

# Family Child Care Working Group

Final Report

Submitted to Governor Dannel P. Malloy  
pursuant to Executive Order #9

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## Section 1: Executive Summary

On September 21, 2011 Governor Dannel P. Malloy issued Executive Order No. 9 (Appendix A). This Executive Order called for the creation of a Working Group to:

“...make recommendations on how best to structure collective bargaining rights and relationships for the Majority Representative in order to enable the Majority Representative to collectively bargain the terms and conditions of family child care providers’ participation in the Care4Kids program...”

The Working Group, as set forth in Executive Order No. 9, consisted of the following individuals: Dennis C. Murphy (Chair): *Deputy Commissioner, Connecticut Department of Labor*; Dorothea Barnett: *Owner and Operator, Totts Inn Daycare and Learning Center*; Harriet Feldlaufer: *Bureau Chief, State Department of Education*; Lawrence Fox: *Consultant*; Phyllis Hyman: *Legislative and Administrative Manager, Connecticut Department of Social Services*; Jane Norgren: *Social Worker and Guardian, Guardianship for Retarded Persons*; Peter Palermino: *Program Manager, Connecticut Department of Social Services*; Jessica Sager: *Co-Founder and Executive Director, All Our Kin*; Teresa Younger: *Executive Director, Permanent Commission on the Status of Women*

The Working Group held several public meetings during which it heard from key stakeholders and members of the public with an interest in Executive Order No. 9. The following report details the Working Group’s findings.

## Section 2: Background

Family child care providers, both licensed and unlicensed, and family friend and neighbor caregivers hereafter referred to as child care providers, play a key role in Connecticut's early care and education system. According to Connecticut Voices for Children's *2011 Early Care and Education Progress Report*, there are approximately 2,675 licensed family child care providers in the state of Connecticut, with the capacity to serve 22,936 children (211 Child Care). In addition to these licensed providers, there are 2,400 unlicensed family, friend and neighbor caregivers listed in the Care4Kids registry, plus an unknown number who informally care for the children of their relatives, neighbors, and friends (Connecticut Race to the Top, Early Learning Challenge, application).<sup>1</sup>

Child care providers play a crucial role as teachers of Connecticut's youngest and most vulnerable children. The majority of infants and toddlers are cared for in such settings and children with socioeconomic risk factors are most likely to be cared for in these settings (Porter, Paulsell, Del Grosso, Avellar, Hass, & Vuong, 2010). In Connecticut, there are 3,425 children receiving Care4Kids in family child care programs and 6,439 children receiving Care4Kids in family, friend, and neighbor care (Care4Kids).<sup>2</sup> "Babies and toddlers living in high-risk environments need additional supports to promote their healthy growth and development. All child care arrangements, including family, friend and neighbor and family child care have the potential to provide high-quality, individualized, responsive and stimulating experiences." (*Zero to Three, The National Center for Infants, Toddlers, and Families*).

Family child care offers an intimate setting for infants and toddlers, and permits siblings of multiple ages to attend the same program. These arrangements are usually less expensive than center-based care and are frequently located close to home or work, making them more accessible to families that lack transportation. Families often choose family child care programs because the providers offer cultural and linguistic continuity for their children, and because they frequently provide flexible care during non-traditional hours, such as evenings and weekends. These programs are, therefore, essential to meeting the need for infant and toddler care, as well as the need for affordable, second- and third- shift, and culturally-based care.

At their best, family child care and family, friend and neighbor caregivers provide nurturing, stable, continuous care and high-quality learning experiences to our youngest children. They lay the foundation for our next generation of citizens to learn, develop, and succeed – both

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<sup>1</sup> It should be noted that DSS through The United Way of Connecticut puts the number of family, friend, and neighbor caregivers receiving Care4Kids at 3,200.

<sup>2</sup> In Connecticut, there are 1,629 infants and toddlers, 954 preschool-age children, and 842 school-age children in family child care programs. There are 2,144 infants and toddlers, 1,604 preschool-age children, and 2,691 school-age children in family, friend, and neighbor care.

in school and in life. But family child care and family, friend and neighbor care varies wildly in quality, from programs meeting the highest possible standards to programs that do regrettably little to support children's development.

Until Connecticut begins to invest in these programs, a substantial percentage of our low-income children will be left out of state child care quality initiatives. It is critical that we support our family child care providers so that they can provide our most vulnerable children with a high-quality early education experience; we must give our providers what they need to succeed so that they can give our children what they need to succeed.

