



EXECUTIVE ORDER NO. 07 – 20

COLLECTIVE BARGAINING WITH RELATIVE ADULT FOSTER HOME PROVIDERS

The availability of adult foster homes enables seniors and persons with disabilities to live in the community in homelike settings when they are unable to live on their own. These homes allow vulnerable populations to live safely and securely while avoiding institutional care. In adult foster homes, medical and personal care services are provided in a manner that encourages independence and improves the quality of life of elderly persons and persons with disabilities. An important component in the range of adult foster homes is relative adult foster homes, where seniors and persons with disabilities are provided care by a family member. Like other adult foster homes, relative adult foster homes offer residents room, meals, laundry and other basic services as well as services directly related to their individual needs, such as incontinence care, assistance with eating, diabetic care, mobility and transfers, skilled nursing tasks, and dementia care. The quality of the care provided by relative adult foster homes depends upon many factors, including the care provider's training and the continuity of the relationship between the resident(s) and the care provider.

Relative adult foster homes play an important role in the continuum of adult foster homes and other long term care services in Oregon and help to reduce the institutionalization of the elderly and persons with disabilities.

The Oregon Department of Human Services ("DHS") is the executive agency authorized to administer and direct all regulated adult foster homes in Oregon and administers state-subsidized care for eligible seniors and persons with disabilities. DHS, the elderly, persons with disabilities, their families, and relative adult foster home providers all will benefit from a process that allows for collective input from relative adult foster home providers on how the State can improve stability among providers and the quality of care provided.

On June 1, 2007, the Governor signed Executive Order No. 07-07, granting collective bargaining rights to Eligible Adult Foster Home Providers and recognizing that this group had presented cards to the Employment Relations Board ("ERB") and that ERB had certified that the cards represented a request to be represented by SEIU Local 503 by more than fifty percent of eligible adult foster Home Providers. The Executive Order excluded persons "who operate only a Relative Adult Foster Home as defined in OAR 411-050-0400(53).



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On July 27, 2007 SB 858 was signed by the Governor into Law. SB 858 gives adult foster home providers the right to be certified or recognized as a union and collectively bargain with the State. The bill allows that “an appropriate bargaining unit for adult foster care home providers is any bargaining unit recognized by the Governor in an executive order issued prior to the effective date of this 2007 Act.” The effective date for the legislation is 1/1/2008.

SEIU Local 503 has presented cards to the Employment Relations Board (“ERB”) and ERB has certified that the cards represent a request to be represented by SEIU Local 503 by more than fifty percent of Eligible Relative Adult Foster Home Providers who receive service fees from the State.

For purposes of this Executive Order, an “Eligible Relative Adult Foster Home Provider” is a person who is licensed by DHS to operate a relative adult foster home as defined by OAR 411-050-0400(53) and who receives fees or payments from the state for providing adult foster care home services to a relative or family member. “Eligible Relative Adult Foster Home Provider” does not include a person whose participation in collective bargaining is determined by the Department of Human Services to be inconsistent with this Executive Order or in violation of state or federal law.

THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. DHS shall engage in collective bargaining negotiations and attempt to reach an agreement with SEIU Local 503, on behalf of Eligible Relative Adult Foster Home Providers, concerning all terms and conditions of the relationship between the State and Eligible Relative Adult Foster Home Providers that are within the State’s control. DHS may negotiate jointly on behalf of Eligible Adult Foster Home Providers and Eligible Relative Foster Home Providers with SEIU Local 503. Such terms and conditions shall include those that would be deemed to be mandatory subjects of bargaining under the Public Employee Collective Bargaining Act, ORS 243.650 et seq., as if that law applied, including but not limited to service fees and the provision of health care coverage.

