



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #410

Wisconsin Quality Home Care Authority (DHS -- Quality Assurance, Disabilities, and Substance Abuse)

[LFB 2009-11 Budget Summary: Page 385, #1]

CURRENT LAW

2007 Wisconsin Act 20 provided \$167,000 GPR annually for the Department of Health Services (DHS) to distribute to an organization that provides services to consumers and providers of supportive home care and personal care services. In September, 2006, DHS and the Dane County Executive entered into an intergovernmental cooperation agreement to create the Quality Home Care Commission (QHCC). The purpose of the agreement was to create and empower the Commission to improve the quality and accessibility of supportive home care and personal care services, and to serve certain employer functions for persons employed to provide in-home care to recipients of medical assistance (MA) waiver services. DHS currently uses these funds to support the QHCC.

GOVERNOR

Provide \$333,000 GPR annually to support the Wisconsin Quality Home Care Authority (WQHCA), beginning in 2009-10, so that a total of \$500,000 GPR would be budgeted annually for the WQHCA (\$167,000 GPR in base funding authorized in Act 20 and \$333,000 in AB 75). Repeal the Act 20 provision that requires DHS to distribute at least \$167,000 annually to the Quality Home Care Commission in Dane County.

AB 75 would provide independent home care providers collective bargaining rights under state law, similar to those provided to state employees under the State Employment Labor Relations Act (SELRA). The attachment to this paper provides a complete summary of all the provisions in AB 75 pertaining to the creation of the WQHCA.

DISCUSSION POINTS

1. This proposal is intended to improve the quality of in-home care provided to elderly individuals and individuals with disabilities by expanding the functions currently performed by the Quality Home Care Commission in Dane County statewide. The proposal is based on a statewide model developed by the Service Employees International Union (SEIU). SEIU has helped start similar statewide entities in other states, including Oregon, Michigan, Massachusetts, and Washington. The union has reported success in organizing personal care workers under the Commissions established in these other states. SEIU representatives argue that better pay and benefits for home health care workers may decrease turnover, leading to greater consumer satisfaction through continuity of care and the availability of more experienced providers.

2. Under the bill, the WQHCA would be created as a public body corporate and politic. Its Board of Directors would consist of the DHS and Department of Workforce Development Secretaries and the following 19 members, appointed by the Governor, each of whom would serve three-year terms: (a) one member of the state Assembly; (b) one member of the state Senate; (c) one representative from a managed care organization; (d) one representative of a county department, selected from a county not participating in the Family Care program; (e) one representative from the Board for People with Developmental Disabilities; (f) one representative from the Council on Physical Disabilities; (g) one representative from the Council on Mental Health; (h) one representative from the Board on Aging and Long-Term Care; and (i) 11 individuals who represent the public interest. The Governor could appoint one of these members to serve as the Board Chairperson. The WQHCA's Board of Directors would appoint an executive director who is not a member of the board, and who would serve at the board's pleasure.

3. As a "public body corporate and politic," the WQHCA would not be a traditional state agency, but instead, would either be subject to, or exempt from, a broad range of statutes and regulations. For example, the WQHCA would be subject to state laws regulating lobbying activities, as well as certain laws dealing with purchasing and competitive bidding. The WQHCA would also be among the entities to which the Legislative Fiscal Bureau would have access, and its records would be subject to audit by the Legislative Audit Bureau at least once every five years.

4. The bill would provide a total of \$500,000 GPR annually for the WQHCA to support the daily operations of the Authority, including: (a) personnel services, including salaries and fringe benefits for an executive director, two regional planners, one regional coordinator, and one executive assistant; (b) board costs; (c) office rental, which includes plans for three regional offices; (d) criminal background checks and staff training; (e) general office expenses and equipment; (f) correspondence and outreach; and (g) professional services, which includes development and maintenance of the provider registry and training services for providers.

5. It is estimated that approximately 90% of the activities conducted by the WQHCA could be claimed as eligible MA administrative costs. As such, these costs would be funded 50% with state funds and 50% from federal MA matching funds. Consequently, if the Committee wishes to support the Governor's recommended funding level for the program (\$500,000 annually),

it could reduce funding in the bill by \$225,000 GPR annually and increase funding by \$225,000 FED to reflect the availability of federal MA administrative matching funds to support the program $[(0.9 \times \$500,000)/2 = \$225,000]$. This alternative is presented as Alternative 2.

