

**2005 DRAFTING REQUEST**

**Bill**

Received: **01/13/2005**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Johnston**

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

Drafter: **rryan**

May Contact:

Addl. Drafters: **mshovers**

Subject: **Health - miscellaneous**

Extra Copies: **DAK**

Submit via email: **NO**

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**Pre Topic:**

DOA:.....Johnston, BB0380 -

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**Topic:**

Personal care services

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/1	rryan 01/13/2005	lkunkel 01/13/2005	rschluet 01/14/2005	_____	mbarman 01/14/2005		S&L
/2	rryan 01/24/2005	lkunkel 01/24/2005	jfrantze 01/24/2005	_____	sbasford 01/24/2005		S&L
/3	mshovers 01/27/2005	kfollett 01/27/2005	rschluet 01/27/2005	_____	sbasford 01/27/2005		

FE Sent For:

<END>

**2005 DRAFTING REQUEST**

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Extra Copies: DAK  
RAC

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/2	rryan 01/24/2005	lkunkel 01/24/2005	jfrantze 01/24/2005		sbasford 01/24/2005		

FE Sent For:

13 MES 1/27/05  
13 kjf  
1/29  
  
<END>

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/?							S&L
/1	rryan 01/13/2005	lkunkel 01/13/2005	rschluet 01/14/2005		mbarman 01/14/2005		

FE Sent For: 1/21mk 1/24 Jo 1/24 [Signature] 1/24 [Signature]  
<END>

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DOA:.....Johnston, BB 0380 -

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**Topic:**

Personal care services ✓

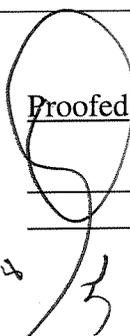
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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/?	rryan	1/mk 1/13					

FE Sent For:

<END>

1/10/04

## 2005-07 Budget Bill Statutory Language Drafting Request

- Topic: Improving the quality of in-home personal care services in Wisconsin
- Tracking Code: (Assigned by Government Operations Team) *BB0380*
- SBO team: Health & Insurance
- SBO analyst: Jim Johnston
  - Phone: 266-3420
  - Email: james.johnston@doa.state.wi.us
- Agency acronym: DHFS
- Agency number: 435

### Drafting Instructions/Intent:

The intent of this draft is to establish in chapter 46 that DHFS has the authority to improve the provision of in-home personal care through the enhanced recruitment and training of in-home personal care workers in collaboration with counties through the formation of state-county commissions under chapter 66.

The commissions would be formed at county option and could serve as the employer of record for personal care workers. The draft must include language specifying that employees of the commission shall not be considered employees of the municipalities that formed the commission, nor are they considered state employees. To that end, § 66.0301 should be amended so that it is clear that employees of a commission set up pursuant to the new language in chapter 46 are only employees of the commission.

**DHFS Authority.** Although the state (via DHFS) currently has various responsibilities related to the provision of in-home personal care services, there is no clear statutory grant of authority concerned with DHFS's role in improving the quality of in-home personal care service workers.<sup>1</sup> The proposed language should address this by specifically providing, perhaps in a new section of Chapter 46, that DHFS has the authority to take part

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<sup>1</sup> DHFS does have responsibility for the Medicaid home and community-based waiver programs and the state-funded community options program (COP) – i.e., the two major programs in Wisconsin that fund in-home personal care services. See Wis. Stat. §§ 46.27(2) & 46.277(2); Wis. Adm. Code HFS Ch. 73. But the statutes lack a specific mandate for DHFS to address the shortcomings associated with in-home personal care workers.

in the recruitment and training of in-home personal care workers, and take any additional measures aimed at improving Wisconsin's in-home personal care services workforce through the new commissions. The term "personal care services" should be defined, as it is Wis. Adm. Code HFS 107.112.

**2. Wis. Stat. 66.0301.** This change should be relatively straightforward – as previously stated, it should be clarified that employees of a commission set up pursuant to § 66.0301 shall not be considered employees of the municipalities that formed the commission for any purpose whatsoever.

With these changes, the intended result is for DHFS to be able to enter into agreements with counties (via § 66.0301) to form commissions that are aimed at improving the quality of in-home personal care service providers. These commissions will recruit and train in-home personal care workers and ultimately act as co-employers of these workers, with the goal of improving the provision of in-home personal care services to Wisconsin's elderly and disabled.

11/11/05

plc to Jim Johnston

Joint commission

created at county option

money paid to commission - commission pay personal care workers (PCW)

client has right to terminate PCW

commission is employer - ex. for purposes of  
IRS, DOR

PCWs not state or county employee  
but an administrator could be a city  
employee

Don't specify composition of the commission

Can we just authorize DARS & city to jointly  
contract with a private agency to employ  
PCWs - prefers creating a public entity  
that PCWs may negotiate with.

