and the need for the service. All of the programs involved require at least an annual review of the individual service plan (some require 6 months). This would be an appropriate time to address anything that could be viewed as a contract.

We would want to coordinate the implementation of a statewide bargaining unit/contract with the transition of the Dane County bargaining unit/contract to address the issue of that contract.