Research clearly demonstrates that higher-quality child care leads to better educational and social outcomes for children. Moreover, recent research from the University of Connecticut's Center for Economic Analysis reveals that quality initiatives, such as All Our Kin's Family Child Care Tool Kit Licensing Program, have substantial economic benefits. When family child care providers get licensed and have access to professional development opportunities, it is not only the quality of their child care that improves but also their quality of life. According to the Center for Economic Analysis, the majority of providers who participated in the Tool Kit Licensing Program earned \$5,000 more the first year after licensure and \$10,000 more the second year. The higher income of providers, coupled with the increase in workforce support for low-income families, benefits everyone.

“The voices of the providers who are caring for children in their homes provide an important perspective on the implementation of “best practices” and the day-to-day reality of home-based child care. It will take the collective interest and careful attention of researchers, policymakers, educators, parents, funders, and providers to preserve the special qualities of home-based child care while at the same time ensuring that all children receive enriching early care and education experiences.” (Stefanie Powers, Editor, *Zero to Three, The National Center for Infants, Toddlers, and Families.*) This group's recommendations are designed to ensure that the voices of providers are heard and that Connecticut's youngest and most vulnerable citizens receive the early learning foundations that will lead to their future success.

## Section 3: Care4Kids Program

Care4Kids (C4K) is Connecticut's public assistance program that helps low to moderate income families meet their child care expenses during the hours that the parents are not available because they are engaged in certain activities. The scale of the Care4Kids program as of November 2011 may be found attached as Appendix

### **Members of the household who are included in the eligibility determination:**

- Children needing care (must be under age 13 or under age 19 if the child has special needs)
- Other minor children
- Parents of the child and of the child's siblings
- Spouses of the parents

### **Activities that can be covered:**

- Employment
- Jobs First Employment Services Activities
- High school enrolment, if the parent is under age twenty

### **Eligibility process:**

- Applications are available by calling the program at 1-888-214-5437 or can be downloaded from [ctcare4kids.com](http://ctcare4kids.com)
- The parent completes the C4K Application form and attaches verification of employment. The parent and the child care provider complete the Parent Provider Agreement (pink form). The packet of materials is returned to C4K.
- C4K notifies the family and provider that the application is received.
- C4K reviews the application, requests additional verifications if needed, determines eligibility and benefit level, issues a certificate to and notifies the family and provider.
- Every eight months, a redetermination packet is mailed to the family to review continuing eligibility.
- Parents and providers are required to notify C4K of changes that may affect eligibility, such as changes in employment, income, schedule, family members, etc.

### **Definitions:**

- "Parent" means a person with whom the child resides who is either the child's parent by blood, marriage, adoption or a spouse or former spouse of such individuals, a legal guardian, a caretaker relative under the cash assistance program or other person standing in loco parentis.

- “Jobs First Employment Services Activities” are activities that parents are required to attend as a condition of eligibility for the Temporary Family Assistance (TFA) program, Connecticut’s time-limited cash assistance program.

**Provider Eligibility:**

Care4Kids can reimburse programs and individuals who provide child care as recognized by state law. These include:

- Child care centers, group day care homes and family day care homes that are licensed by the Department of Public Health (DPH) to provide child day care services. Licensed programs are listed on the DPH web site. 2-1-1 Infoline maintains information on licensed providers and can help families find a provider that meets their needs.
- Organizations that are not required by state law to be licensed as child day care providers, such as before and after school programs administered by boards of education, summer day camps and town recreation department programs.
- Unlicensed close relatives, as long as care is provided in the home of the child or in the home of the care giving relative.
- Unlicensed unrelated individuals if care is provided in the child’s home or in their own home if they are caring for the child for less than 3 hours a day. An example of this- is school age children being cared for by a neighbor until the parent returns from work.
- NOTE: Background checks are conducted each year on all unlicensed providers. Individuals on the Department of Children and Families (DCF) Child Abuse and Neglect Registry or with a criminal record of certain crimes against persons are not eligible providers.

