

**Statement of Walter Kamiat**  
**Associate General Counsel**  
**Service Employees International Union**  
**Before the Governor's Personal Care Attendant Working Group**  
**Hartford, Connecticut (January 10, 2012)**

At the outset, I would very much like to thank the Working Group for its invitation to me to submit my testimony, and to thank you for the important work involved in examining how to best design a structure to bring collective bargaining rights to client-employed, consumer-directed home care workers within the State's Medicaid and medical assistance programs.

As you know, I am an Associate General Counsel of the Service Employees International Union (SEIU), and for the last few years have been particularly responsible for providing legal counsel and assistance to the SEIU with regard to its representation of home care workers. SEIU currently represents hundreds of thousands of client-employed and consumer-directed home care workers in a variety of states, many of which have adopted specific statutory measures to facilitate this kind of collective bargaining. Although each of these state statutes varies in some ways, they also have common features that are important to recognize and that are crucial to their success. This will be the focus of my testimony.

Before examining these common features, however, it is very important to keep our focus on the important purposes – *in terms of improving the states' consumer-directed home care services programs* – that states have tried to accomplish by creating statutory structures for these workers to engage in collective bargaining. All of these states have provided for the state itself, or some other representative of public authority, to play a central role in the collective bargaining processes that it has designed, and this structure reflects that the collective bargaining at issue here is fundamentally about a model in which the state can better administer these very important home care programs. Thus, before going through the details of how these statutes have been structured, I will discuss the home care policy purposes that stand behind them.

***I. The Purposes of State Efforts to Provide for Home Care Collective Bargaining:  
Building and Maintaining a More Adequate, Stable, and Skilled Workforce to  
Provide Client-Employed, Consumer-Directed In-Home Care.***

Numerous states have in recent decades designed and operated systems of collective bargaining that allow the client-employed, consumer-directed home care workforces that serve the recipients of Medicaid and other state medical assistance programs to choose a representative for bargaining, if they wish. These states – which include California, Illinois, Maryland, Massachusetts, Oregon, and Washington – represent some of the largest, most successful consumer-directed in-home care systems in the nation. These collective bargaining systems were developed in large part to improve the availability and quality of client-employed, consumer-directed, in-home care delivered to the elderly and to people with disabilities within these programs. In particular, these collective bargaining systems are parts of efforts by states to

build a more reliable and stable occupation of home care workers available to those who need in-home assistance in order to stay in their homes and communities. By taking these steps, these states are seeking to make these very important services more secure and potentially more widely available.

Recognizing that the collective bargaining systems we are examining have their foundation in home care policy is important, both in understanding those systems, and in understanding why certain design features of those systems are crucial to their success.

For these reasons, we should emphasize at the outset that these collective bargaining systems are designed only to cover home care workers who are directly chosen, employed, and supervised by recipients of Medicaid or other state medical assistance programs. These recipients need the services of these in-home care providers to live independently and with dignity in their homes and communities. This scope of coverage reflects that the collective bargaining systems at issue are efforts to strengthen those programs and make them more successful and effective.

It is widely recognized that providing the elderly and persons with disabilities with the opportunity to stay in their homes and to hire and direct their own in-home care providers has many advantages: It saves money in relation to the costs of either institutionalization or agency provided services; but more important, it produces far better health and life-quality outcomes, enabling individuals to better control their care and remain in their community with independence and dignity.

Yet these programs have always faced problems that limit their effectiveness, as well as their potential expansion. Among the most significant problems is that of recruiting, retaining and training an adequate and stable workforce to provide these services to all who could benefit from them. Indeed, research has found that workforce problems—specifically labor shortages and high turnover—may be the most significant obstacles to providing consumer-directed home care services.<sup>1</sup> These problems will only become more serious in the coming years as the population ages and the demand for the needed workforce increases.

Over the next forty years, the number of Americans age 65 and over is expected to double, from 40.2 million to a projected 88.5 million.<sup>2</sup> During the same time period, the number of Americans expected to require at least some type of long-term care services in their lifetime is projected to

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<sup>1</sup> See, e.g., Linda Hiddemen Barondess, *Some Potential Solutions to High Direct-Care Staff Turnover Rates*, *Annals of Longterm Care*, vol. 15, issue 10 (Oct. 1, 2007), available at: <http://www.annalsoflongtermcare.com/article/7860>.

<sup>2</sup> Grayson K. Vincent & Victoria A. Velkoff, *The Next Four Decades: The Older Population in the United States 2010 to 2050 (U.S. 2010 to 2050)* (U.S. Census Bureau, May 2010), available at: <http://www.census.gov/prod/2010pubs/p25-1138.pdf>.

grow to 27 million from approximately 12 million today.<sup>3</sup> Nationwide, more than one million additional home care attendants will be needed by 2018, according to the latest employment projections.<sup>4</sup> Yet the workforce providing these services is highly transient and unstable, with jobs in this area perceived by many as undesirable, to be held until better opportunities come along.

The impact of high turnover and labor shortages on consumers may be devastating – both to the availability of self-directed care opportunities and to the quality of that care. Consumers who cannot find workers are often forced to settle for either more restrictive agency-directed home care or even institutionalization. Even consumers who are fortunate enough to find workers face risks that they will lose those workers unexpectedly – having then to settle for inexperienced replacements and little continuity of care.<sup>5</sup>

That this should be a workforce plagued with recruitment difficulties and high turnover is not surprising. Pay is low; non-wage benefits are rare; relief workers to allow for time off are often unavailable; and work is often physically and emotionally difficult, with little hope of improvements. Yet many thousands of caring individuals try to make this their occupation and stay in this field. The high turnover rates and recruitment difficulties evidence how hard this is.

The collective bargaining measures we are examining must be understood as parts of state efforts to improve this situation. These state efforts thus reflect state policy judgments, which I believe are firmly correct:

- First, that the client-employed, consumer-directed care model can only meet its potential if there is an adequate, available and stable workforce available to be employed by consumers;
- Second, that the state can and should play an indispensable role that no individual consumer could or would take on -- by taking on human resources responsibilities (e.g.,

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<sup>3</sup> HCBS Clearinghouse and the SCAN Foundation, *Fact Sheet: Growing Demand for Long Term Care* (September 2010), available at: <http://www.thescanfoundation.org/sites/default/files/Fact Sheet No. 5 Final.pdf>.

<sup>4</sup> Eldercare Workforce Alliance, *Geriatrics Workforce Shortage: A Looming Crisis for Our Families*, <http://www.eldercareworkforce.org/research/issue-briefs/research:geriatrics-workforce-shortage-a-looming-crisis-for-our-families>; National Center for Health Workforce Analyses, *Nursing Aides, Home Health Aides, and Related Health Care Occupations—National and Local Workforce Shortages and Associated Data Needs* v, ix, 1-2 (U.S. Dep't of Health and Human Services, 2004), available at: <ftp://ftp.hrsa.gov/bhpr/nationalcenter/RNandHomeAides.pdf>; Robyn I. Stone & Joshua M. Wiener, *Who Will Care for Us? Addressing the Long-Term Care Workforce Crisis* 3-4, 9, 12-16 (The Urban Institute and American Association of Homes and Services for the Aging, Oct. 2001), available at: <http://www.rwjf.org/files/research/WhoWillCareforUsReport.pdf>.

<sup>5</sup> See Barondess, *supra* note 1.

relating to recruitment, and referral, the setting of compensation standards, the design of benefit programs and training opportunities, etc.) that must be performed in order to develop and maintain an adequate workforce available for consumer hiring;

- Third, that an important part of these efforts to improve conditions and stabilize this workforce is to create a system for ensuring ongoing and meaningful input from that workforce -- i.e., by providing for a system of home care worker representation and collective bargaining – as well as ongoing input from consumers and their representatives; and
- Fourth that all this can be done while maintaining the rights of consumers to select, hire, direct, and terminate their in-home caregivers. Indeed, To the extent that the system works to enhance the availability of and quality of workers, these consumer rights will be far more effective.

Many of the states that have followed this course have thereby placed themselves at the forefront in terms of stabilizing and expanding their workforces in order to enhance consumer direction opportunities.<sup>6</sup> Among the reforms that they have developed are:

- Worker registries that (i) connect new consumers who need assistance with qualified and screened caregivers, (ii) allow existing consumers to locate back-up or replacement workers, and (iii) help workers within these programs to remain employed in these programs over the long term;
- Health insurance programs in California, Illinois, Oregon and Washington State that for the first time enable home care workers to obtain employment-based healthcare benefits, thereby attracting caregivers to the profession and providing incentives for them to stay in it;
- Systems of paid leave for client-employed providers in Washington State, Oregon, and Massachusetts that help keep providers in these programs; and
- A wage scale in Washington State that, for the first time in a state program, rewards experience and offers pay increases for workers who mentor less-experienced colleagues.

Although the reforms adopted in each state are somewhat different, each state has created a system that encourages the state, workforce representatives, and consumers to search for and develop measures to improve the job satisfaction, compensation systems and training

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<sup>6</sup> D. Pavelchek & C. Mann, *Evaluation of Interventions to Improve Recruitment and Retention: Summary of Results for the Washington State Home Care Quality Authority* (Wash. State Univ., Social and Economic Sciences Research Center-Puget Sound Division 2007); C. Howes, *Building a High Quality Home Care Workforce: Wages, Benefits and Flexibility Matter* (Institute for the Future of Aging Services 2006), available online at: [http://www.bjbc.org/content/docs/ExecSummary\\_Conn\\_College\\_FINALCOLOR8-06.pdf](http://www.bjbc.org/content/docs/ExecSummary_Conn_College_FINALCOLOR8-06.pdf); R. Zawadski and J. Radosevich, *Impact of Health Benefits on Retention of Home care Workers*, RTZ Associates (2003); C. Howes, *The Impact of a Large Wage Increase on the Workforce Stability of IHSS Home Care Workers in San Francisco County* (2002).

opportunities for this important but highly-dispersed and traditionally highly-transient homecare workforce. In essence, all of these are efforts designed to ensure that this line of work should be treated as a real occupation, able to attract a sufficient qualified workforce to meet the needs of these important programs over the long term.