6. Under the bill, the WQHCA would be required to: (a) create a statewide registry of independent home care workers; (b) provide referrals to individuals seeking home care services; (c) determine the eligibility of providers for placement on the registry; (d) develop a recruitment program for providers; (e) operate a backup provider system with a 24-hour call service; and (f) conduct activities to improve the supply and quality of home care providers..

7. The provider registry would assist consumers in locating qualified providers that meet their individual needs and preferences. In addition, the registry would assist providers in accessing additional training opportunities and connecting them to consumers who seek home health services. AB 75 would authorize WQHCA to establish the criteria for placing providers on the registry and to conduct background checks on both consumers and providers to promote safety and quality care. The administration indicates that it would build upon the registry system established by the Quality Home Care Commission in Dane County to establish a statewide registry.

8. The Quality Home Care Commission in Dane County was established by an inter-governmental agreement in 2006 between DHS and Dane County. Following two years of policy and infrastructure development, the registry became fully operational in January, 2009. The Director of the Dane County Commission indicates that the registry is designed to provide the best possible match between consumer and provider by organizing and sorting individuals by skill level and care needs. The intent of the registry is to provide a personalized match to best meet the needs and preferences of each individual consumer. Currently, the registry serves approximately 2,000 providers and 550 consumers. All consumers and providers are subjected to a background check conducted by the Commission.

9. The WQHCA and related provisions included in AB 75 would only apply to independent home health care providers who are employed directly by individuals receiving MA benefits and who self-direct their home care services through one of the state's long-term care programs. As a result, employees of an agency or other licensed provider would not be subject to any of these provisions.

10. Currently, the long-term care programs in the state that allow individuals to self-direct their own care include Family Care, Family Care Partnership, PACE, and IRIS (Include, Respect, I Self-Direct). In addition, counties where Family Care is not currently available, and where individuals have the option of self-directing their own care through one of the other long-term care waiver programs, such as the community options program (COP), could elect to adopt the provisions associated with this item if the county board of supervisors elects to require county agencies to comply with the provisions set forth in the bill.

11. While managed care organizations (MCOs) provide comprehensive case management services to Family Care beneficiaries, all Family Care enrollees may also choose to

participate in the self-directed supports option, which is available through each of the MCOs. Under the self-directed supports option, participants have greater control over how most services are received and who provides such services. For instance, participants work with an interdisciplinary team to determine when and where work will be performed and are permitted to employ family members and friends to provide services. When an individual chooses to self-direct certain services, the associated funding is carved out of the capitation rate and managed on behalf of the individual by either a "fiscal intermediary" or "co-employment agency."

12. Similarly, the IRIS program provides individuals a fee-for-service alternative to the Family Care program. IRIS is the state self-directed support waiver under the MA home and community-based services waiver authority, where individuals are given the ability to self-direct their own care and manage an individual designated budget amount. Similar to the self-directed supports option under Family Care, IRIS participants have greater control over how services are received and who provides these services. IRIS is only available in counties where Family Care services are also available.

13. The administration expects that the proposal would improve both access to, and the quality of, home care services provided in the state, and increase the number of providers that are qualified to provide these services. In addition, the administration anticipates continued growth in the demand for these services as the Family Care program continues to expand statewide.

While it is difficult to quantify the current disparities in home health services the WQHCA is designed to address, DHS argues that it is necessary to develop a better network of home health care providers and to improve the quality of services and options available to individuals in need of these services. In particular, DHS staff points to historically high turnover among independent providers, the lack of qualified providers, and the difference between actual hours of personal care provided and the number of hours authorized by DHS as evidence of a growing access problem in the state.

14. Currently, DHS estimates that there are approximately 4,000 independent providers of home health services in Wisconsin that would be directly affected by this provision. DHS staff indicates that many of these individuals are considered part-time workers and a significant number are family members of the individual's utilizing these services.

15. In 2007-08, a total of approximately \$264.3 million (all funds) was spent on personal care services under the state's MA program.

