

STATE OF WISCONSIN  
Department of Health Services  
Division of Long Term Care

**DLTC Info Memo Series 2009-05**

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**Index Title: Quality Home Care Authority Initiative**

To: Listserv

For: Area Administrators / Human Services Area Coordinators  
County Departments of Community Programs Directors  
County Departments of Developmental Disabilities Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
County Waiver Coordinators  
Tribal Chairpersons

From: Susan Crowley  
Administrator

Subject: **Quality Home Care Authority Initiative**

### **Document Summary**

A county may choose to participate in the provisions of the Quality Home Care Authority (QHCA) initiative as enacted by the 2009 Wisconsin Act 28. This document describes the initiative and provides information on the process for a county to notify the Department of Health Services of a decision to participate.

### **Introduction**

The 2009 Wisconsin Act 28 (2009-2011 budget) creates a Quality Home Care Authority (QHCA) and establishes new provisions and requirements that apply to independent home care providers under certain circumstances. The provisions automatically apply to Family Care, Family Care Partnership, PACE and IRIS (Include, Respect, I Self-Direct), but apply to other home and community-based waiver programs for adults only if the county operating the programs elects to participate through action by the county board of supervisors. When a county transitions to Family Care, any independent workers employed by individuals who transition to IRIS, Family Care, Family Care Partnership or PACE will be subject to the provisions of the law. Dane County has already implemented provisions similar to those in the legislation and is able to participate without additional action by its County Board.

Counties that will transition to Family Care in 2009 and 2010 may want to consider opting into this initiative. As explained more fully below, the QHCA provisions permit, but do not require, the formation of a union. If a county opts in to the QHCA, independent home care workers serving individuals who will transition to Family Care will be able to have a voice in any election to form a union. Even if not involved in the election process, those providers would be automatically included in a union, should it be formed. Since no collective bargaining agreement can be effective until the 2011-2013 biennium, the agreement would not affect the home and community-based waivers operated by the county.

### **Background**

The provisions of the QHCA initiative apply to the following:

- individual home care providers employed directly by adult consumers who self-direct home care in Family Care, Family Care Partnership, PACE and IRIS
- individual home care providers employed by consumers in those counties that elect to participate.

The definition of home care under the QHCA provisions encompasses both personal care and supportive home care when the provider is employed directly by the participant. The requirements do not apply to providers employed by agencies or through co-employment or agency-with-choice arrangements.

When a county elects to participate in the initiative, the consumer and county agency paying for the home care are required to provide the name and address of each independent home care provider serving participants in these programs to the QHCA which will maintain a list on behalf of the Department of Health Services. These workers, collectively from all counties, are designated as a statewide collective bargaining unit and are enabled by the legislation to form a union, if they so choose, and to elect a labor organization to bargain with the Department of Health Services for wages and benefits only. The bargaining process will only be implemented if the workers in the unit vote to form a union. If bargaining occurs, the provisions require consumers and home care payers in these programs to compensate covered providers in accordance with a legislatively approved and funded collective bargaining agreement.

The language in the legislation maintains the employer/employee relationship between the consumer and the provider and protects the ability of the consumer to hire and fire providers and set conditions of employment. Existing fiscal agent relationships in the covered programs would also continue.

### **Quality Home Care Authority**

The QHCA is an independent public authority governed by a board appointed by the Governor with a majority membership of consumers and their representatives and advocates. The QHCA provides a forum for efforts to increase the number of individual home care providers in the state and improve quality of care through access to training. The QHCA will not be an employer of home care workers or a provider of those services. Services of the QHCA (including the registry) would be available free of

charge to Medicaid recipients and their individual providers and to individual providers who want to be included on the registry.

The duties of the QHCA are:

- Establish and maintain one or more registries of home care providers and provide referral/matching services for consumers in need of home care.
- Apply qualification criteria for home care providers who seek placement on the registry and develop criteria and an appeal process for denial or removal of a provider from the registry consistent with the terms of Wisconsin's home and community-based waivers and Medicaid State Plan. All current qualifications for individual providers of care will apply.
- Develop and operate recruitment and retention programs to expand the pool of providers.
- Provide orientation activities and skills training for home care providers.
- Provide training for consumers in the duties and responsibilities of employers and skills needed to be effective employers.
- Inform consumers of the background and qualifications of providers on the registry and providers identified by consumers for employment.
- Develop and operate a system of backup and respite referrals to providers, including a 24/7 on-call service for consumers.
- Report annually to the Governor on the number of providers on the registry and/or providing services under the auspices of the QHCA.
- Conduct other activities to improve supply and quality of direct care workers.

### **The Registry**

The registry that will be operated by the QHCA is a mechanism to recruit and pre-qualify interested providers and to match consumers looking for home care providers with qualified providers in their area. Only providers who are available for and interested in employment would be included on the voluntary registry. Providers who are not interested in additional work would not be included on the registry. Consumers could continue to hire family members, neighbors or friends as they do now. Individuals who are hired would be part of the bargaining unit described below, but would not have to join a union, if formed, or be placed on the registry for purposes of matching with prospective employers. Background checks would be completed through the mechanisms already established by the county for providers identified by the consumer. The QHCA would conduct background checks for potential providers who apply to be placed on the registry.

### **Collective Bargaining**

The statute establishes a statewide collective bargaining unit to allow the formation of a union, but it does not create or require a union. Home care workers in the bargaining unit can participate in an election to form the union. All individual providers defined in the statute would be part of the bargaining unit, but even if a union is formed would not be required to join. It will be the responsibility of the QHCA and the Department to ensure that all eligible home care workers are identified as part of the bargaining unit.

The language applies provisions of the State Employment Labor Relations Act (SELRA) to the bargaining unit for purposes of collective bargaining only (home care providers would not be state employees for other purposes). The language uses a “showing of interest” provision to conduct an election for an exclusive representative of the bargaining unit; that is, permits independent home care providers to unionize. The showing of interest must be at least 30% of the entire bargaining unit.

An individual provider remains the at-will employee of the consumer. The Department of Health Services is designated as the employer for purposes of collective bargaining only. The Department would consult with consumer members of the QHCA regarding the bargaining process. The terms of collective bargaining are limited to wages and benefits. The wage rate(s) that result from the collective bargaining would be the minimum pay. Consumers could choose to pay providers more than the minimum rate if it fits within their budget. Any tentative agreement reached at bargaining must be submitted to the legislature for approval as with other tentative agreements under SELRA.

### **Action Steps**

If the county chooses to participate, the county board of supervisors must inform the Department of Health Services of its action. In doing so, the county agrees to compensate covered providers in accordance with any labor agreement and to make payroll deductions authorized by the agreement. If the county decides not to participate, no action is required.

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