In doing this, these measures provide a foundation upon which these states can build a stronger system of client-employed and client-directed services.

## ***II. The Common Features of State Collective Bargaining Systems for Client-Employed, Home Care Providers.***

Although each state system is somewhat different, common and important features of these systems include the following:

- (i) *Workers Covered by the Collective Bargaining Measure are Limited to those Employed Directly by Consumers.* All of the state-law home care collective bargaining statutes in these states only apply to home care workers hired directly by consumers within state Medicaid or other state medical assistance programs. Home care workers employed by private sector entities (e.g., agency home care workers) are not covered by these systems. This is so for a number of important reasons:
  - a. This reflects that these measures have grown out of a need to strengthen the model of client-hired and client-directed in-home care which is distinct from the model of home care through employees of home care agencies. These collective bargaining measures recognize the advantages of clients being able to hire and direct the workers of their choice in this most personal and intimate service, and seek to improve these programs by creating a larger and more stable supply of workers available to be hired by consumers.
  - b. Private home care agencies, as well as most other kinds of private sector employers, are governed by the labor relations rules of the National Labor Relations Act, the principal federal law governing private sector labor relations. Because the NLRA governs, state and local governments are severely limited in their ability to regulate the labor relations of such private sector employers, even when they are providing services as part of a state program. *See, e.g., Metropolitan Milwaukee Ass'n of Commerce v. Milwaukee County*, 431 F.3d 277 (7<sup>th</sup> Cir. 2005). This means that the labor relations rules of the NLRA – including the right of employers to resist unionization and the right of workers to strike – may not normally be altered by state law.
- (ii) *State Setting of Workforce Compensation Terms.* Under these state home care collective bargaining systems, the state, or some other governmental entity, generally sets compensation and other terms and conditions of employment

that govern the workers hired by, and directed by consumers within the relevant state financed medical assistance programs. This reflects the interest of the state in controlling its own costs as well as in ensuring that compensation arrangements are sufficient to attract and retain an adequate number and quality of workers within the relevant state programs, so that all consumers within the programs can have a meaningful ability to locate and choose their own.

- (iii) *Expressly Protecting Consumer-Choice and Consumer-Direction.* All of the state-law home care collective bargaining statutes expressly protect the rights of consumers to select, hire, fire, direct, and supervise the workers in the consumer's homes. The collective bargaining authorized by the statute is limited to those workforce issues not in conflict with these consumer rights. In this way collective bargaining under these statutes is:
- a. Far more limited in scope than in other public sector contexts;
  - b. Focused on workforce-wide issues relating to public efforts to improve the recruitment and retention of a workforce available to consumers within the overall program, rather than on the relations of any particular worker and any particular consumer-employer; and
  - c. Structured to reflect the policy goal of making consumer-directed care more meaningful by ensuring access to a broader and more qualified potential workforce.
- (iv) *Designating the Appropriate Public Agency or Official to Engage in Collective Bargaining.* Given that the purpose of the collective bargaining under these statutes is to allow the state to better set conditions to govern the home care workforce crucial to important public programs, the statutes ensure that the appropriate state interests and policy makers are represented in the collective bargaining. Many statutes create a governmental home care council, whose structure ensures significant consumer representation and the participation of the relevant governmental policy-making officials. This reflects that the state's collective bargaining positions should reflect both the perspectives and interests of consumers and the of the relevant policy-making officials who are responsible for the public programs in question. Other statutes permit the collective bargaining to be conducted under the direct supervision of the governor or his/her designees.

Whatever the details of the bargaining structure, it is obviously important for successful collective bargaining that the worker representatives can engage and reach agreements with those who have significant policymaking authority in the subject areas of bargaining, or at least with those empowered to act on behalf of those policymaking officials. Bargaining agreements, after all, are binding public policy determinations.

- (v) *The Use of Pre-Existing Public Sector Collective Bargaining Statutes.* All of the statutes in question to some degree use the structures and provisions of pre-existing public sector collective bargaining statutes (expressly cross referencing those statutes and modifying them as they are to be applied in this distinct context). This practice of extending pre-existing public sector collective bargaining statutes to cover these new relations (with appropriate modifications) provides the important benefit of using the pre-existing agencies, personnel, and closely related institutions and rules, all drawn from a closely analogous context, to effectuate the relevant arrangements:
- a. *The General Appropriateness of Using Public Sector Bargaining Statutes.* Public sector labor relations statutes have as their purpose the structuring of bargaining between the public authority and the representatives of a workforce providing services to public programs over how public policy and authority should be best exercised with regard to that workforce. Its goal is to provide processes to ensure the reasonable accommodation of interests so as to achieve workforce productivity and morale consistent with effective public administration of public programs. With appropriate modifications, that is the purpose of the home care collective bargaining processes at issue.
  - b. Put simply, application of the public employee collective bargaining model reflects that collective bargaining here concerns state public policies and practices that govern home care worker employment standards, and that reflect the state's interest in building and maintaining an adequate and quality workforce to provide in-home, consumer-directed services to consumers within state programs. Therefore, the most analogous context is that of public sector labor relations – where statutes are designed to account for how public policy and public authority should and should not accommodate workforce interests.
  - c. *The Inappropriateness of Private Sector Labor Relations Statutes.* In contrast private sector labor relations statutes focus on the issue of how to channel and regulate economic conflicts that can involve the use of economic weaponry such as strikes and lockouts. The goal is not to attain socially desirable bargaining outcomes, but to both preserve and regulate the powers of the parties to resolve their conflicting interests through economic force. This has little to do with the vision of home care bargaining we have been discussing.
  - d. *Practical Aspects of Using the Public Sector Bargaining Model.* Practical aspects of using this model include:

- (i) *The Use of Expert Labor-Relations Agencies.* The expert governmental labor relations agency that normally administers public sector labor relations statutes is generally given authority to do so with respect to these home care worker collective bargaining systems. Such agencies have expertise in the processes through which the workforce may, if it chooses, designate a representative and in the practical administration of collective bargaining systems.
  - (ii) *The Use of Public Sector Processes for Designating Representatives.* Statutes have generally prescribed the methods through which the workforce can choose whether to designate a representative, usually following public sector examples, although often adapting those examples to account for distinct aspects of this workforce.
  - (iii) *Contracts and Dispute Resolution Processes.* These collective bargaining systems often provide that the contracts which result from collective bargaining and the dispute resolution systems associated with resolving collective bargaining disputes are to be given similar effect as in other public sector contexts. Public sector dispute resolution systems are particularly appropriate models (although with some possible modifications) because they usually account for the importance of reaching reasonable and equitable resolutions without economic conflict, as well as the importance of legislative review under various circumstances.
  - (iv) *No Right to Strike.* All of these statutes make clear that the home care workers are not being granted any right to strike, regardless of whether public employees have any such right generally under the state public employee labor statute. This is significantly different from the labor relations rules of the National Labor Relations Act, where the right to strike is expressly protected and where there have been significant strikes involving home care agency employees. As noted above, these home care workers, as long as not employed by private-entity employers, would not be subject to the NLRA).
- e. *The Issue of Treating a Government Entity as “Employer for Collective Bargaining Purposes.”* In order to expand the coverage of relevant public sector collective bargaining statutes to include home care collective bargaining, state home care statutes have often used



“shorthand” terminology to the effect that the relevant government entity will be considered “the employer” of these home care workers “solely for purposes of collective bargaining.” This reflects that virtually all pre-existing collective bargaining statutes define their processes as applying to “employees” and “employers.” In that sense, the role of the public entity responsible for bargaining to further the public’s interest in the home care workforce is analogous to that of a public employer under the public sector bargaining statute.

But the statutory language makes clear the limited consequences intended. This designation *does not mean that the employees should be treated as public employees for any other legal purposes.* Indeed, some statutes have particularly emphasized that these workers will not be considered governmental employees for purposes of tort liability, and that these workers are being granted no rights to public employee benefits or benefit programs, no rights to civil service or other job security protections, and no rights to any other statutory benefits that have been made generally available to public employees.

As the experience of these programs has demonstrated, passage of these statutes has not resulted in unintended entitlements to public employee benefits. What they have accomplished is that the state has empowered itself to better build the more stable and professional workforce needed to successfully deliver more reliable consumer-hired and consumer-directed in-home care. That accomplishment will provide substantial benefits to both the dedicated workforce providing this vital service and to the persons with disabilities and elderly persons who rely on the skills, availability and reliability of that workforce for their care, autonomy and ability to remain in their homes and communities.



**STATE OF CONNECTICUT**  
**Executive Order No. 10**  
**Working Group**

Issues for consideration

**I. Definition of Bargaining Unit**

- A. all personal care attendants (PCA's) or only those who provide services under programs administered by Department of Social Services and Department of Developmental Services?

-need to limit collective bargaining agreement (CBA) to areas of substantial state activity

-PCA work outside subsidies is non-bargaining unit work

- B. single statewide unit or allow carve-out units?

-single unit – single CBA

-reduce incentive for union raiding

-can amend statute in future if needed

**II. Union selection/certification/decertification**

- A. current Executive Order designates union “so long . . . [as it] . . . complies with its responsibilities.”

-need to afford PCA's periodic option to select different representative (or no representative) without undue disruption

-window to petition for new/no representative: 30 day period in year of CBA expiration and/or 3 years

- B. process administered by “impartial party” at petitioner's cost or by State Board of Labor Relations (SBLR)?

- Executive Order currently provides for impartial party at petitioner's cost

-cost, experience, application of existing administrative law

**III. Collective Bargaining**

- A. Negotiable/non negotiable (illegal) subjects of bargaining.  
Executive Order 10 currently requires “meet & confer” over:

1. quality and availability of personal care assistance services
2. recruitment and retention
3. standards for compensation
4. state payment procedures
5. training, personnel development, other opportunities

B. Potential illegal subjects

1. pension, health care, total compensation
2. consumer's right to select, hire, schedule, train, direct, supervise, and terminate
3. scope of grievance procedure (ex. remedy as to consumer)

C. Impasse procedures

-mandatory interest arbitration or fact finding with recommendation to legislature and/or governor?