Commission can be sued

ok to try 1st as a contract with a private agency



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1707/9  
RLR/mk

In 1113 log

RMC

\*

DOA:.....Johnston, BB0380 - Personal care services

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

D-Note

Do NOT Gen

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

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES ✓**

**OTHER HEALTH AND HUMAN SERVICES ✓**

This bill authorizes DHFS and a county to jointly enter into a contract with a private organization to improve the provision of personal care services. Personal care services are medically oriented activities that assist a person with activities of daily living, such as assistance with bathing, toileting, skin care, and meal preparation. The bill specifies that a private organization that enters into a contract with DHFS and a county to improve personal care services may recruit, train, or employ personal care workers. The bill requires DHFS and a county to consult with personal care workers regarding the terms of any potential contract before entering into the contract.

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

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

2 SECTION 1. 46.033 of the statutes is created to read:



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

LRB-1707/1dn  
RLR:mk

Jim,

Definition of personal care services

The definition of "personal care services" in the bill is the same as the first sentence of HFS 107.112 (1) (a). Would you prefer that the bill directly reference all of HFS 107.112, and thereby invoke the requirements that the services be provided by an MA-certified provider, ordered by a physician, and supervised by a registered nurse according to a plan of care (regardless of whether the clients are MA recipients)? Alternatively, the definition could refer to the list of covered services under HFS 107.112 (1) (b), either by reference or by restating the services in the statutes.

MA reimbursement

Only an MA-certified provider of personal care services may receive MA reimbursement for personal care services. An MA-certified provider of personal care services must be a home health agency (licensed under s. 50.49, stats.), a county department, or an independent living center. HFS 105.17 further requires that a provider must employ or contract with at least one registered nurse and supervise the provision of personal care services. Do you want to exempt an organization with which the department and county contract from any of the requirements for MA certification?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

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

LRB-1707/1dn  
RLR:lmk:rs

January 14, 2005

Jim,

Definition of personal care services

The definition of "personal care services" in the bill is the same as the first sentence of HFS 107.112 (1) (a). Would you prefer that the bill directly reference all of HFS 107.112, and thereby invoke the requirements that the services be provided by an MA-certified provider, ordered by a physician, and supervised by a registered nurse according to a plan of care (regardless of whether the clients are MA recipients)? Alternatively, the definition could refer to the list of covered services under HFS 107.112 (1) (b), either by reference or by restating the services in the statutes.

MA reimbursement

Only an MA-certified provider of personal care services may receive MA reimbursement for personal care services. An MA-certified provider of personal care services must be a home health agency (licensed under s. 50.49, stats.), a county department, or an independent living center. HFS 105.17 further requires that a provider must employ or contract with at least one registered nurse and supervise the provision of personal care services. Do you want to exempt an organization with which the department and county contract from any of the requirements for MA certification?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

## Ryan, Robin

---

**From:** Johnston, James  
**Sent:** Monday, January 24, 2005 10:57 AM  
**To:** Ryan, Robin  
**Cc:** Zolik, Nate - Office of Governor Jim Doyle; Wong, Donna - Office of Governor Jim Doyle  
**Subject:** Personal Care Draft LRB #1707

Robin,  
I have some modifications for the personal care draft:

46.033

- (2) change to say "Upon the request of a county board, the department may assist with the recruitment and training of individuals to provide personal care services."
- (3) delete this section

Regarding the change to 66.0301, we need a provision stating that employees of a personal care worker commission set up pursuant to § 66.0301 shall not be considered employees of the entities that formed the commission for any purpose whatsoever.

Assume just referring to cooperation between county and state. Assume DOT would not want to prohibit a county and city from jointly hiring personal care workers



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-17074

RLR:lmk:ra  
Keep

2

In 1/24/05

DOA:.....Johnston, BB0380 - Personal care services

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

PMR

J-Note

Do NOT Gen

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

*Analysis by the Legislative Reference Bureau*

**HEALTH AND HUMAN SERVICES**

**OTHER HEALTH AND HUMAN SERVICES**

INS 1

INS 2

This bill authorizes DHFS and a county to jointly enter into a contract with a private organization to improve the provision of personal care services. Personal care services are medically oriented activities that assist a person with activities of daily living, such as assistance with bathing, toileting, skin care, and meal preparation. The bill specifies that a private organization that enters into a contract with DHFS and a county to improve personal care services may recruit, train, or employ personal care workers. The bill requires DHFS and a county to consult with personal care workers regarding the terms of any potential contract before entering into the contract.

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

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

2 SECTION 1. 46.033 of the statutes is created to read:

1           **46.033 Personal care services quality improvement.** (1) In this section,  
2           “personal care services” means medically oriented activities related to assisting a  
3           person with activities of daily living necessary to maintain the person in his or her  
4           place of residence in the community.

5           (2) Upon the request of a county board, the department and the county shall  
6           jointly contract with a private organization to provide services intended to improve  
7           the provision of personal care services. A contract under this section may provide for  
8           the private organization to recruit, train, or employ individuals to provide personal  
9           care services.

