State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1382/P5
TJD&CMH:cjs:jf

DOA:.....Palchik, BB0361 - Wisconsin Quality Home Care Authority

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

This bill requires that an adult who 1) hires an individual home care provider other than an agency, county, or independent living center employee or a health care provider; 2) is a resident of a county that agrees to abide by certain requirements or that offers certain programs; and 3) is a recipient of a home care benefit through the Family Care Program, a medical assistance waiver program, a self-directed supports option program, an amendment to the state medical assistance plan, or the Program of All-Inclusive Care for the Elderly must comply with certain requirements with regard to the hiring of the home care provider. The requirements include hiring only a provider eligible for inclusion on a registry maintained by the Wisconsin Quality Home Care Authority (WQHCA), created in this bill, and compensating providers in accordance with any state collective bargaining agreement pertaining to home care providers.

The bill creates the WQHCA, which is a public body corporate and politic with a board of directors that is created by state law, but which is not a state agency. A majority of members of the board of directors must represent the interests of recipients of home care services. The WQHCA is subject to requirements such as state purchasing requirements, lobbying laws, and the code of ethics for public officials. The WQHCA is exempt from state employment requirements, and its

employees are excluded from the state retirement system. The bill requires the WQHCA to establish and maintain a registry of providers; provide referrals to individuals seeking home care services; determine the eligibility of providers for placement on the registry; develop a recruitment program for providers; operate a backup provider system with a 24-hour per day call service; conduct activities to improve the supply and quality of home care providers; and perform other tasks.

This bill provides home care providers collective bargaining rights under state law in a manner similar to that provided state employees under the State Employment Labor Relations Act (SELRA). The collective bargaining unit is structured as one statewide unit and DHS acts as the state employer.

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:

SECTION 1. 7.33 (1) (c) of the statutes is amended to read:

7.33 **(1)** (c) "State agency" has the meaning given under s. 20.001 (1) and includes an authority created under subch. II of ch. 114 or ch. 52, 231, 232, 233, 234, or 237.

SECTION 2. 13.172 (1) of the statutes is amended to read:

13.172 **(1)** In this section, "agency" means an office, department, agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, and any authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, or 279.

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

13.48 **(13)** (a) Except as provided in par. (b) or (c), every building, structure or facility that is constructed for the benefit of or use of the state, any state agency, board, commission or department, the University of Wisconsin Hospitals and Clinics

Authority, the Fox River Navigational System Authority, the Wisconsin Quality Home Care Authority, or any local professional baseball park district created under subch. III of ch. 229 if the construction is undertaken by the department of administration on behalf of the district, shall be in compliance with all applicable state laws, rules, codes and regulations but the construction is not subject to the ordinances or regulations of the municipality in which the construction takes place except zoning, including without limitation because of enumeration ordinances or regulations relating to materials used, permits, supervision of construction or installation, payment of permit fees, or other restrictions.

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

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

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

13.94 **(4)** (a) 1. Every state department, board, examining board, affiliated credentialing board, commission, independent agency, council or office in the executive branch of state government; all bodies created by the legislature in the legislative or judicial branch of state government; any public body corporate and politic created by the legislature including specifically the Wisconsin Quality Home Care Authority, the Fox River Navigational System Authority, the Lower Fox River Remediation Authority, and the Wisconsin Aerospace Authority, a professional baseball park district, a local professional football stadium district, a local cultural arts district and a long-term care district under s. 46.2895; every Wisconsin works

agency under subch. III of ch. 49; every provider of medical assistance under subch. IV of ch. 49; technical college district boards~~; development zones designated under s. 560.71~~; every county department under s. 51.42 or 51.437; every nonprofit corporation or cooperative or unincorporated cooperative association to which moneys are specifically appropriated by state law; and every corporation, institution, association or other organization which receives more than 50% of its annual budget from appropriations made by state law, including subgrantee or subcontractor recipients of such funds.

****NOTE: This is reconciled s. 13.94 (4) (a)1. This SECTION has been affected by drafts with the following LRB numbers: -0284/P2, -1382/P4.