-right to strike?

D. Incorporation of statutory framework

-State Employee Relations Act (SERA); Municipal Employee Relations Act (MERA); Connecticut private act (CGS 31-10) et seq

-forum to administer statute – State Board of Labor Relations (SBLR)

-limitation of SBLR authority to order relief (e.g. bargaining orders only, no orders as to consumers)

IV. Union dues/agency fee

-Ceiling on dues and if so, flat or percentage?

-Dues checkoff procedure

-Notice to PCA's re agency fee option (*Chicago Teachers v. Hudson*, 475 U.S. 292 (1986))

**2009 - 2011**

**COLLECTIVE BARGAINING  
AGREEMENT**

Between

**HOME CARE COMMISSION**

And

**SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 503, OPEU**

TABLE OF CONTENTS

ARTICLE 1 – PARTIES TO THE AGREEMENT ..... 1

ARTICLE 2 – RECOGNITION ..... 1

ARTICLE 3 – TERM OF AGREEMENT ..... 1

ARTICLE 4 – COMPLETE AGREEMENT ..... 1

ARTICLE 5 – SEPARABILITY ..... 2

ARTICLE 6 – NO STRIKE/NO LOCKOUT ..... 2

ARTICLE 7 – UNION RIGHTS ..... 2

ARTICLE 8 – PAYROLL/VOUCHER SYSTEMS ..... 4

ARTICLE 9 – NO DISCRIMINATION ..... 5

ARTICLE 10 - OREGON HOME CARE COMMISSION REGISTRY AND REFERRAL  
SYSTEM (OHCC RRS) ..... 5

ARTICLE 11 – GRIEVANCE PROCEDURE ..... 8

ARTICLE 12 – HEALTH PLAN ..... 9

ARTICLE 13 – WORKERS’ COMPENSATION ..... 10

ARTICLE 14 – WAGES ..... 10

ARTICLE 15 – MILEAGE AND PUBLIC TRANSPORTATION REIMBURSEMENT ..... 11

ARTICLE 16 – TIME OFF ..... 11

ARTICLE 17 – TASK LIST OF AUTHORIZED SERVICES ..... 12

ARTICLE 18 – TEMPORARY CONSUMER ABSENCES ..... 13

ARTICLE 19 – WAGE OVERPAYMENTS ..... 13

ARTICLE 20 – HEALTH AND SAFETY ..... 13

LETTER OF AGREEMENT - ARTICLE 7 – UNION RIGHTS ..... 15

LETTER OF AGREEMENT - ARTICLE 16 –TIME OFF ..... 16

LETTER OF AGREEMENT - ARTICLE 20 – HEALTH AND SAFETY ..... 17

LETTER OF AGREEMENT - TRAINING ..... 18



**JOINT INTRODUCTORY STATEMENT TO COLLECTIVE BARGAINING  
AGREEMENT**

The parties to this Collective Bargaining Agreement affirm the commitment of the Home Care Commission and the Service Employees International Union, Local 503, OPEU to maintain a partnership based on principles of mutual respect, courtesy and dignity.

We acknowledge that this is a unique employer-employee relationship that also requires collaboration with consumers, their family members, DHS/AAA staff and advocates. It is our intent to create an atmosphere where those same principles of respect, courtesy and dignity apply to all of those partnerships.



## **ARTICLE 1 – PARTIES TO THE AGREEMENT**

This Agreement is entered into between Service Employees International Union, Local 503, OPEU (Union) and the Home Care Commission (Employer) acting through the Department of Administrative Services (DAS).

## **ARTICLE 2 – RECOGNITION**

**Section 1.** The Employer recognizes the Union as the exclusive bargaining representative for all Homecare Workers (Employees) represented by the Union as listed in Section 2.

**Section 2.** The Employer and the Union have established a single bargaining unit that consists of:

All full-time, part-time, hourly, and live-in publicly funded Homecare Workers employed through the Employer, who are Client-Employed Providers (CEPs), Spousal Pay Providers, State Plan Personal Care for seniors and people with disabilities, and providers in the Oregon Project Independence (OPI) Program, and for whom compensation is paid by Department of Human Services (DHS) or other public agency that receives money from DHS.

All other Homecare Workers, including those employed by other employers, and supervisors are excluded.

**Section 3.** When there has been a determination of the Employment Relations Board to modify the bargaining unit listed in Section 2 of this Article or when the Parties reach mutual agreement to modify, negotiations will be entered into as needed or as required by law.

## **ARTICLE 3 – TERM OF AGREEMENT**

### **Section 1.**

- a) This Agreement shall become effective on the date of the last signature by representatives of DAS and the Union on the complete agreement after full acceptance by the Parties, and expires on June 30, 2011.
- b) Either party may give written notice during the one hundred and eighty (180) day period preceding the expiration of the Agreement of its desire to negotiate a successor Agreement.
- c) Negotiations shall commence at a mutually agreeable date after receipt of such notice.

**Section 2.** This Agreement shall not be opened during its term except by mutual agreement of the Parties, by proper use of Article 5, Separability, or as otherwise specified in the Agreement.

## **ARTICLE 4 – COMPLETE AGREEMENT**

**Section 1.** Pursuant to their statutory obligations to bargain in good faith, the Employer and the Union have met in full and free discussion concerning matters in “employment relations” as defined by ORS 243.650(7). This Agreement incorporates the sole and complete agreement between the Employer and the Union resulting from these negotiations. The Union agrees that the Employer has no further obligation during the term of this Agreement to bargain wages, hours, or working conditions except as specified below.

**Section 2.** The Parties recognize the full right of the Employer to issue rules, regulations and procedures and that these rights are diminished only by the law and this Agreement, including interpretative decisions which may evolve pursuant to the proper exercise of authority given by the law or this Agreement.

**Section 3.** The Employer agrees to bargain over any change(s) it proposes to make to mandatory subjects of bargaining not covered by the Agreement pursuant to the Public Employee Collective Bargaining Act (PECBA). Changes to any of the terms and conditions contained in the Agreement may be made by mutual agreement or as otherwise allowed by ORS 243.702.

#### **ARTICLE 5 – SEPARABILITY**

In the event that any provision of this Agreement is at any time declared invalid by any court of competent jurisdiction, declared invalid by final Employment Relations Board (ERB) order, made illegal through enactment of federal or state law or through government regulations having the full force and effect of law, such action shall not invalidate the entire Agreement, it being the express intent of the Parties hereto that all other provisions not invalidated shall remain in full force and effect. The invalidated provision shall be subject to re-negotiation by the Parties within a reasonable period of time from either party's request.

#### **ARTICLE 6 – NO STRIKE/NO LOCKOUT**

**Section 1.** During the term of this Agreement, the Union, its members and representatives agree not to engage in, authorize, sanction or support any strike, slowdown or other acts of curtailment or work stoppage.

**Section 2.** The Employer agrees that, during the term of this Agreement, it shall not cause or initiate any lockout of Employees.

**Section 3.** This Article does not apply to the consumers' sole and undisputed rights provided in the law, including the selection and termination of employment of the Employee.

#### **ARTICLE 7 – UNION RIGHTS**

**Section 1. Bulletin Boards.** The Union shall be allowed to provide and maintain a bulletin board or share space on an existing bulletin board in an area regularly accessible by represented Employees where space is deemed available by Management of the facility. Such space shall not be denied for arbitrary or capricious reasons.

**Section 2. New Member Orientation.** When an Orientation is scheduled for representable Employees, the Union will be allowed to make a twenty (20) minute presentation at a mutually agreeable time about the organization, representational status, and union benefits and to distribute and collect membership applications.

**Section 3. Union Presentations at Trainings.** The Union shall be granted twenty (20) minutes before the start of the scheduled training or after the scheduled training for Union

business. Union Presentations held before the scheduled training shall not cause a delay in the scheduled start time of the training. The Union commits to making a good faith effort to make a presentation at trainings scheduled by the Employer.

**Section 4. List and Information.** By the tenth (10<sup>th</sup>) calendar day of each month, the Union shall receive a list of all current Employees' name, address, telephone number, social security number or identification number, provider number, hours worked, gross pay, union dues, fair share payments and other deductions for the previous month's activity. The list will be provided in an agreed-upon format and transmitted electronically.

**Section 5.** The Union agrees to pay reasonable costs associated with fair share and dues deduction administration and/or system changes to accommodate fair share and/or dues deduction.

**Section 6.** The Union shall indemnify and hold the Employer or designee harmless against claims, demands, suits, or other forms of liability which may arise out of action taken by the Employer or designee for the purpose of complying with the provisions of this Article.

**Section 7. Dues Deduction.**

- a) Upon written request from the Employee, monthly Union dues plus any additional voluntary Union deductions shall be deducted from the Employee's salary and remitted to the Union. Additionally, upon written notice from the Union, authorized increases in dues in the form of special assessments shall be deducted from the Employee's salary and remitted to the Union according to this Section. Such notice shall include the amount and duration of the authorized special assessment(s). Monthly Union dues will cease, upon written notice from the Employee. All applications for Union membership or dues cancellation, which the Employer receives, shall be promptly forwarded to the Union. Employee applications for Union membership or dues cancellation, which the Union receives, shall be promptly forwarded to the Employer.
- b) Dues deduction shall continue until such time that the Employee requests cancellation of the dues deduction in writing.
- c) Upon return from any break in service of not more than twelve (12) months, reinstatement of the dues deduction shall occur for those workers who were having dues deducted immediately prior to said break in service.
- d) Dues deduction shall only occur after all mandatory and priority deductions are made in any pay period.

**Section 8. Fair Share.** All Employees in the bargaining unit who are not members of the Union shall make fair share payments in-lieu-of dues to the Union.