**A member of the Care4Kids family unit may not be paid by the program to provide care.**

- The family unit includes, but is not limited to, the child and any of the following individuals living the child’s home: the child’s siblings, the child and siblings’ parents, stepparents, guardians, and the other children, spouses and ex-spouses of such.
- If the parent is a minor and is living with his or her parents, stepparents or guardians, those individuals are included in the family unit and may not be paid to provide care.
- Individuals in the same Temporary Family Assistance unit as the child and the spouses of those individuals are in the Care4Kids family unit and cannot be paid to provide care.
- Other individuals living in the home may be paid for providing care, except during the hours of 11:00 PM through 7:00 AM, unless the child is under 3 years old or has special needs.

## Section 4: Research Highlights

The following presents research highlights and summaries of the information provided to the Working Group regarding the unionization of child care providers by individuals and entities who have had experience with this issue in other states.

- A. Maryann Parker, *Associate General Counsel to the Service Employees International Union (SEIU)*. In addition to Maryann Park's testimony before the Working Group, a booklet as submitted, *Working Together for Quality Child Care, Raising Children Raising Families* (Appendix C).

January 10, 2012, Maryann Parker, Esq., provided information detailing her personal and professional involvement in supporting the organization of FCC (Family Child Care) providers. She presented background information on the current process in CT and described the role and importance of the family child care provider.

Parker also described collective bargaining experiences in other states. Since 2005, eight states have created statutory systems for bargaining with FCC provider unions. (Illinois, Maine, Maryland, New Jersey, New Mexico, Oregon, Washington, and Wisconsin) Several states have succeeded in passing FCC bargaining legislation subsequently vetoed by the Governor (California, Massachusetts, and Rhode Island).

- B. Helen Blank, *Director of Leadership and Public Policy, National Women's Law Center*. In addition to Helen Blank's testimony before the Working Group the booklet as submitted, *Getting Organized, Unionizing Home Based Child Care Providers, Update 2010* (Appendix D).

"Getting Organized" first published in February 2007, found that the unionization of the home-based child care workforce, while relatively new, was a "promising strategy for improving the treatment of child care providers - a poorly paid and overwhelmingly female workforce -- and, more generally, increasing public support for the investments in high-quality affordable child care that are needed to develop America's potential." The 2010 Update reports on what has happened across the nation between 2007 and 2010. It discusses funding, the legal authority granting unions the right to represent child care providers and the report provides summaries of contracts that have been negotiated in states.



Summary of the status of organizing rights in states:

- In seven states in which child care providers had secured the right to organize and negotiate with the state as of February 2007 (Illinois, Washington, Oregon, Iowa, New Jersey, Michigan, and Wisconsin).
- In seven states in which child care providers have gained the right to organize and negotiate with the state through executive order or legislation between February 2007 and March 2010 (New York, Pennsylvania, Kansas, Maryland, Ohio, Maine, and New Mexico).
- In three states in which legislation authorized unionization, but the governor vetoed it. New authority has not yet been granted (California, Massachusetts, and Rhode Island).
- In one state in which unions have been organizing and negotiating on the county level (Minnesota).

C. State of Maryland; State of Maryland's *Executive Order regarding Collective Negotiation by Family Child Care Providers* (Appendix E). Maryland Senate Bill 284 "*An Act Concerning Collective Negotiation by Family Child Care Providers*" (Appendix F). *The Agreement between the Governor of Maryland, The Maryland State Department of Education, and Service Employees International Union, Local 500, CtW* has been attached as (Appendix G).

The December 2011 report to the Maryland General Assembly, *Status of the Maryland Child Care Subsidy Program as it Relates to Family Child Care Providers*, (Appendix H) detailed what has occurred in the State of Maryland during the year that collective bargaining rights for family child care providers participating in the State's child care subsidy program (July 1, 2010-June 30, 2011) were enacted.

Elizabeth Kelly, *Director of the Maryland Office of Child Care*:

The teleconference with Elizabeth Kelley disclosed the possible risk that certain providers may opt out of participating in the child care subsidy program in order to avoid any impact of collective bargaining. She reported that in Maryland, 193 providers opted out of the system out of a total of approximately 4000 providers covered under collective bargaining.

Kelley reiterated recurring themes: providers are not state employees, but independent contractors; providers may not strike; an antitrust exemption exists regarding Family Child Care; the right to petition the state must be preserved in all cases.