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

13.95 Legislative fiscal bureau. (intro.) There is created a bureau to be known as the "Legislative Fiscal Bureau" headed by a director. The fiscal bureau shall be strictly nonpartisan and shall at all times observe the confidential nature of the research requests received by it; however, with the prior approval of the requester in each instance, the bureau may duplicate the results of its research for distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director's designated employees shall at all times, with or without notice, have access to all state agencies, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority, and to any books, records, or other documents maintained by such agencies or authorities and relating to their expenditures, revenues, operations, and structure.

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

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

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

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

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

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

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

16.004 **(12)** (a) In this subsection, "state agency" means an association, authority, board, department, commission, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor, and the courts, but excluding the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan

Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority.

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

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

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

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

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

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

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

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

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

16.52 **(7)** PETTY CASH ACCOUNT. Petty cash account. With the approval of the secretary, each agency that is authorized to maintain a contingent fund under s. 20.920 may establish a petty cash account from its contingent fund. The procedure for operation and maintenance of petty cash accounts and the character of

expenditures therefrom shall be prescribed by the secretary. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, or 279.

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

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

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

16.53 **(2)** IMPROPER INVOICES. If an agency receives an improperly completed invoice, the agency shall notify the sender of the invoice within 10 working days after it receives the invoice of the reason it is improperly completed. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, or 279.

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

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

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

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

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

16.765 **(1)** Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center Sports and Entertainment Corporation shall include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation as defined in s. 111.32 (13m), or national origin and, except with respect to sexual orientation, obligating the contractor to take affirmative action to ensure equal employment opportunities.

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

16.765 **(2)** Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower

Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center Sports and Entertainment Corporation shall include the following provision in every contract executed by them: "In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01 (5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause".

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

16.765 **(4)** Contracting agencies, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center Sports and Entertainment Corporation shall take appropriate action to revise the standard government contract forms under this section.

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

16.765 **(5)** The head of each contracting agency and the boards of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox River

Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center Sports and Entertainment Corporation shall be primarily responsible for obtaining compliance by any contractor with the nondiscrimination and affirmative action provisions prescribed by this section, according to procedures recommended by the department. The department shall make recommendations to the contracting agencies and the boards of directors of the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, and the Bradley Center Sports and Entertainment Corporation for improving and making more effective the nondiscrimination and affirmative action provisions of contracts. The department shall promulgate such rules as may be necessary for the performance of its functions under this section.

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

16.765 **(6)** The department may receive complaints of alleged violations of the nondiscrimination provisions of such contracts. The department shall investigate and determine whether a violation of this section has occurred. The department may delegate this authority to the contracting agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports and Entertainment Corporation for processing in accordance with the department's procedures.

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

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

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

16.765 **(7)** (d) Direct the violating party to take immediate steps to prevent further violations of this section and to report its corrective action to the contracting agency, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports and Entertainment Corporation.

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

16.765 **(8)** If further violations of this section are committed during the term of the contract, the contracting agency, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home

Care Authority, or the Bradley Center Sports and Entertainment Corporation may permit the violating party to complete the contract, after complying with this section, but thereafter the contracting agency, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports and Entertainment Corporation shall request the department to place the name of the party on the ineligible list for state contracts, or the contracting agency, the Fox River Navigational System Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Quality Home Care Authority, or the Bradley Center Sports and Entertainment Corporation may terminate the contract without liability for the uncompleted portion or any materials or services purchased or paid for by the contracting party for use in completing the contract.

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

16.85 **(2)** To furnish engineering, architectural, project management, and other building construction services whenever requisitions therefor are presented to the department by any agency. The department may deposit moneys received from the provision of these services in the account under s. 20.505 (1) (kc) or in the general fund as general purpose revenue — earned. In this subsection, "agency" means an office, department, independent agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority created in subch. II of ch. 114 or subch. III of ch. 149 or in ch. 52, 231, 233, 234, 237, or 279.

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

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

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

19.42 **(10)** (s) The executive director and members of the board of directors of the Wisconsin Quality Home Care Authority.

SECTION 31. 19.42 (13) (o) of the statutes is created to read:

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

SECTION 32. 46.284 (4) (m) of the statutes is created to read:

46.284 **(4)** (m) Comply with any agreements under subch. V of ch. 111 relating to a provider, as defined in s. 46.2898 (1) (c), hired directly by an enrollee.

SECTION 33. 46.2898 of the statutes is created to read:

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

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

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

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

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

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

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

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.