- a) Fair share deductions shall be made in the first full month of Employee service but shall not be made for any month in which the Employee works less than thirty-two (32) hours.
- b) Bargaining unit members who exercise their right of non-association, for example, when based on a bona fide religious tenet or teaching of a church or religious body of which such Employee is a member, shall pay an amount of money equivalent to regular monthly Union fair share dues to a non-religious charity or to another charitable organization mutually agreed upon by the Employee and the Union and such payment shall be remitted to that charity by the Employee in accordance with ORS 243.666. At

time of payment, the Employee shall simultaneously send verifiable notice of such payment to the Employer and the Union.

- c) Upon return from any break in service of not more than twelve (12) months, reinstatement of fair share deduction shall occur for those workers who were having fair share deduction immediately prior to said break in service.
- d) Fair share deductions shall only occur after all mandatory and legal deductions are made in any pay period.
- e) Fair Share Adjustment Summaries for SEIU Local 503, OPEU Home Care Members. The payroll summaries will be forwarded to the Union by the tenth (10<sup>th</sup>) calendar day of the following month. The Fair Share Adjustment Summary will reconcile the previous month's remittance with the current month's remittance. The Fair Share Adjustment Summary will be an alphabetical listing and shall show the following:
  - Name (last name first, full first name, middle initial);
  - Formatted Social Security Number (000-00-0000) or identification number;
  - Provider number;
  - Prior month deduction;
  - Current month deduction;
  - Variance (difference between prior month deduction and current month).
- f) Any additional information requested under this Section may be made available electronically to the Union.

**Section 9. List of Representatives.** The Union shall provide the Employer with a list of the names of authorized Union staff representatives and elected officers, and shall update those lists as necessary.

**Section 10. Other Deductions.** Voluntary payroll deductions made to the Union for Employee benefits shall be submitted at the same time as regular dues deductions.

No later than the tenth (10<sup>th</sup>) calendar day of each month, the Union shall receive a benefit register for each benefit listing each Employee, the amount deducted, and the purpose of the deduction.

## **ARTICLE 8 – PAYROLL/VOUCHER SYSTEMS**

**Section 1.** A properly completed voucher must be submitted for payment. A properly completed voucher is one that has been signed by the Consumer/Employer and the Homecare Worker and legibly documents the number of hours worked.

**Section 2.** The Homecare Worker may properly submit their voucher at any point after service for that pay period has been completed. Properly completed vouchers should be submitted for payment no later than fourteen (14) days of the last service date for the period in which the voucher covers, wherever possible. In no event will the Employee be denied payment for hours worked if vouchers are submitted past the fourteen (14) days.

**Section 3.** Vouchers shall be processed in the payment system within two (2) working days (excluding Oregon and Federal holidays) of the proper submission of a completed voucher by the Employee.

**Section 4.** Vouchers shall be issued no later than seven (7) calendar days from proper submission and processing of the prior pay period's voucher. Newly hired Homecare Workers shall also be entitled to receive written confirmation of the date they are authorized to begin providing services and receive their vouchers within seven (7) days from the date services began. Whenever possible, the Relief Worker shall receive their voucher prior to beginning services, but no later than seven (7) days from the date relief services began.

**Section 5.** Upon initial hire, an employee shall have the option to be paid on a monthly or bi-monthly basis regardless of the number of hours worked each month. An employee may change the option twice each calendar year.

#### **ARTICLE 9 – NO DISCRIMINATION**

**Section 1.** The Union and the Employer agree not to engage in unlawful discrimination against any Employee because of religion, sex, race, creed, color, national origin, sexual orientation, age, physical or mental disability or Union activities. Written claims of discrimination against the Employer may be submitted to the Executive Director of the Oregon Home Care Commission or designee within thirty (30) days of the date of the alleged claim to respond, with final resolution of a claim through the Bureau of Labor and Industries (BOLI) or Equal Employment Opportunity Commission (EEOC), as appropriate.

**Section 2.** This Article does not apply to the consumers' sole and undisputed rights provided in the law, including the selection and termination of employment of the Homecare Workers.

#### **ARTICLE 10 – OREGON HOME CARE COMMISSION REGISTRY AND REFERRAL SYSTEM (OHCC RRS)**

**Section 1. Inclusion in the OHCC RRS.** All employees referenced in Article 2, Section 2 will be included in the OHCC RRS.

##### **Section 2. Definitions.**

- a) **Active** – The overall condition of the provider number status designating that the Homecare Worker is available for referral.
- b) **Approved Prior to Conversion** – A detailed description of the Homecare Worker's provider number status for Homecare Workers who were approved to work prior to conversion to Oregon ACCESS. This status will be retained until their credential status is updated in Oregon ACCESS. Homecare Workers with this status may be referred on the OHCC RRS.
- c) **Approved to Work** – A detailed description of the Homecare Worker's provider number status. Homecare Workers with this status may be referred on the OHCC RRS.
- d) **Career** – A level of provider in Oregon ACCESS who has no restrictions for whom they may serve.
- e) **Provider Number** – The number assigned to an individual Homecare Worker through the Oregon ACCESS system when the DHS/SPD/AAA office approves a Homecare Worker to work.
- f) **HK – Homecare Workers** – The provider type acronym or code assigned to Homecare Workers that are members of the collective bargaining unit in Oregon ACCESS. This

acronym (or any successor acronym) in Oregon ACCESS identifies Homecare Workers in the collective bargaining unit.

- g) **Oregon ACCESS** – The computer system used by DHS/SPD/AAA to store and maintain Consumer/Employer and Homecare Worker information.
- h) **Oregon Home Care Commission Registry and Referral System** – An on-line computer system to match employers who need services in their homes to Homecare Workers who are able and willing to meet those needs. All Homecare Workers are downloaded from Oregon ACCESS into the OHCC RRS.
- i) **Restricted** – A level of provider in Oregon ACCESS who is restricted to working for specific Consumer/Employers.

**Section 3. Homecare Workers Available for Referral.** To be referred in the OHCC RRS, a Homecare Worker must:

- a) Provide written permission to release his/her information on the OHCC RRS.
- b) Have a Career, Active, Approved to Work, and HK Provider number in Oregon ACCESS. Homecare Workers with an Approved Prior to Conversion status will also be included.
- c) Have verification of the date of Orientation. Be seeking employment.

Only Homecare Workers who meet the criteria above will be available for referral in the OHCC RRS.

**Section 4. Homecare Worker Authorization to Release Contact Information.** Homecare Workers must provide signed written authorization to permit release of their contact information through the internet-based OHCC RRS. Homecare Workers must also provide signed written authorization to terminate permission to release their contact information. Homecare Workers must submit the written authorization or de-authorization to the Home Care Commission or a DHS/SPD/AAA office.

**Section 5. Homecare Workers Seeking Employment.** Homecare Workers who are seeking work are responsible for updating their availability for referral every sixty (60) days in the OHCC RRS. Homecare Workers no longer seeking employment can change their availability to work status in the OHCC RRS at any time.

**Section 6. OHCC RRS Referrals.** Referrals to consumers will be in random order based on matching. Matching is based on search criteria entered by the consumer or the consumer's representative and the profile information entered by the Homecare Worker.

**Section 7. Unavailability for Referral in the OHCC RRS due to Employment Status in Oregon ACCESS.** Homecare Workers or former Employees who have any of the following conditions in Oregon ACCESS will be unavailable for referral in the OHCC RRS.

- a) Has not provided any paid services to any Consumer/Employer in the last twelve (12) months and his/her provider number is inactivated;
- b) Has voluntarily terminated his/her provider number in Oregon ACCESS by submitting a written letter to the DHS/SPD/AAA office stating s/he will no longer be providing Homecare Worker services in Oregon;
- c) Has a restricted provider number and is limited to working for specific Consumer/Employers;

- d) Has lost his/her provider number through termination by DHS/SPD;
- e) Has failed to complete a criminal history check authorization or provide fingerprints as requested by the Department and as a result, his/her provider number has been inactivated;
- f) Has not attended Orientation within ninety (90) days, in which case his/her provider number will be inactivated; and,
- g) Has any other type of status in Oregon ACCESS that will not allow the Employee to be available for referral according to the rules of the Department.

**Section 8. Unavailability for Referral in the OHCC RRS due to Misconduct, Poor Performance, or Violation of Rule.** An Employee will not be referred in the OHCC RRS and the Employer will change his/her RRS Process Status to "Removed by OHCC" when the facts support the Employer's claim of misconduct, poor performance or other violations of the rule(s) adopted by the Employer, and this removal is a reasonable penalty for a proven offense. An investigation shall be conducted prior to ending the Employee's ability to be available for referral in the OHCC RRS; the Employee, SEIU and SPD will be notified in writing within fifteen (15) days of the decision. The Employee will have the right to Union representation during an investigatory interview. The Employee may request and be given any OHCC RRS information pertaining to that individual Employee within three (3) business days. The Employee will be informed of projected costs, if any, for gathering and providing the requested information for the purposes of making the required advance payment, as appropriate. Actual charges shall be based on actual costs incurred.

**Section 9. Employee Grievances Due to Unavailability for Referral in the OHCC RRS.** Employees no longer available for referral in the OHCC RRS due to reasons other than described in Section 10 of this Article are subject to the grievance procedure. The Employment Relations Board's (ERB) decision will be based on whether the facts support the Employer's written claim that the Employee should no longer be referred in the OHCC RRS is a reasonable penalty. If the Employer's decision is reversed, the Employee will be available for referral in the registry, provided the Homecare Worker completes and signs a new Homecare Worker Application and authorizes the release of his/her contact information in the OHCC RRS.

**Section 10. Provider Number Terminations by DHS.** A Homecare Worker whose provider number is terminated through the DHS Administrative Review Process (ARP) will be unavailable for referral in the OHCC RRS and is not subject to the grievance procedure. Should an ARP appeal result in the restoration of the provider number, the Employer will be notified of the reactivation through the DHS Oregon ACCESS system. The Homecare Worker will be available for referral in the OHCC RRS when the provider number is restored to the Active/Approved to Work/Career status in Oregon ACCESS and the Homecare Worker completes and signs a new Homecare Worker Application and authorizes the release of his/her contact information in the OHCC RRS.