- D. State of Illinois; Jerry Stermer, *Senior Advisor to the Governor*: Summary of teleconference with Jerry Stermer, Senior Advisor to the Governor. (1/6/12, held with Dennis Murphy and staff)

Mr. Stermer indicated that prior to his current position he held the position of President of the Child Advocacy Group for 20 years. He indicated that there was initial resistance to the notion of collective bargaining among the highly educated child-care providers. They held concerns with respect to potential impacts.

The following issues became most prevalent in negotiations:

- Access to health insurance. The resolution was that the state agreed to pay some portion of the cost of health insurance directly to SEIU and it provided the coverage.
- Rates of pay/tiered reimbursement
- Dues payments to the union depending upon performance

He shared that recently, the family, friends and neighbors group which was not part of the original family child care group, voted down unionization.

- E. Harry Elliott, *General Counsel to the State Board of Labor Relations*: presented and discussed the issues. Elliot expressed the issues associated with a joint employer model, as independent contractors do not under normal circumstances have the rights to collectively bargain. He believed joint employer status was needed to avoid anti-trust laws. The importance of setting a clear framework of dispute resolution process was highlighted.

## **Section 5: Public Comment**

Both oral and written comments were given by members of the public at two of the four Working Group meetings. Full comments of what was shared can be found in the meeting minutes and in appendices. This is an outline of common themes and key concerns heard from the public:

### **Those who challenged the constitutionality of the Governor's Executive Order:**

- Estelle Stevenson, We the People of Connecticut, Inc.

### **Those who appeared to support the Governor's Executive Order, collective bargaining and unionization:**

- Nichole Hawkins, Hartford, early childcare and education provider;
- Cordelia Thorpe, day care provider, 4 yrs.; believes union will help navigate the bureaucracy
- MaryAnn Parker, associate counsel for SEIU; clarified the purpose of the Working Group
- Blanca Mercado, provider, 15 yrs.
- Leonicia Contreras, Waterbury, provider
- Ms. Williams, New Haven, provider
- Quenette Pugh, provider, 20 yrs.
- Robin Willoughby, New Haven, provider
- Nelida Centeno, Meriden, provider: Beba's Day Care, 8 yrs.
- Queen Freelove, New Haven, provider, 20 yrs.
- Durley Arteaga, Bridgeport, provider, 8 yrs.
- Medelicia Antonetty, Hartford, provider, 25 yrs.
- Ancella Robinson, Bridgeport, provider, 5 yrs.
- Rhonda Butler, Branford, provider, 32 yrs. and co-President of Second Homes Family Childcare Association

### *Common themes and key issues:*

- Concerns over delayed payments and slow approval process
- Streamlining and speeding up payment process
- Increasing reimbursement rates
- Ongoing financial constraints on providers due to the existing payment process and low reimbursement rates
- Validating and valuing the societal services that home child care providers fill
- Onerous responsibilities placed on providers to help families enroll in C4K

- Expanded training and educational opportunities
- Raising quality and standards of quality child care
- Concerns about health care expenses and coverage
- Providing a collective voice for providers to have concerns addressed
- Potential loss of providers due to economic challenges

**Those who questioned the process and role of SEIU**

- Stephen Mendelson, representing a group to Stop SEIU from organizing care providers in Connecticut

**Those who felt disenfranchised by the meet and confer process and concerned with the “process”:**

- Christine Welton, Ellington, provider
- Maria Nelson, Suffield, provider
- Terry Bouchard, Suffield, provider

*Common themes and key issues:*

- Some C4K providers did not receive ballots
- Concerned about what the union would do
- Concerned about provider input because Working Group meetings are during the day

## **Section 6: Issues Presented by Collective Bargaining and Options for Resolution for Connecticut**

In discussing the issues presented by the existence of collective bargaining for child care providers, the Working Group was influenced by a set of guiding principles. These are as follows:

### **GUIDING PRINCIPLES**

- All of the introductory clauses of Executive Order #9 (Appendix A).
- Collective bargaining process should seek to improve the quality of care provided, to improve the effectiveness of communication with the state administrators of the program, and provide a meaningful voice to and for child care providers.
- Child care providers funded through the Care4Kids program are not and should not be considered employees of the state,
- The allowance of a collective bargaining agent does not and should not affect the rights of parents or guardians in the recruitment, selection, direction, and termination of child care providers,
- The composition of the bargaining representatives for the state should comprise members of the executive branch responsible for the Care4Kids program to ensure meaningful dialogue and agreements consistent with the public goals and policies of the program,
- In light of program funding restrictions, the structure of collective bargaining should be viewed with the goal of maintaining or expanding upon the current levels of services provided to the parents and children.