(d) "Qualified provider" means a provider who meets the qualifications for payment through the Family Care Program under s. 46.286, the Program for All-Inclusive Care for the Elderly operated under 42 USC 1396u-4, an amendment to the state medical assistance plan under 42 USC 1396n (j), or a medical assistance waiver program operated under a waiver from the secretary of the U.S. department of health and human services under 42 USC 1396n (c) or 42 USC 1396n (b) and (c) and any qualification criteria established in the rules promulgated under sub. (7) and who the authority determines is eligible for placement on the registry maintained by the authority under s. 52.20 (1).

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

(b) If a county acts under par. (a), it shall notify the department and the authority of its action.

(3) REQUIREMENTS FOR BENEFIT. An adult individual who receives 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 of All-Inclusive Care for the Elderly 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.

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

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

1. The Family Care Program under s. 46.286.

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

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

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

(4) DUTIES OF HOME CARE PAYORS. Care management organizations, the state, and counties that pay for the provision of home care services to individuals shall inform the authority of the name, address, and telephone numbers of any provider hired by an individual receiving home care services.

(5) DUTIES OF CONSUMERS: A recipient of home care services, as described under sub. (3), who hires a provider shall do all of the following:

(a) Hire only a provider who has been placed on the registry maintained by the authority under s. 52.20 (1) or a person whose name has been submitted to the authority under par. (b) and who the authority has determined is eligible for placement on the registry.

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

(c) Compensate providers in accordance with any collective bargaining agreement that applies to home care providers under subch. V of ch. 111.

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

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

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

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

(8) Any withholding of medical assistance benefits by the department for failure of the benefit recipient to comply with s. 46.2898 (5) is subject to approval by the federal centers for medicare and medicaid services.

SECTION 34. 46.48 (9) of the statutes is repealed.

SECTION 35. 46.48 (9m) of the statutes is created to read:

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 grants to counties to facilitate transition to procedures established under s. 46.2898.

SECTION 36. Chapter 52 of the statutes is created to read:

CHAPTER 52

QUALITY HOME CARE

52.01 Definitions. In this chapter:

(1) "Authority" means the Wisconsin Quality Home Care Authority.

(2) "Board" means the board of directors of the authority.

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

(4) "Department" means the department of health services.

(5) "Family Care Program" means the benefit program described in s. 46.286.

(6) "Home care provider" means an individual who is a qualified provider under s. 46.2898 (1) (d).

(7) "Medical assistance waiver program" means a program operated under a waiver from the secretary of the U.S. department of health and human services under 42 USC 1396n (c) or 42 USC 1396n (b) and (c).

(8) "Program of All-Inclusive Care for the Elderly" means the program operated under 42 USC 1396u-4.

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

(a) The secretary of the department of health services or his or her designee.

(b) The secretary of the department of workforce development or his or her designee.

(c) The following, to be appointed by the governor to serve 3 year terms:

1. One representative from the state assembly.

2. One representative from the state senate.

3. One representative of care management organizations.

4. One representative of county departments, under 46.215, 46.22, 46.23, 51.42, or 51.437, selected from counties where the Family Care Program is not available.

5. One representative of the board for people with developmental disabilities.

6. One representative of the council on physical disabilities.

7. One representative of the council on mental health.

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

9. Eleven individuals, each of whom is a current or former recipient of home care services through the Family Care Program or a medical assistance waiver program or an advocate for or representative of consumers of home care services.

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

(4) EXECUTIVE COMMITTEE. (a) The board shall elect an executive committee. The executive committee shall consist of the chair of the board, the secretary of the department of health services or his or her designee, the secretary of the department of workforce development or his or her designee, and 3 persons selected from board members appointed under sub. (1) (c) 9.

(b) The executive committee may do the following:

1. Hire an executive director who is not a member of the board and serves at the pleasure of the board.

2. Hire employees to carry out the duties of the authority.

3. Engage in contracts for services to carry out the duties of the authority.

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

(6) QUORUM. A majority of the members of the board constitutes a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. Action may be taken by the board upon a vote of a majority of the members present. Meetings of the members of the board may be held anywhere within the state.

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

(8) COMPENSATION. The members of the board are not entitled to compensation for the performance of their duties. The authority may reimburse members of the board for actual and necessary expenses incurred in the discharge of their official duties as provided by the board.

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

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

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

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

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

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

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

(6) Sue and be sued.