**Section 11. Exclusive use of the OHCC RRS.** DHS/SPD/AAA offices will use the OHCC RRS exclusively.

## **ARTICLE 11 – GRIEVANCE PROCEDURE**

**Section 1.** Grievances are defined as acts, omissions, applications, or interpretations alleged to be violations of the terms or conditions of this Collective Bargaining Agreement.

**Section 2.** The Employer encourages, whenever possible, an informal resolution approach between the Employee and local DHS/Area Agencies on Aging (AAA) or Area Agencies on Aging and Disabilities (AAAD) representative(s) over the application of the terms and conditions of the Collective Bargaining Agreement that are within their authority to administer.

**Section 3.** Grievances shall be filed within thirty (30) calendar days of the date the grievant or the Union knows or by reasonable diligence should have known of the alleged grievance. Once filed, the Union shall not expand upon the original elements and substance of the written grievance.

Grievances shall be reduced to writing, stating the specific Article(s) alleged to have been violated, a clear explanation of the alleged violation, and the requested remedy. Grievances shall be processed in the following manner:

**Step 1.** The Union on the Grievant's behalf may submit the grievance in writing within thirty (30) calendar days to the Home Care Commission Executive Director or designee. The grievant and Union representative (designated by the Union) or the Union representative will attempt to meet with the Home Care Commission Executive Director or designee within thirty (30) calendar days following the Commission's receipt of the grievance. Such meeting, if held, may be face-to-face or via teleconference. Failure to meet will not invalidate the grievance.

The Commission designee shall respond to the grievance in writing within fifteen (15) calendar days following the Step 1 meeting or the date when the Parties agreed that such a meeting would not be necessary.

**Step 2.** No grievance may be processed under this Step which has not first been filed and investigated in accordance with Step 1 above. When the response at Step 1 does not resolve the grievance or no response is received within the fifteen (15) calendar days, a Notice of Appeal and appropriate filings may be filed in writing to the Employment Relations Board (ERB) for hearing and the Home Care Commission within forty-five (45) calendar days from the date the Step 1 response was due or received, unless the Parties mutually agree to seek alternative dispute resolution assistance. The filing shall include the formal written grievance and any related information. The ERB shall have no authority to rule contrary to, to amend, add to, subtract from, change or eliminate any of the terms of this Agreement. The Parties waive any right to appeal ERB decisions at Step 2. The decision of ERB shall be final and binding except for decisions made outside the scope of their authority as defined in this paragraph.

**Section 4. Time Limits.** The time limits specified in this Article shall be strictly observed, unless either Party requests a specific extension of time, which, if agreed to, must be stipulated in writing and shall become part of the grievance record. "Filed" for purposes of all steps shall mean date of receipt by mail, hand delivery, by facsimile (fax), or as otherwise agreed to by the Home Care Commission Executive Director, or designee, and the Union. If the Employer fails to issue a response within the time limits, the Union may advance the grievance by written notice to the next step unless withdrawn by the Union. If the Union fails to meet the specified time limits, the grievance shall be considered withdrawn and cannot be resubmitted.



**Section 5.** The Employer is not responsible for any compensation of Employees or their representative for time spent investigating or processing grievances nor any travel or subsistence expenses incurred by a grievant or Union Steward in the investigation or processing of grievances.

**Section 6.** Each party shall bear the cost of its own presentation at Step 2, including preparation and post-hearing briefs, if any.

**Section 7.** At the conclusion of the ERB proceeding, the Parties shall share cost of filing and answer fees. Neither party will request representation costs or civil penalties under ERB rules.

## **ARTICLE 12 – HEALTH PLAN**

a) **Section 1. Employer Contribution.** Effective July 1, 2009, the Employer shall contribute the following amounts for eligible employees per month:

\$477.55 for each employee enrolled in the Kaiser Permanente Medical Plan  
\$44.13 for each employee enrolled in the Kaiser Permanente Dental Plan  
\$769.52 for each employee enrolled in the Oregon Dental Service (ODS) Medical Plan  
\$39.49 for each employee enrolled in the Oregon Dental Service (ODS) Dental Plan

Effective October 1, 2009, the Employer agrees to pay the additional one percent (1%) provider tax added to medical insurance premiums for the Healthy Kids program.

For Plan Year beginning April 1, 2010 the Employer shall contribute up to an increase of eleven percent (11)% inclusive of the one percent (1%) provider tax of the composite rate for medical, vision and dental coverage for eligible Employees.

For Plan Year beginning April 1, 2011 the Employer shall contribute up to an increase of ten percent (10%) inclusive of the one percent (1%) provider tax of the composite rate for medical, vision and dental coverage for eligible Employees.

Such increase shall be based on the actual plan participation for the month prior to notice by the carriers of the new rates for the affected plan year.

**Section 2. Eligibility.** Initial eligibility shall begin thirty (30) days after the second month when an Employee has worked a minimum of eighty (80) authorized and paid hours in each of the two (2) immediately preceding months. An Employee will lose eligibility for the Employer contribution thirty (30) days after s/he fails to work a minimum of eighty (80) authorized and paid hours in each of the two (2) immediately preceding months.

**Section 3.** Employees shall not be eligible to receive the Employer contribution for health care benefits under this Article if the worker is receiving other health care benefits, except for Medicare and Veterans' benefits. For purposes of eligibility determination by the health plan administrator, the Employee must declare when receiving other health care benefits.

**Section 4.** The Union agrees to administer the health plan in accordance with this Article and the National Association of Insurance Commissioners (NAIC) acts and regulations. The Employer will pay the Union for the cost of health plan administration in accordance with the contract on health insurance administration that will be executed by the Parties.

## **ARTICLE 13 – WORKERS’ COMPENSATION**

**Section 1.** Upon receipt of Consumer/Employer request and authorization, the Employer shall provide Workers’ Compensation insurance coverage to actively employed Homecare Workers by an appropriate insurer. The Employer will ask the Department of Human Services to facilitate the distribution and collection of such authorization forms.

**Section 2.** During the covered period, the Employer acting through DAS agrees to meet quarterly, or as otherwise mutually agreed, with representatives from the Union and the designated carrier to review available data concerning claims, claims costs, and projected premium expenditures.

**Section 3.** To assure continued affordable health and Workers’ Compensation insurance is available to its members, the Union agrees to provide the best, good faith efforts to work with and support the designated insurance carrier in the areas of loss control, return to work, timely claims management and to provide and promote mandatory and/or voluntary training opportunities to its members.

## **ARTICLE 14 – WAGES**

**Section 1.** The per hour rate schedule for compensation of eligible Employees is outlined below:

<b>Activities of Daily Living</b>	<b>Hourly</b>	<b>Live-In</b>
Full Assistance	\$10.20	\$10.20
Substantial Assistance/ Minimal Assistance	\$10.20	\$10.20
Self-Management Tasks	\$10.20	\$4.55
24-Hour Availability	N/A	\$4.55

The Employee’s average hourly rate of pay will depend on the number of qualifying hours for each type of assistance provided.

### **Section 2. Relief Worker Wages**

- a) A Relief Worker is defined as a Homecare Worker who provides substitute services for either a twenty-four (24) hour live-in Homecare Worker who is taking paid time off pursuant to Article 16, Section 1 (a), or an hourly Homecare Worker. Payment to a Relief Worker substituting for a live-in provider taking time off in a twenty-four (24) hour block shall be one hundred and seventy-five dollars (\$175.00). Payment to a Relief Worker substituting for a live-in provider taking time off in a four (4) through twelve (12) hour block shall be the full assistance hourly rate. Payment to a Relief Worker substituting for an hourly Homecare Worker shall be based on the full assistance hourly rate.
- b) The wage rate for Relief work will be confirmed when the local office is notified of the need for substitute services.

**Section 3.** Twenty-four (24) hour availability pay will be made only in Consumer/Employer plans that are specifically designated as twenty-four (24) hour care plans.

**Section 4.** Twenty-four (24) hour Homecare Workers shall receive no less than sixty (60) hours a month of pay at the twenty-four (24) hour availability rate. In the event that two (2) Homecare Workers are providing services to one (1) individual Consumer/Employer in a twenty-four/five (24/5), twenty-four/two (24/2) setting, the hours/pay will be divided on a pro rata basis.

**Section 5.** If an employee's voucher is not processed timely pursuant to Article 8, Section 3, upon request of the employee, the SPD/AAA office will provide a letter noting when the voucher was authorized for payment and the payment amount. Provision of a letter to the employee does not create any additional financial liability for the Employer, DHS or its designee for any reason.

#### **ARTICLE 15 – MILEAGE AND PUBLIC TRANSPORTATION REIMBURSEMENT**

Homecare Workers shall be reimbursed for eligible personal vehicle miles authorized for service-plan-related non-medical transportation at a rate of forty cents (\$.40) and effective October 1, 2007, forty-eight and one-half cents (\$.485) per mile for the term of this Agreement.

DHS/AAA or AAAD will reimburse Homecare Workers for the actual cost incurred for preauthorized public transportation when needed to accompany a Consumer/Employer.

#### **ARTICLE 16 – TIME OFF**

**Section 1. Live-in Providers.** Live-in providers shall accrue one (1) paid day (defined as twenty-four (24) hours) for every month of work up to a maximum of one hundred forty-four (144) hours.