2. If collective negotiations fail to result in an agreement with SEIU Local 503 after a 150-calendar-day period of good faith negotiations, then DHS shall agree that either party to the negotiations may demand appointment of an arbitrator for binding arbitration, subject to the conditions set forth below. Either party to the negotiations may request from ERB a list of seven qualified, disinterested, unbiased persons to serve as a potential arbitrator so that each party



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can alternatively strike three names from the list. The order of striking should be determined by lot. DHS shall agree that the arbitration process shall follow generally the procedures and timelines of ORS 243.746(3), (5) and (6) (except that the arbitrator's opinion and order shall not be filed with ERB) and require that the arbitrator's findings and opinion be based on the criteria of ORS 243.746(4). It is the State's intent that judicial review of the arbitrator's findings and opinion be available under the Uniform Arbitration Act, ORS 36.600 et seq., and that an arbitration award may be vacated by a court for the reasons contained in ORS 36.705.

3. To the extent that DHS may not implement an agreement or an arbitrator's findings and opinion under this Executive Order without first undertaking rule-making under the Administrative Procedures Act, ORS chapter 183, then the state will not be obligated to implement such agreement or arbitrator's findings and opinion until the necessary rule-making is completed.

4. Any arbitrator's findings or opinion that has budgetary impact upon DHS shall be subject to the affected agency obtaining an appropriation to fund those impacts unless and until the Legislative Assembly enacts legislation to apply ORS 243.742, ORS 243.752, or similar provisions, to adult foster home collective bargaining.

5. This Executive Order is not intended to create any contractual rights or obligations, although it is expected that negotiations will result in a written agreement between parties. It is intended solely as executive direction to the State agencies identified herein. Nothing in this Executive Order is intended to give to relative adult foster home providers, or imply that relative adult foster home providers have, any right to engage in a-strike or a collective cessation of the delivery of relative foster home services. Nothing in this Executive Order is intended to authorize the execution of fair-share agreements, or to infringe upon the non-association rights of adult foster home providers. Nothing in this Executive Order is intended to provide SEIU Local 503 or any other individual or entity with third-party beneficiary rights.

6. Nothing in this Executive Order is intended to directly or indirectly limit choice in the selection by consumers or their families of relative foster home providers, or cause financial loss to them, including those not eligible for assistance from the State.

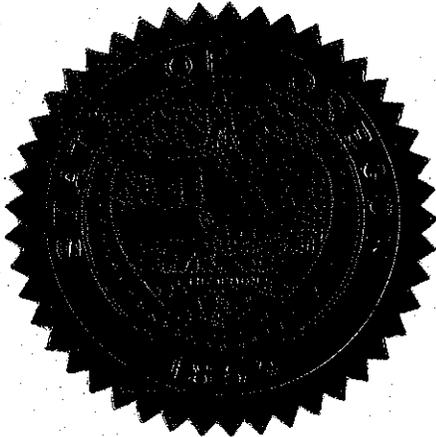


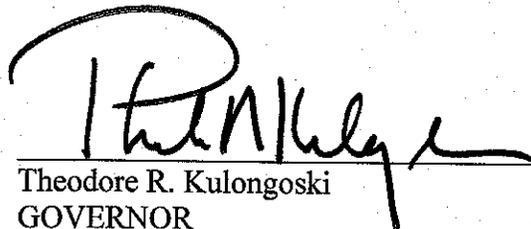
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7. Relative adult foster home providers are not employees or agents of the State. Nothing in this Executive Order is intended to alter the existing relationship between relative adult foster home providers and the State or in any way imply an employer-employee or principal-agent relationship.

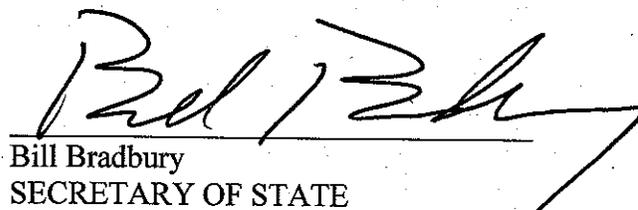
8. This Executive Order is effective immediately.

Done at Salem, Oregon, this 6 day of November, 2007.




Theodore R. Kulongoski
GOVERNOR

ATTEST:


Bill Bradbury
SECRETARY OF STATE