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

(8) Collect fees for its services.

52.20 Duties of authority. The authority shall:

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

(2) 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 develop an appeal process for denial of placement on or removal of a provider from the registry consistent with the terms of the medical assistance waiver programs, the Family Care Program, an amendment to the state medical assistance plan under 42 USC 1396n (j), or the Program of All-Inclusive Care for the Elderly, as determined by the department.

(3) Comply with any conditions necessary for individuals receiving home care services to receive federal medical assistance funding through a medical assistance waiver program, the Family Care Program, an amendment to the state medical assistance plan under 42 USC 1396n (j), or the Program of All-Inclusive Care for the Elderly.

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

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

(6) Notify home care providers providing home care services of any procedures for remaining a qualified provider under s. 46.2898 (1) (d) set forth by the department or the authority and of the terms of a collective bargaining agreement under subch. V of ch. 111.

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

(8) Provide training and support for individuals hiring a home care provider regarding the duties and responsibilities of employers and skills needed to be effective employers.

(9) Inform consumers of the experience and qualifications of home care providers on the registry and home care providers identified by individual recipients of home care services for employment.

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

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

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

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

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

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

SECTION 37. 70.11 (41s) of the statutes is created to read:

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

SECTION 38. 71.26 (1) (be) of the statutes is amended to read:

71.26 **(1)** (be) *Certain authorities.* Income of the University of Wisconsin Hospitals and Clinics Authority, of the Health Insurance Risk-Sharing Plan Authority, of the Wisconsin Quality Home Care Authority, ~~and~~ of the Fox River Navigational System Authority, and of the Wisconsin Aerospace Authority.

SECTION 39. 77.54 (9a) (a) of the statutes is amended to read:

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

SECTION 40. 100.45 (1) (dm) of the statutes is amended to read:

100.45 **(1)** (dm) "State agency" means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, the Wisconsin Housing and Economic Development Authority, the Bradley

Center Sports and Entertainment Corporation, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Health and Educational Facilities Authority, the Wisconsin Aerospace Authority, the Wisconsin Quality Home Care Authority, and the Fox River Navigational System Authority.

SECTION 41. 101.177 (1) (d) of the statutes is amended to read:

101.177 **(1)** (d) "State agency" means any office, department, agency, institution of higher education, association, society, or other body in state government created or authorized to be created by the constitution or any law, that is entitled to expend moneys appropriated by law, including the legislature and the courts, the Wisconsin Housing and Economic Development Authority, the Bradley Center Sports and Entertainment Corporation, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Wisconsin Quality Home Care Authority, and the Wisconsin Health and Educational Facilities Authority, but excluding the Health Insurance Risk-Sharing Plan Authority and the Lower Fox River Remediation Authority.

SECTION 42. 111.81 (3h) of the statutes is created to read:

111.81 **(3h)** "Consumer" means a person meeting all the criteria under s. 46.2898 (3).

SECTION 43. 111.81 (7) (g) of the statutes is created to read:

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

SECTION 44. 111.81 (9k) of the statutes is created to read:

111.81 **(9k)** "Home care provider" means a qualified provider under s. 46.2898 (1) (d).

SECTION 45. 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, subject to the approval of the federal centers for medicare and medicaid services, shall negotiate and administer collective bargaining agreements entered into with the collective bargaining unit specified in s. 111.825 (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 entered into with the collective bargaining unit specified in s. 111.825 (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), the department of health services, subject to the approval of the federal centers for

medicare and medicaid services, is responsible for the employer functions of the executive branch under this subchapter.

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

SECTION 46. 111.825 (2g) of the statutes is created to read:

111.825 **(2g)** A collective bargaining unit for employees who are home care providers shall be structured as a single statewide collective bargaining unit.

SECTION 47. 111.825 (3) of the statutes is amended to read:

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

SECTION 48. 111.825 (4) of the statutes is amended to read:

111.825 **(4)** Any labor organization may petition for recognition as the exclusive representative of a collective bargaining unit specified in sub. (1), (1m) ~~or~~, (2), or (2g) in accordance with the election procedures set forth in s. 111.83, provided the petition is accompanied by a 30% showing of interest in the form of signed authorization cards. Each additional labor organization seeking to appear on the ballot shall file petitions within 60 days of the date of filing of the original petition and prove, through signed authorization cards, that at least 10% of the employees in the collective bargaining unit want it to be their representative.