- a) Such time off may be taken only in twenty-four (24) hour increments or in hourly increments of at least four (4) but not more than twelve (12) hours, subject to Consumer/Employer or designee authorization and available relief. Live-in providers shall use accrued paid time off before requesting and taking leave without pay. Payment for time taken by the live-in provider shall be based on the provider's average daily authorized wage rate. Payment for the Relief Worker shall be pursuant to Article 14, Wages, Section 2.
- b) If the accrued hours are not used by January 31 of each year, fifty percent (50%) of the remaining accrued hours will be paid out at the employee's average daily authorized wage rate and the balance shall be reduced by the number of hours cashed out. Vouchers claiming paid time off that are received after the cut-off dates in this Section may only receive pay up to the balance remaining available. Cash-out payment will be initiated on the first business day of February.
- c) Live-in providers who separate from service and return and provide live-in services within one (1) year from the last date live-in services were provided to a consumer shall have all unused leave credits restored.
- d) Live-in providers who convert to hourly or separate from live-in service and return as an hourly provider within one (1) year from the last date of live-in services shall be credited with their unused hours of leave up to a maximum of thirty-two (32) hours.

**Section 2. All Hourly Providers.** On July 1 of each year, all active employees who worked eighty (80) authorized and paid hours in any one (1) of the three (3) months that immediately precede July (April, May, June) shall be credited with sixteen (16) hours of paid time off. On February 1 of each year, active employees who worked eighty (80) authorized and paid hours in any one (1) of the three (3) months that immediately precede February (November, December, January) shall be credited with sixteen (16) hours of paid time off.

- a) Such time off must be utilized in eight (8) hour blocks. If the Employee's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Payment for time taken by the provider shall be based on the provider's average authorized hourly wage. Payment for the relief worker shall be pursuant to Article 14, Wages, Section 2.
- b) Employees shall be allowed to take available accumulated paid time off when their regular Consumer/Employer is temporarily unavailable for the authorized Employee to provide services to the Consumer/Employer. In all other situations, Homecare Workers who are not working during a month shall not be eligible to use paid time off in that month. As long as the affected workers remain active, such employees will be cashed out for their earned paid time off at the regular cash-out interval.
- c) If the accrued hours are not used by January 31 each year, the remaining accrued hours will be paid out at the employee's average daily authorized wage rate and the balance shall be reduced to zero (0). Cash-out payment will be initiated on the first business day of February. Employees will not be cashed out for hours they already have requested to use at the time of the cash-out. Vouchers claiming paid time off that are received after the cut-off dates in this Section will not receive pay for the time used when the paid time off already has been cashed out.

**Section 3.** Time taken off will be reflected on the time sheet. The accumulated paid time hours off will be posted on each wage statement balance.

**Section 4.** Hourly Homecare Workers who transfer to twenty-four (24) hour care shall maintain their paid time off balance and begin accruing at the twenty-four (24) hour rate effective the first of the month in which they begin their twenty-four (24) hour assignment.

**Section 5.** It is not the Homecare Worker's responsibility to find their own replacement when they take paid leave. The Consumer/Employer has the primary responsibility for selecting and hiring their providers. Paid leave must be prior authorized with the Consumer/Employer and relief must be available if necessary and the Agency must be notified in order to authorize the Relief Worker and issue a voucher as per Article 8, Payroll/Voucher Systems, Section 2. The Consumer/Employer will need to sign the paid leave voucher, as they would any other voucher. Sometimes the Consumer/Employer will require assistance from the Program Manager or designee in finding a suitable replacement provider.

## **ARTICLE 17 – TASK LIST OF AUTHORIZED SERVICES**

**Section 1.** Case managers will request that the Consumer/Employer provide a copy of approved services and maximum hours to their Homecare Worker(s). If Employee(s) do not receive a copy of a task list of authorized services and maximum authorized hours from their Consumer/Employer, they may request a written copy from the case manager, which shall be provided to the Employee within five (5) business days from the date of request.

**Section 2.** If changes in hours and/or services occur other than as a result of Consumer/Employer illness requiring alternative care or death, notice of the change shall be provided to the Employee in writing on or before the effective date of the change.

**Section 3.** The Consumer/Employer retains the right to reduce the number of hours and/or services at any time.

**Section 4.** The Home Care Commission shall develop a Live-in Homecare Worker Orientation that will be offered by the local SPD/AAA office. A live-in Homecare Worker shall complete the orientation prior to commencement of employment as a live-in provider. This Orientation shall provide Live-in Homecare Workers with information about the types of services and related trainings applicable to Live-in Homecare Workers. The Orientation will include, but is not limited to, information regarding live-in pay rates, number of hours authorized at different pay rates, and total maximum monthly authorized hours.

**Section 5.** The Homecare Worker should receive the task list prior to beginning employment from the consumer/employer. Live-in Homecare Workers should request their task list prior to beginning work if it is not received from the Consumer/Employer.

#### **ARTICLE 18 – TEMPORARY CONSUMER ABSENCES**

Live-in providers shall continue to receive the rate of pay immediately preceding the Consumer/Employer's absence from his/her home due to illness or medical treatment for up to a maximum of thirty (30) calendar days. This provision is predicated on the expectation that the Consumer/Employer will be returning home within that thirty (30) day period.

#### **ARTICLE 19 – WAGE OVERPAYMENTS**

**Section 1.** Overpayments in wages resulting from Consumer/Employer or provider error shall be repaid at no more than five percent (5%) of the Employee's pay that is based on hours paid until repaid in full. If the Employee leaves his/her employment as a Homecare Worker before the overpayment has been fully recovered, the remaining maximum amount may be deducted from the Employee's final check(s).

**Section 2.** An Employee who disagrees with the determination that an overpayment has been made may grieve the determination through the grievance procedure.

#### **ARTICLE 20 – HEALTH AND SAFETY**

**Section 1.** When gloves and masks are not available at the Consumer/Employer's residence, the Employee may request from the local DHS/AAA or AAAD location and receive a sufficient amount to address assessed Consumer/Employer needs on a monthly basis. Non-latex, non-powdered gloves will be provided where there is a demonstrable need, including those relating to allergic reactions to latex and/or powder. Requests by the Employees for safety equipment other than the gloves and masks that are routinely provided shall be in writing and shall be provided subject to local DHS/AAA or AAAD management approval. All such requests will be responded to by Program Managers or designee in each office within twenty (20) calendar days from the receipt of the written request.

**Section 2.** Employees shall have access to information on communicable diseases, blood-borne pathogens, and universal precautions through the local DHS/AAA or AAAD office. Such information shall be made available at New Homecare Worker Orientations, and will also be made available by Program Managers or designee in each office, upon request.

**LETTER OF AGREEMENT**  
**ARTICLE 7 – UNION RIGHTS**

Starting three (3) months after the execution of this collective bargaining agreement or three (3) months after the Union authorizes payment to the Department of Human Services for the systems development and testing work to effect the deduction changes below, whichever is later, the Parties agree to the following procedures for Union deductions.

- All Union dues, fair share payments, charitable contributions made in lieu of dues and Issues Fund assessments shall be based on a service period (defined as the calendar month in which services are authorized and provided) and taken from all checks for the service period in question, provided sufficient funds are available.
- All other current Union deductions, including but not limited to, Citizen Action for Political Education (CAPE) contributions shall be based on a service period and shall be deducted from the first check issued for the service period in question provided sufficient funds are available.
- This Letter of Agreement shall not have any effect on tax deductions, which will continue to be on a payment date basis (i.e., date payment is issued).
- For Homecare Workers who authorize CAPE contributions prior to the implementation of this Letter of Agreement, deductions shall be made in accordance with those authorizations and shall be based on the hourly deduction system in effect when those authorizations were signed. CAPE authorizations made after the implementation date of this letter shall be based on flat dollar monthly deductions.
- Deductions pursuant to this Letter of Agreement shall be remitted to the Union pursuant to the provisions in Article 7, Section 7 of the collective bargaining agreement.
- Pursuant to Article 7, Section 5, the Union agrees to pay reasonable costs associated with fair share and dues deduction administration and/or system changes to accommodate fair share and/or dues deduction.
- The Union shall indemnify and hold the Employer or designee harmless against claims, demands, suits, or other forms of liability which may arise out of actions taken by the Employer or designee for the purpose of complying with the provisions of this Letter of Agreement.

This LOA will sunset on June 30, 2011.

**LETTER OF AGREEMENT**  
**ARTICLE 16 –TIME OFF**

The Parties agree to continue a pilot project that will apply to Live-in Homecare Workers (seven (7)-day service only). The pilot program shall be in accordance with the following:

- A Live-in Homecare Worker who is separated from service due to his/her Consumer/Employer no longer being eligible for the in-home service program may apply for a one hundred percent (100%) cash-out of unused paid time off.
- The Live-in Homecare Worker submits a completed SDS 2310 to the local office.
- If such cash-out is made, the Employees' remaining paid time off balances shall be reduced to zero (0).
- Payment will be initiated upon verification that the Homecare Worker has met the above criteria.

This LOA and pilot program will sunset on June 30, 2011 whether or not a successor collective bargaining agreement for 2011-2013 has been reached.

This agreement is non-precedent setting and cannot be referenced in any other forum except successor negotiations for this bargaining unit.



**LETTER OF AGREEMENT**  
**ARTICLE 20 – HEALTH AND SAFETY**

The Employer and the Union agree to jointly develop a list of free and low-cost flu shots available around the state. Both parties agree to publicize this information on their websites and in other materials available to Homecare Workers.

**LETTER OF AGREEMENT**  
**TRAINING**

It is the Employer's intent to maintain the Home Care Commission's Training Committee as a Steering Committee to make recommendations to the Commission related to training. The Committee shall consist of the following members:

1. Four (4) representatives from the Home Care Commission or designated by the Commission
2. One (1) representative from the Department of Human Services
3. Four (4) representatives from SEIU/HCW

The Commission may invite other appropriate partners, as necessary or as requested by the Committee members, to attend the meeting(s) to provide their expertise on training-related topics/issues.

The Committee will be kept informed of the training budget and the expenditures for training provided to Homecare Workers and/or Consumer/Employers.

In the event that SEIU disagrees with a recommendation from the Training Committee to the HCC, SEIU will be invited to submit a "minority report" for consideration by the Commission.