16. DHS estimates that approximately 7% of all Family Care enrollees self-direct at least one of the services they receive. Based on a ratio of 2.3 providers per consumer, it is estimated that between 6,000 and 8,000 independent home health providers would be needed to adequately supply home health services to individuals throughout the state once Family Care has been fully implemented statewide.

17. The continued expansion of Family Care, the ICF-MR relocation initiative, the

nursing home diversion initiative, and other long-term care community program options are expected to continue to increase the demand for personal care workers statewide. Supporters argue that steps must be taken to ensure that adequate personal care staffing exists to serve this growing population of individuals in their homes and communities. DHS has indicated that its support for the WQHCA is based on the anticipation that the Authority will help ensure an adequate supply of qualified personal care workers is available to assist community-based long-term care consumers.

18. According to the Wisconsin Council on Long-Term Care, the turnover rate among independent home health providers is approximately 50% per year. DHS argues that this is largely attributable to low wages, limited benefits, and the physically demanding nature of the work. From this perspective, it may be advantageous to support an entity whose focus is helping consumers find adequate assistance, while supporting the training of personal care workers. To the extent that the WQHCA could also facilitate the organization of personal care workers into a union, it may create an opportunity for this group of workers to seek better pay or benefits as a group for all personal care workers, potentially drawing additional individuals into the job market as personal care providers.

19. However, some advocates for consumers of these personal care services have expressed concern over the support of organizing personal care workers without assurances of additional funding to pay for their services. Funding for services under most MA long-term care waiver services has not been increased in recent biennia, requiring recipients to manage constant levels of funding to cover increasing costs over time. Generally, individuals with care plans requiring personal care receive a budget to pay for an approved package of services. Increasing the cost per hour of obtaining those services without increasing allotments to fund them may require waiver service recipients to reduce the number of hours of service contracted for in order to support the higher cost per hour charged by providers.

20. The administration indicates that individual consumers would not be adversely affected by any increases in wages and benefits paid to home health providers, since the amount of MA funding provided to these individuals to allow them to self-direct their own care would be adjusted to account for any higher costs associated with the purchase of home health care services from independent providers. Under the bill, the provisions relating to collective bargaining agreements would take effect on July 1, 2011.

21. The bill would provide home health care providers collective bargaining rights under state law similar to those afforded to state employees under the State Employment Labor Relations Act (SELRA). Under this provision, providers would only be considered employees for purposes of collective bargaining benefits. In addition, providers would be provided the authority, if approved by a majority, to designate a labor organization as the exclusive representative for the collective bargaining unit.

22. While the bill would not require independent providers to be listed on the statewide registry, all independent providers that provide home health services to individuals self-directing their home health care services would be subject to the collective bargaining agreement between

providers and DHS. However, unless specified otherwise in the collective bargaining agreement, these individuals would not be subject to mandatory union membership, although Fair Labor standards may require that all individuals subject to the collective bargaining agreement contribute "fair share" dues.

23. Under the bill, DHS would become the employer of record for purposes of bargaining under the collective bargaining agreement. However, the employer-employee relationship would be limited to negotiations pertaining to wages and fringe benefits only. Consumers employing the home care providers would still retain the right to hire, lay off, supervise and discipline providers and to set the terms, conditions, and duties of employment, but would be required to pay providers the collective bargaining rate.

24. Any agreement between the collective bargaining unit and DHS would be constrained by the amount of funding provided to support MA benefits. The administration has indicated that, if the provisions in AB 75 are approved, the administration would request additional funding to support any projected increases in costs of services provided by independent home care providers. This funding would be separately identifiable for consideration by the Legislature in future budget deliberations. In addition, DHS has indicated that only the amounts appropriated in the MA budget for services provided by independent home care providers, either on a fee-for-service basis or through services provided through a managed care organization, would be available for purposes of negotiating a collective bargaining agreement. As a result, in cases where additional MA funding is not provided prospectively, the collective bargaining agreement would not provide for wage or benefit increases for independent home care providers.

25. According to a recent report issued by the Wisconsin Long-Term Care Workforce Alliance, the average wage of personal and home care aides employed by a personal care or home health agency in the state was \$9.72 per hour in 2008. While similar data for independent home care providers is not currently available, DHS staff believes the average wage for these individual providers is less than the average wage of agency employees, and differs widely across the state.