### **Issues and Options for Resolution**

#### **1. Definition of the bargaining unit**

Executive Order Number 9 declares that the only unit appropriate for the meet and confer process “...shall be a state-wide unit of all family child care providers who participate in the Care4Kids program, in a family day care home, described in subdivision (3) of subsection (a) of section 19a-77 of the general statutes, of a home described in subdivision (4) of subsection 19a-77.”

The options here include the insertion of this language in any legislative authorization or perhaps modified by omitting the requirement that the unit be “state-wide”, should a program be created or modified which is administered on other than a statewide basis. This would allow for future carve-outs in such circumstances, geographically or otherwise, as determined appropriate by the State Board of Labor Relations.

It is important to note that the requirement that the bargaining unit comprise those who participate in the Care4Kids program is vital to provide the substantial state activity necessary to provide an exemption to antitrust law.

The Working Group offers no other comment on any modification of this bargaining unit definition in a transition to a collective bargaining arrangement. The Working Group does observe that some care and discussion should occur in the process of negotiations, should they occur, to clarify the situation where a child care provider provides services to a child covered by the Care4Kids program on an intermittent and irregular basis.

## **2. Management Negotiating Entity**

Consistent with the previously stated principles, Executive Order Number 9 states that under the meet and confer process, the Management entity consists of "...representatives of the Department of Social Services and any other executive branch representatives the Governor deems appropriate...."

## **3. Labor Relations Regulatory Oversight**

Although the Municipal Employee Relations Act (Sec. 7-467 et seq) and the Connecticut Labor Management Relations Act (C.G.S. 31-101 et seq) theoretically may be used as the basis for regulatory oversight, the Working Group believes that the State Employee Relations Act (Sec. 5-270 et seq) is the best suited option for regulatory oversight. Child care providers would constructively be covered employees solely for purposes of the legislation and regulatory jurisdiction, as modified.

In order to ensure the integrity of self-determination of the parents or guardians, an option would be to limit the State Board of Labor Relations remedial authority's application to the state and any collective bargaining agent and not as to the parents or guardians.

The state board would exercise when appropriate its administrative authority to regulate any future petitions for decertification/certification and regulate any subsequent elections pursuant to their regular process.

A variety of options are available in the attempt to define the effects and process of collective bargaining.

One option would be to provide that the provisions of section 5-276a of Connecticut General Statutes providing for binding interest arbitration is not a process available to the parties,

and that any negotiated agreement is subject to the state's regular budgetary approval process, subject to funds being made available and subject to affirmative legislative approval. Should impasse be reached during negotiations, and after mediation, this option would provide for a fact-finding process. The fact-finder would provide non-binding recommendations to the parties for settlement. And, as previously stated, the results of any collective bargaining would be subject to the state's regular budgetary approval process, subject to funds being made available, and subject to affirmative legislative approval.

Another option would be to provide for an interest arbitration process with no limitation on the subjects to be considered, but the results would be subject to the state's regular budgetary approval process, subject to funds being made available, and subject to affirmative legislative approval.

Although already stated in the State Employees Relations Act, an option may be to affirmatively state that child care providers do not have the right to strike.

An additional option may be to include an affirmative statement declaring that nothing in the Act in any way impairs the right of child care providers to directly lobby, petition and communicate with any governmental entity. This would prevent any successful argument that these would be a prohibited practice for the state to deal directly with child care providers.

#### **4. Appropriate Subjects for Collective Bargaining**

To support the guiding principle that child care providers are not state employees, an option may be to provide that it is an unlawful subject of bargaining to demand that child care providers be entered into the state employee benefits system, including both its health benefits and its pensions.

Another option would be to make clear that family child care providers are not eligible for benefits as state employees, but that providers and their representatives may negotiate for any fringe benefits, subject to the necessary approval processes.

To protect the freedom of choice of the parents, guardians and the children, an option is to declare as a prohibited subject of bargaining a grievance procedure which encompasses disputes, of any nature whatsoever, between a child care provider and the parents, guardians or children.

An option would be to allow the parties to negotiate a grievance procedure, subject to the approval processes.

Another option may include allowing for all subjects or certain subjects to be appropriate for a grievance to proceed to an arbitrator who is authorized to issue an opinion which is final and binding on the parties.