SECTION 49. 111.83 (1) of the statutes is amended to read:

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

SECTION 50. 111.83 (5m) of the statutes is created to read:

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

(b) Upon the filing of a petition with the commission indicating a showing of interest of at least 30 percent of the home care providers included in the collective bargaining unit under s. 111.825 (2g) to be represented by a labor organization or to change the existing representative, the commission shall hold an election in which the home care providers may vote on the question of representation. The labor organization named in the petition shall be included on the ballot. Within 60 days of the time that the petition is filed, another petition may be filed with the commission indicating a showing of interest of at least 10 percent of the home care providers who are included in the collective bargaining unit under s. 111.825 (2g) to be represented by another labor organization, in which case the name of that labor organization shall also be included on the ballot.

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

SECTION 51. 111.84 (2) (c) of the statutes is amended to read:

111.84 **(2)** (c) To refuse to bargain collectively on matters set forth in s. 111.91 (1) with the duly authorized officer or agent of the employer which is the recognized or certified exclusive collective bargaining representative of employees specified in s. 111.81 (7) (a) in an appropriate collective bargaining unit or with the certified exclusive collective bargaining representative of employees specified in s. 111.81 (7) (b) to ~~(f)~~ (g) in an appropriate collective bargaining unit. Such refusal to bargain shall include, but not be limited to, the refusal to execute a collective bargaining agreement previously orally agreed upon.

SECTION 52. 111.905 of the statutes is created to read:

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

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

SECTION 53. 111.91 (1) (cg) of the statutes is created to read:

111.91 **(1)** (cg) The representative of home care providers in the collective bargaining unit specified under s. 118.825 (2g) may not bargain collectively with respect to any matter other than wages and fringe benefits.

SECTION 54. 111.91 (2c) of the statutes is created to read:

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

(a) Policies.

(b) Work rules.

(c) Hours of employment.

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

SECTION 55. 111.92 (1) (a) of the statutes is amended to read:

111.92 **(1)** (a) Any tentative agreement reached between the office, or, as provided in s. 111.815 (1), the department of health services, acting for the state, and any labor organization representing a collective bargaining unit specified in s. 111.825 (1) ~~or~~, (2) (a) to (e), or (2g) shall, after official ratification by the labor organization, be submitted by the office or department of health services to the joint committee on employment relations, which shall hold a public hearing before determining its approval or disapproval. If the committee approves the tentative agreement, it shall introduce in a bill or companion bills, to be put on the calendar or referred to the appropriate scheduling committee of each house, that portion of the tentative agreement which requires legislative action for implementation, such as salary and wage adjustments, changes in fringe benefits, and any proposed amendments, deletions or additions to existing law. Such bill or companion bills are not subject to ss. 13.093 (1), 13.50 (6) (a) and (b) and 16.47 (2). The committee may,

however, submit suitable portions of the tentative agreement to appropriate legislative committees for advisory recommendations on the proposed terms. The committee shall accompany the introduction of such proposed legislation with a message that informs the legislature of the committee's concurrence with the matters under consideration and which recommends the passage of such legislation without change. If the joint committee on employment relations does not approve the tentative agreement, it shall be returned to the parties for renegotiation. If the legislature does not adopt without change that portion of the tentative agreement introduced by the joint committee on employment relations, the tentative agreement shall be returned to the parties for renegotiation.

SECTION 56. 230.03 (3) of the statutes is amended to read:

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

SECTION 57. 281.75 (4) (b) 3. of the statutes is amended to read:

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

SECTION 58. 285.59 (1) (b) of the statutes is amended to read:

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

SECTION 59. 704.31 (3) of the statutes is amended to read:

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

SECTION 9122. Nonstatutory provisions; Health Services.

(1) QUALITY HOME CARE; RULES. Using the procedure under section 227.24 of the statutes, the department of health services may promulgate rules under section 46.2898 (7) of the statutes, as created by this act, 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.

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

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

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

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

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

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

SECTION 9322. Initial applicability; Health Services.

(1) HOME CARE PROVIDERS. The treatment of section 46.2898 (5) of the statutes, as created by this act, first applies to a recipient of home care services on the date that the recipient's individual service plan is reviewed.

SECTION 9422. Effective dates; Health Services.

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

(END)