26. In Dane County, all qualifying providers are subject to the collective bargaining agreement between the current Quality Home Care Commission and the designated bargaining representative, SEIU. A recognition clause in the agreement specifies that a provider may be exempt from the agreement if they do not work at least four hours in any month or 16 hours in any four-month period. Under the current bargaining agreement, all wages paid to providers subject to the agreement must be in accordance with the minimum wage rate established by the Dane County Living Wage Ordinance, which is \$10.20 per hour in 2009.

27. In addition to potential increases in costs associated with wage increases, the cost of any collective bargaining agreement between DHS and independent home health care providers is likely to be driven largely by the costs of fringe benefits, particularly health benefits. However, it is not known how any future collective bargaining agreements would affect MA program costs.

28. Agency providers argue that providing independent providers with the ability to

bargain with the state for higher wages may lead to a disparity in reimbursement rates across different providers. As a result, agency providers argue that MA reimbursement rates for all providers should be increased to better reflect the cost of providing services to individuals supported by the state MA program.

29. While the WQHCA would be established in state fiscal year 2009-10, no bargaining agreement would be in effect until the 2011-13 biennium. In addition, any agreement between DHS and the collective bargaining unit will require legislative approval before becoming effective.

ALTERNATIVES

1. Adopt the Governor's recommendation.

2. Modify the Governor's recommendation by reducing funding by \$225,000 GPR and increasing funding by \$225,000 FED annually to reflect that DHS could claim 90% of the costs of the program as an MA administrative expense.

ALT 2	Change to Bill Funding
GPR	- \$450,000
FED	<u>450,000</u>
Total	\$0

3. Delete all statutory and funding changes in the bill relating to the Wisconsin Quality Home Care Authority (-\$333,000 GPR annually) in AB 75, except the provision that would repeal the requirement that DHS provide \$167,000 annually to an organization that provides services to consumers and providers of supportive home care and personal care services.

ALT 3	Change to Bill Funding
GPR	- \$666,000

4. Delete all statutory and funding changes in the bill relating to the Wisconsin Quality Home Care Authority (-\$333,000 GPR annually) in AB 75. Delete base funding for the program that DHS currently provides to the Quality Home Care Commission in Dane County (-\$167,000 GPR annually).

ALT 4	Change to Bill Funding
GPR	- \$1,000,000

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Attachment

ATTACHMENT

Summary of Statutory Provisions

Provision of Quality Home Care Services

Create requirements regarding the provision of home care services under the state's MA-supported long-term care programs as described below.

Definitions. For these purposes, define a "provider" as any individual providing home care services who is not: (a) an employee of a home health agency, who is hired through that home health agency; (b) an employee of a personal care provider agency who is hired through that personal care provider agency; (c) a health care provider, as defined in Chapter 146 (as it relates to health care worker protections) acting in his or her professional capacity; (d) an employee of a company or agency providing supportive home care; (e) an employee of an independent living center; or (f) an employee of a county agency or department.

Define a "qualified provider" as a provider who meets qualifications for payments under Family Care, the Program for All-Inclusive Care for the Elderly (PACE), self-directed service options (IRIS), or MA long-term care waiver programs and who the Authority determines is eligible for placement on a registry maintained by the Authority.

Describe a "recipient of home care services" as an adult who receives home care services and who meets the following criteria: (a) resides in a county in which the statutory provisions under this item have been adopted by the county board of supervisors or in a county that operates the Family Care, Program, PACE, or (IRIS) programs; (b) the individual self-directs all or part of his or her home care services and is the employer of record of the provider; and (c) the individual is eligible to receive home care services under Family Care, PACE, any of the MA long-term care waiver programs, or a program operated under an amendment to the state MA plan.

Requirements to Receive Benefits. Provide that an adult who receives home care services and meets the criteria described above could receive a benefit for home care services only if he or she: (a) hires only a provider who has been placed on the registry maintained by the WQHCA, or a person whose name has been submitted to the WQHCA and who has been determined eligible for placement on the registry; (b) provides the name, address, and telephone number of a potential provider, not placed on registry, to WQHCA for evaluation of eligibility for placement on the registry; (c) compensates providers in accordance with any applicable collective bargaining agreement; and (d) informs WQHCA of the name, address, and telephone number of any provider that he or she hires.