10           (3) Before entering into a contract under this section, the department and the  
11           county shall consult with individuals who provide personal care services regarding  
12           the terms of the contract.

(END)

13  
INS 2-13

(d-n)

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1707/2ins  
RLR:.....

**Ins 1:**

This bill authorizes DHFS, upon the request of a county board, to provide assistance in recruiting and training people to provide personal care services.

**Ins 2:**

The bill specifies that if DHFS and a county create a commission that employs people to provide personal care services, the people employed by the commission to provide personal care services are not employees of the state or the county.

1

2

3

4

**Ins 2-13:**

5

(2) Upon the request of a county board, the department may provide assistance in recruiting and training individuals to provide personal care services.

6

7

(3) If the department and a county create a commission under s. 66.0301 (2) that employs individuals to provide personal care services, the persons employed by the commission to provide personal care services are not employees of the state or the county.

8

9

10

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

LRB-1707/2dn  
RLR: *brk*

*(date)*

Jim,

The bill provides that employees of a personal care worker commission<sup>✓</sup> created by DHFS and a county<sup>✓</sup> are not employees of either the state or the county.<sup>✓</sup> The bill does not address all types of intergovernmental personal care worker commissions<sup>✓</sup>, because I assume that you do not want to prohibit a county and city<sup>✓</sup> from creating a personal care worker commission and allowing the personal care workers to be employees of either the county or city. ✓

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

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

LRB-1707/2dn  
RLR:lmk:jf

January 24, 2005

Jim,

The bill provides that employees of a personal care worker commission created by DHFS and a county are not employees of either the state or the county. The bill does not address all types of intergovernmental personal care worker commissions, because I assume that you do not want to prohibit a county and city from creating a personal care worker commission and allowing the personal care workers to be employees of either the county or city.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us

**Johnston, James**

**From:** Johnston, James  
**Sent:** Thursday, January 27, 2005 12:49 PM  
**To:** Ryan, Robin  
**Cc:** Wong, Donna - Office of Governor Jim Doyle; Zolik, Nate - Office of Governor Jim Doyle  
**Subject:** LRB 1707

Robin,

I have a modification to the email I sent on Monday regarding the commission language under chapter 66. The language needs to clarify the employment status of commission employees as not being considered employees of the government entities creating the commission. The change should clarify that employees of any commission set up pursuant to 66.0301 (not just personal care worker commissions), shall not be considered employees of the entities.

Monday 1/24 email with modification:

I have some modifications for the personal care draft:

46.033

- (2) change to say "Upon the request of a county board, the department may assist with the recruitment and training of individuals to provide personal care services."
- (3) delete this section

Regarding the change to 66.0301, we need a provision stating that employees of a ~~personal care worker~~ commission set up pursuant to § 66.0301 shall not be considered employees of the entities that formed the commission for any purpose whatsoever.

Thanks,

Jim

Atty. in Gov's office is Nate Zolick  
6-7887

fine to allow municipals to make  
person's eyes of the municip



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-17072 <sup>3</sup>

RLR:lmk:if

Handwritten notes: "MBS" with an arrow pointing to "RLR:lmk:if", and "E:kjf" with an arrow pointing down from "RLR:lmk:if".

DOA:.....Johnston, BB0380 - Personal care services

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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

*Analysis by the Legislative Reference Bureau*  
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INS  
ANL

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

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4 "personal care services" means medically oriented activities related to assisting a

1 person with activities of daily living necessary to maintain the person in his or her  
2 place of residence in the community.

3 (2) Upon the request of a county board, the department may provide assistance  
4 in recruiting and training individuals to provide personal care services.

5 (3) If the department and a county create a commission under s. 66.0301 (2)  
6 that employs individuals to provide personal care services, the persons employed by  
7 the commission to provide personal care services are not employees of the state or  
8 the county.

9 (END)

FNS  
MES

INS ANL

**LOCAL GOVERNMENT**

single space

Under current law, the state, regional planning commissions, federally recognized Indian tribes and bands, and local units of government, including municipalities, counties, school districts, and other special purpose districts, may enter into intergovernmental cooperation agreements for the receipt or furnishing of services or joint exercise of powers. As part of an intergovernmental cooperation agreements, these units of government may create a commission to perform the service or exercise the joint power.

This bill specifies that if such a commission is created, the employees of the commission are not employees of the underlying unit of government that created the commission, unless the contract creating the commission specifies otherwise.

SECTION ~~1~~ 66.0301 (3) of the statutes is amended to read:

INS  
MES

66.0301 (3) Any contract under sub. (2) may provide a plan for administration of the function or project, which may include but is not limited to provisions as to proration of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts. If a commission is created, the employees of the commission are not employees of the municipalities that created the commission, unless the municipalities specify otherwise in the contract.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1707/3  
RLR&MES:lmc&kjf:rs

DOA:.....Johnston, BB0380 - Personal care services

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

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

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*Analysis by the Legislative Reference Bureau*

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