**Committee Tasks:**

- Prioritize training needs;
- Recommend training to improve Homecare Worker and Consumer/Employer Safety;
- Recommend training topics that cover specialty areas that are a concern to Homecare Worker's, and Consumer/Employer's;
- Evaluate the effectiveness of training provided;
- Recommend marketing incentive programs to increase Homecare Worker participation in the training program.

**Committee Goals**

- Provide Homecare Workers with skill-building opportunities to enhance the services received by Consumer/Employers in a safe and efficient manner.
- To empower Consumer/Employers with the knowledge and skills to effectively direct their services and manage their Employees.

**Homecare Worker Attendance at Trainings**

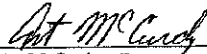
Subject to available funding and where the Home Care Commission agrees with the recommendations of the Training Committee, active Homecare Workers will be paid for actual hours in attendance at Home Care Commission sponsored training.

**Union Presentations**

The Union shall be granted twenty (20) minutes before scheduled trainings for Union business. Such meetings shall not cause a delay in the scheduled start time of the trainings. The Union commits to making a good faith effort to make a presentation at trainings scheduled by the Employer.

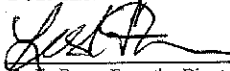
Signed this 6<sup>th</sup> day of November, 2009, at Salem, Oregon.

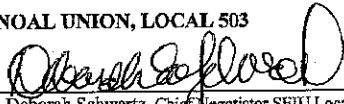
FOR THE HOME CARE COMMISSION:

  
Art McCurdy  
State Labor Relations Manager


  
Cheryl Miller, Executive Director  
Home Care Commission

FOR THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 503

  
Leslie Frane, Executive Director SEIU Local 503

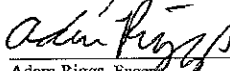
  
Deborah Schwartz, Chief Negotiator SEIU Local 503

  
Abby Solomon, Care Providers Director SEIU Local 503


  
Linda Burgin, President SEIU Local 503


  
Beverly Mackey, Bargaining Team Chair Local 99

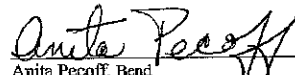
  
Gini Griensowic, Bargaining Team Co-Chair Local 99

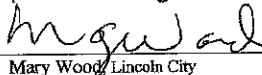
  
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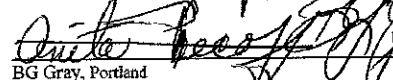
  
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Alice Redding, Rainier

  
Leanne, Camas Valley

  
Anita Pecoff, Bend

  
Mary Wood, Lincoln City

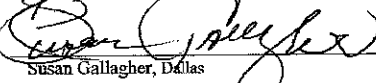
  
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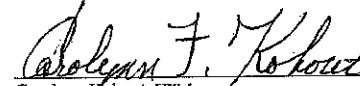
  
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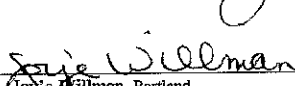
  
Bobbie Sotiri, North Bend

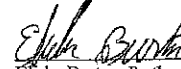
  
Phyllis Wills, Hillsboro

  
Irina Nasteka, Portland

  
Susan Gallagher, Dallas

  
Carolyn Kohout, Hillsboro

  
Joyce Willman, Portland

  
Elisha Burton, Portland

## HOME CARE COMMISSION

**410.600 Definitions for ORS 410.600 to 410.625.** As used in ORS 410.600 to 410.625:

- (1) "Activities of daily living" includes but is not limited to the following:
  - (a) Bathing and personal hygiene;
  - (b) Dressing and grooming;
  - (c) Eating;
  - (d) Mobility;
  - (e) Bowel and bladder management; and
  - (f) Cognition.
- (2) "Area agency" has the meaning given that term in ORS 410.040.
- (3) "Commission" means the Home Care Commission established and operated pursuant to section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.625.
- (4) "Elderly person" has the meaning given that term in ORS 410.040.
- (5) "Home care services" means assistance with activities of daily living and self-management provided by a home care worker in the home of an elderly person or person with a disability.
- (6) "Home care worker" means a person:
  - (a) Who is hired directly by an elderly person or person with a disability who receives moneys from the Department of Human Services for that purpose;
  - (b) Whose compensation is paid in whole or in part by the department, an area agency or other public agency that receives moneys from the department for that purpose; and
  - (c) Who provides either hourly or live-in home care services.
- (7) "Person with a disability" has the meaning given that term in ORS 410.040.
- (8) "Self-management" includes but is not limited to the following activities, other than activities of daily living, required by an individual to continue living independently in the individual's own home:
  - (a) Medication and oxygen management;
  - (b) Transportation;
  - (c) Meal preparation;
  - (d) Shopping; and
  - (e) Client focused general household work. [2001 c.901 §1; 2003 c.14 §177; 2007 c.70 §178]

**410.602 Home Care Commission; membership; rules.** (1) The Home Care Commission is created, consisting of nine members appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members shall be elderly persons or persons with disabilities who are receiving or who have received home care services. One member shall be appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

- (a) Governor's Commission on Senior Services;
- (b) Department of Human Services;
- (c) Oregon Disabilities Commission; and
- (d) Oregon Association of Area Agencies on Aging and Disabilities.

(2) The members shall be appointed for terms of three years. A member is eligible for reappointment and may serve no more than three consecutive terms. When making appointments to the commission, the Governor may consider recommendations from the entities listed in subsection (1) of this section and other organizations representing the interests of elderly persons and persons with disabilities.

(3) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The commission shall exercise all powers necessary to effectuate the purposes of ORS 410.600 to 410.625.

(5) The Governor shall select annually from the membership of the commission a chairperson who serves at the pleasure of the Governor. The chairperson or majority of the members of the commission then in office shall have the power to call regular or special meetings of the commission. The commission shall meet at a place, date and hour determined by the commission.

(6) Members of the commission shall be paid compensation and expenses as provided in ORS 292.495 from such funds as may be available to the commission.

(7) Meetings of the commission shall be open and public in accordance with ORS 192.610 to 192.690. Records of the commission shall be open and available to the public in accordance with ORS 192.410 to 192.505. The commission shall meet regularly with the executive director of the Home Care Commission to make recommendations and set policy, to approve or reject reports of the executive director, to adopt rules and to transact other business.

(8) A quorum of the commission shall consist of a majority of the members of the commission then in office. All decisions of the commission shall be made by a majority of all the members then in office.

(9) The commission shall, in accordance with ORS chapter 183, adopt and enforce rules to carry out the provisions of ORS 410.600 to 410.625.

(10) The commission is not subject to ORS 291.050 to 291.060.

(11) Members of the commission are officers of the state and the commission is a state commission for purposes of ORS 30.260 to 30.300 and 278.120 and ORS chapter 180.

(12) The chairperson may sign, on behalf of the commission, contracts or agreements that the commission authorizes or is required to execute. [2001 c.901 §2; 2007 c.70 §179; 2007 c.797 §3]

**410.604 Duties of commission; executive director.** (1) The Home Care Commission shall ensure the quality of home care services by:

(a) Establishing qualifications for home care workers with the advice and consent of the Department of Human Services as the single state Medicaid agency;

(b) Providing training opportunities for home care workers and elderly persons and persons with disabilities who employ home care workers;

(c) Establishing and maintaining a registry of qualified home care workers;

(d) Providing routine, emergency and respite referrals of home care workers;

(e) Entering into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the commission; and

(f) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to (e) of this subsection.

(2)(a) The commission shall enter into an interagency agreement with the department to contract for a department employee to serve as executive director of the commission. The executive director shall be appointed by the Director of Human Services in consultation with the Governor and subject to approval by the commission, and shall serve at the pleasure of the Director of Human Services. The commission may delegate to the executive director the authority to act on behalf of the commission to carry out its duties and responsibilities, including but not limited to:

(A) Entering into contracts or agreements; and

(B) Taking reasonable or necessary actions related to the commission's role as employer of record for home care workers under ORS 410.612.

(b) The commission shall enter into an interagency agreement with the department for carrying out any of the duties or functions of the commission, for department expenditures and for the provision of staff support by the department.

(3) When conducting its activities, and in making decisions relating to those activities, the commission shall first consider the effect of its activities and decisions on:

(a) Improving the quality of service delivered by home care workers; and

(b) Ensuring adequate hours of service are provided to elderly persons and persons with disabilities by home care workers.

(4) The commission has the authority to contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property in its own name. [2001 c.901 §3; 2007 c.70 §180; 2007 c.797 §4]

**410.606 Referral of qualified individuals on commission registry.** The Department of Human Services, an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission. [2001 c.901 §4]

**410.608 Selection of home care worker; right to terminate employment; eligibility determination made by Department of Human Services.** (1) An elderly person or a person with a disability who hires a home care worker has the right to select the home care worker, including a family member.

(2) An elderly person or a person with a disability who hires a home care worker has the right to terminate the employment of the home care worker at any time and for any reason.

(3) The Department of Human Services shall determine the eligibility of an elderly person or a person with a disability to receive home care services under the Medicaid program and state-funded long term care services. [2001 c.901 §5; 2007 c.70 §181]

**410.610** [1981 c.183 §1; 1987 c.428 §27; 1989 c.721 §50; renumbered 124.050 in 1995]

**410.612 Collective bargaining.** (1) For purposes of collective bargaining under ORS 243.650 to 243.782, the Home Care Commission is the employer of record for home care workers.

(2) Notwithstanding subsection (1) of this section, home care workers may not be considered for any purposes to be an employee of the State of Oregon, an area agency or other public agency.