This provision would first apply to a recipient of home care services on the date that individual's service plan is reviewed.

Providers Subject to Collective Bargaining Agreements. Provide that a qualified provider, as described above, is subject to the collective bargaining agreement that applies to home care providers, as described later in this summary, and that a qualified provider may choose to be placed on the registry maintained by the Authority.

Other Provisions. Authorize DHS to promulgate rules that define terms relating to this section, including the term "home care services," establishing qualifications that would apply to providers, and establishing procedures for implementing these provisions. Provide that any withholding of MA benefits by DHS for failure of the benefit recipient to comply with these provisions would be subject to the approval by the federal Centers for Medicare and Medicaid Services (CMS).

Collective Bargaining Agreements

Require that all qualified providers providing home care services providing services to individuals under this item be subject to the collective bargaining agreement that applies to home care providers under current statute. Under the bill, these requirements would take effect on July 1, 2011.

Collective Bargaining Unit. Provide home care providers collective bargaining rights under state law similar to those provided to state employees under the State Employment Labor Relations Act (SELRA). Providers would only be considered employees for purposes of collective bargaining benefits. Require DHS to negotiate and administer collective bargaining agreements entered into with home care providers, subject to approval from CMS. Provide that DHS would be responsible for the employer functions of the executive branch and require DHS to structure the collective bargaining unit for employees who are home care providers as a single statewide collective bargaining unit.

Require that after any tentative agreement is officially ratified it be submitted to the Joint Committee on Employment Relations, which would be required to hold a public hearing before determining its approval or disapproval. Any agreement approved by the committee would then be submitted to the full Legislature for a vote.

Representation. Provide that if a petition is filed with the Employment Relations Commission showing at least 30% of the home care providers included in the collective bargaining have interest in being represented by a labor organization or to changing the existing representative, the Commission would be required to hold an election in which providers may vote on the question of representation, with the labor organization named in the petition on the ballot. Provide that if within 60 days of time the petition is filed, another petition may be filed if at least 10% of providers show interest in being represented by a different labor organization, in which case the name of the labor organization would also be included on the ballot. Require that if a single labor organization receives a majority of the votes, that organization would be the exclusive representative for the collective bargaining unit. Provide that if a majority is not reached, runoff elections may be held until one organization receives a majority of votes.

Rights of Consumers. Provide that consumers employing home care providers retain the right to hire, discharge, suspend, promote, retain, lay off, supervise, or discipline a provider and to set terms, conditions, and duties of employment. The relationship between a consumer and the provider remains at will.

Provide that the representative of the collective bargaining unit may only bargain collectively with respect to matters concerning wages and fringe benefits. Further, the bill would prohibit employers from bargaining with the collective bargaining unit in regard to the following matters: (a) policies; (b) work rules; (c) hours of employment; and (d) any rights of the consumer as specified above.

Create the Wisconsin Quality Home Care Authority

Create a new statutory chapter, Chapter 52, entitled "Quality Home Care," which describes the creation, organization, and duties of the Authority.

Create the Authority as a public body corporate and politic and require the Authority to do all of the following:

- (a) Establish and maintain a registry of home care providers and provide referral services for individuals in need of home care services;
- (b) Determine eligibility of individual providers for placement on the registry;
- (c) Comply with any conditions necessary for individuals receiving home care services to receive federal MA funding through the state's MA-funded long-term care programs;
- (d) Develop and operate recruitment and retention programs to expand the pool of qualified home care providers available to consumers;
- (e) Maintain a list of home care providers included in a collective bargaining unit;
- (f) Notify home care providers of any procedures for remaining a qualified provider set forth by DHS or the Authority, and of the terms of a collective bargaining agreement;
- (g) Provide orientation activities and skills training for home care providers;
- (h) Provide training and support for individuals hiring a home care provider;
- (i) Provide consumers with information regarding the experience and qualification of home care providers on the registry;
- (j) Develop and operate a system of backup and respite referrals to home care providers, and a 24-hour call service for recipients of home care services;
- (k) Provide an annual report to the Governor on the number of home care providers

on the registry and the number of providers providing services under the Authority; and

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

Board of Directors. Specify that the Authority's Board of Directors would consist of the Secretary of DHS or his or her designee, the Secretary of the Department of Workforce Development (DWD) or his or her designee, and the following members, appointed by the Governor to serve three-year terms: (a) one member of the state Assembly; (b) one member of the state Senate; (c) one representative from a managed care organization; (d) one representative of a county department, selected from a county not participating in the Family Care program; (e) one representative from the Board for People with Developmental Disabilities; (f) one representative from the Council on Physical Disabilities; (g) one representative from the Council on Mental Health; (h) one representative from the Board on Aging and Long-term Care; and (i) eleven individuals who represent the public interest.

Direct the Governor to appoint one member to serve as Chairperson of the Board, and require the Board to form an executive committee consisting of the Chairperson, the DHS Secretary or his or her designee, the DWD Secretary or his or her designee, and three persons selected from the remaining Board members. This bill identifies the initial Chairperson as the DHS Secretary, or his or her designee.

Provide that each Board member would hold office until a successor is appointed and qualified unless the member vacates or is removed from office, and that 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. Provide that a member who ceases to qualify for office vacates his or her office. Require any vacancy on the Board to be filled in the same manner as the original appointment to the Board for the remainder of the unexpired term, if any.

The initial board members identified in (a), (c), and three members from the eleven identified in (i), above, would be appointed for terms that expire July 1, 2010. In addition, the initial board members identified in (b), (d), (f) and four members from the eleven identified in (i), above, would be appointed for terms that expire July 1, 2011. All terms for the remaining board members initially appointed by the Governor would expire July 1, 2012.

Provide that a majority of the members of the Board would constitute a quorum for purposes of conducting the Board's business and exercising its powers. Further, provide that action may be taken by the Board upon a majority vote of the members present, and authorize Board meetings to be held anywhere within the state. Prohibit a member of the Board from being compensated for his or her services, except for reimbursement for actual and necessary expenses incurred in the performance of his or her duties.

Permit the executive committee of the Authority to hire an Executive Director, who would not be a member of the Board, and who would serve at the pleasure of the Board. Further, permit the executive committee to hire additional employees to carry out the duties of the

Authority and engage in contracts for services necessary to carry out the duties of the Authority.

Powers of the Authority. Provide the Authority with all powers necessary or convenient to carry out the purposes for which it is created, including the authority to: (a) adopt policies and procedures to govern its proceedings and to carry out its duties; (b) employ, appoint, engage, compensate, transfer, or discharge necessary personnel; (c) make or enter into contracts, including contracts for the provision of legal or accounting services; (d) award grants for the purposes set forth in statute; (e) buy, lease, or sell property; (f) sue and be sued; and (g) collect fees for its services.

Other Provisions. The Authority would be subject to or exempt from a range of statutes and regulations, including but not limited to the following: (a) the Authority would be included among the entities to which the Legislative Fiscal Bureau has access, including any books, records, or other documents maintained by the Authority relating to its expenditures, revenues, operations, and structure; (b) the DOA Secretary and his or her designated employees could enter the Authority's office and examine its books and accounts and any other matter that in the Secretary's judgment should be examined, and interrogate the Authority's employees publicly or privately relative thereto; (c) the Authority, its officers, and employees would be required to cooperate with the DOA Secretary, and assist the Secretary in preparing the state budget report and budget bill as the Secretary or Governor may request, and, upon request, provide the Secretary such information concerning anticipated revenues and expenditures as the Secretary requires for effective control of state finances; (d) the Authority would be subject to certain provisions of state law regarding purchasing and bidding, including requirements with respect to nondiscriminatory contracting practices; (e) the Authority would be exempt from various taxes, including the general property tax and the income tax; and (f) the Authority would be subject to certain provisions of state law regarding the code of ethics for public officials. The Authority's records would also be subject to audit by the Legislative Audit Bureau at least once each 5 years.

Other Statutory Provisions

Rule-Making Authority. Provide that DHS may promulgate rules under statutory provisions created by this bill governing home care providers, which shall remain in effect until the date on which permanent rules take effect, but not to exceed the period set forth in statute. Provide that DHS is not required to provide evidence that promulgating a rule under this item 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.