(3) The Oregon Department of Administrative Services shall represent the commission in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of home care workers. The department is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the commission and the Department of Human Services. [2001 c.901 §6]

**410.614 Rights of home care workers.** Notwithstanding ORS 243.650 (19) and (20), the Home Care Commission shall be considered a public employer and home care workers shall be considered public employees governed by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Home care workers do not have the right to strike. [2001 c.901 §7]

**410.620** [1981 c.183 §2; renumbered 124.055 in 1995]

**410.625 Authority of commission; budget.** (1) In carrying out its duties under ORS 410.600 to 410.625, the Home Care Commission may:

(a) Enter into an interagency agreement or a contract with any state agency for the performance of the commission's duties or the leasing of office space;

(b) Provide nonemployee compensation to home care workers or prospective home care workers who attend training sessions approved or sponsored by the commission;

(c) On behalf of an elderly person or a person with a disability who hires a home care worker through the Home Care Commission registry, elect workers' compensation coverage or arrange for health insurance coverage, including group coverage, for the person's home care workers; and

(d) As prescribed by rule, charge fees to and collect fees from persons who attend training sessions sponsored by the commission and who currently are not home care workers.

(2) The commission and the Department of Human Services shall confer as to the amount of funds necessary to carry out the duties and activities of the commission, and the department shall include the agreed upon amount in the Governor's budget request to the Legislative Assembly.

(3) The commission may apply for and receive gifts and grants from any public or private source.



(4) The commission may award grants from funds appropriated by the Legislative Assembly to the department for allocation to the commission or from funds otherwise available from any other source for the purpose of carrying out the duties of the commission under ORS 410.600 to 410.625. [2007 c.797 §2; 2009 c.11 §51]

**410.630** [1981 c.183 §3; renumbered 124.060 in 1995]

**410.640** [1981 c.183 §4; 1983 c.434 §3; renumbered 124.065 in 1995]

**410.650** [1981 c.183 §5; 1983 c.434 §1; 1983 c.740 §139; renumbered 124.070 in 1995]

**410.660** [1981 c.183 §6; renumbered 124.075 in 1995]

**410.670** [1981 c.183 §7; 1987 c.428 §28; renumbered 124.080 in 1995]

**410.680** [1981 c.183 §8; 1985 c.651 §1; renumbered 124.085 in 1995]

**410.690** [1981 c.183 §9; 1983 c.434 §2; 1985 c.651 §2; renumbered 124.090 in 1995]

**410.700** [1981 c.183 §10; renumbered 124.095 in 1995]

## **Article XV, Section 11 of Oregon State Constitution**

**Section 11. Home Care Commission.** (1) **Ensuring High Quality Home Care Services: Creation and Duties of the Quality Home Care Commission.** (a) The Home Care Commission is created as an independent public commission consisting of nine members appointed by the Governor.

(b) The duties and functions of the Home Care Commission include, but are not limited to:

(A) Ensuring that high quality, comprehensive home care services are provided to the elderly and people with disabilities who receive personal care services in their homes by home care workers hired directly by the client and financed by payments from the State or by payments from a county or other public agency which receives money for that purpose from the State;

(B) Providing routine, emergency and respite referrals of qualified home care providers to the elderly and people with disabilities who receive personal care services by home care workers hired directly by the client and financed in whole or in part by the State, or by payment from a county or other public agency which receives money for that purpose from the State;

(C) Provide training opportunities for home care workers, seniors and people with disabilities as consumers of personal care services;

(D) Establish qualifications for home care workers;

(E) Establish and maintain a registry of qualified home care workers;

(F) Cooperate with area agencies on aging and disability services and other local agencies to provide the services described and set forth in this section.

(2) **Home Care Commission Operation/Selection.** (a) The Home Care Commission shall be comprised of nine members. Five members of the Commission shall be current or former consumers of home care services for the elderly or people with disabilities. One member shall be a representative of the Oregon Disabilities Commission, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Governor's Commission on Senior Services, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Oregon Association of Area Agencies on Aging and Disabilities, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Senior and Disabled Services Division, (or a successor entity, for as long as a comparable entity exists).

(b) The term of office of each member is three years, subject to confirmation by the Senate. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. A member is eligible for reappointment and may serve no more than three consecutive terms. In making appointments to the Commission, the Governor may take into consideration any nominations or recommendations made by the representative groups or agencies.

(3) **Other Provisions – Legal Duties and Responsibilities of the Commission.** (a) The Home Care Commission shall, in its own name, for the purpose of carrying into effect and promoting its functions, have authority to contract, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

(b) When conducting any activities in this Section or in subsection (1) of this section, and in making decisions relating to those activities, the Home Care Commission shall first consider the effect of its activities and its decisions on improving the quality of service delivery and ensuring adequate hours of service are provided to clients who are served by home care workers.

(c) Clients of home care services retain their right to select the providers of their choice, including family members.

(d) Employees of the Commission are not employees of the State of Oregon for any purpose.

(e) Notwithstanding the provisions in paragraph (d) of this subsection, the State of Oregon shall be held responsible for unemployment insurance payments for home care workers.

(f) For purposes of collective bargaining, the Commission shall be the employer of record of home care workers hired directly by the client and paid by the State, or by a county or other public agency which receives money for that purpose from the State. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the Commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration as the method of concluding the collective bargaining process. Home care workers shall not have the right to strike.

(g) The Commission may adopt rules to carry out its functions. [Created through initiative petition filed Nov. 10, 1999, and adopted by the people Nov. 7, 2000]

**Note:** The deadlines to subsections (1), (2) and (3) of section 11, except the periods in subsections (2) and (3), were a part of the measure submitted to the people by initiative petition (Measure No. 99, 2000) and adopted by the people Nov. 7, 2000.

**Note:** Section 11 was submitted to the voters as sections 1, 2 and 3 and added to the Constitution but not to any Article therein by Measure No. 99, 2000.

**Note:** In Measure No. 99, 2000, subsection (1)(a) and (b)(A) to (F) were designated as section 1 (A) and (B)(1) to (6); subsection (2)(a) and (b) as section 2 (A) and (B); and subsection (3)(a) to (g) as section 3 (A) to (G). The reference to subsection (1) of this section was a reference to Section 1 above, and the reference to paragraph (d) of this subsection was a reference to subsection (D) of this section.

**Note:** In Measure No. 99, 2000, the period in subsection (1)(b)(F) appeared as a semicolon, and there was no period in subsection (3)(e).



**Enrolled**  
**House Bill 3618**

Sponsored by Representative DEMBROW, Senator MORRISETTE; Representatives BARKER, BARNHART, BOONE, BUCKLEY, CLEM, DOHERTY, FREDERICK, GELSER, GREENLICK, HOLVEY, KAHL, MATTHEWS, NATHANSON, ROBLAN, STIEGLER, VANORMAN, WITT, Senators DEVLIN, MONROE, ROSENBAUM, SHIELDS (Presession filed.)

CHAPTER .....

AN ACT

Relating to home care workers; creating new provisions; amending ORS 410.600, 410.604, 410.606 and 656.039; and declaring an emergency.

Whereas home care workers and personal support workers provide essential services to seniors, persons with physical disabilities and persons experiencing a developmental disability or mental illness; and

Whereas the state has a duty to provide workers' compensation coverage to home care workers and personal support workers who receive funding from the state; and

Whereas the Legislative Assembly does not intend to compromise the resources and choices available to seniors, persons with physical disabilities, persons experiencing a developmental disability or mental illness or the family members of seniors, persons with physical disabilities or persons experiencing a developmental disability or mental illness; and

Whereas seniors, persons with physical disabilities, persons experiencing a developmental disability or mental illness and the family members of seniors, persons with physical disabilities and persons experiencing a developmental disability or mental illness have a right to choose among available services, activities and purchases, including adult support services; and

Whereas the Legislative Assembly does not intend to reduce the amount or scope of those services, activities and purchases or to compromise the services, activities and purchases currently available to persons who receive care from a home care worker or personal support worker who is currently registered in the registry maintained by the Home Care Commission; now, therefore,

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Sections 2 and 3 of this 2010 Act are added to and made a part of ORS 410.600 to 410.625.**

**SECTION 2. The Legislative Assembly finds and declares that the interest and welfare of the public are served by the Home Care Commission that operates in accordance with section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.625 and also are served by operations that:**

- (1) Do not compromise the resources of elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses;**

(2) Do not compromise the ability of elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses to choose from among services, activities and purchases, including adult support services; and

(3) Do not reduce the amount and scope of the services, activities and purchases, including adult support services, available to elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses.

**SECTION 3.** (1) The Home Care Commission shall create a Developmental Disabilities and Mental Health Committee.

(2) The committee shall provide information and make recommendations to the commission on:

(a) Methods of improving the quality of services available to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses;

(b) Means of ensuring that an adequate amount of services are available to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses; and

(c) All the duties and functions under ORS 410.600 to 410.625 as those duties and functions pertain to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses, including but not limited to:

- (A) Qualifications for personal support workers;
- (B) Registration of personal support workers;
- (C) Referrals for routine, emergency and respite care;
- (D) Training opportunities for personal support workers; and
- (E) Collective bargaining.

(3) The commission shall consider the recommendations of the committee. When the commission does not follow the recommendations of the committee, the commission shall inform the committee of the reasons for not following the recommendations.

(4) The commission shall appoint members to the committee. In appointing members to the committee, the commission shall include at least one:

(a) Consumer of services, activities or purchases available to persons with developmental disabilities;

(b) Consumer of services, activities or purchases available to persons with mental illnesses;

(c) Family member of a person with a developmental disability;

(d) Family member of a person with a mental illness;

(e) Advocate for persons with developmental disabilities or mental illnesses;

(f) Personal support worker;

(g) Representative from an agency that assists persons with developmental disabilities or mental illnesses in finding and arranging resources for home care services; and

(h) Representative from a support services brokerage that assists persons with developmental disabilities or mental illnesses in finding and arranging resources for home care services.

**SECTION 4.** ORS 410.606 is amended to read:

410.606. (1) Notwithstanding ORS 410.600, for purposes of this section:

(a) "Activities of community inclusion" includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.

(b) "Adult support services" means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual's own home or the individual's family's home or to fully participate in community life or work, that:

(A) Complement existing services, activities or purchases available to the individual;

(B) Are designed, selected and managed by the individual or the individual's legal representative;

(C) Are provided in accordance with an individualized plan; and

(D) Allow individuals to choose and have control over services and life goals.

(c) "Home care services" means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker for an elderly person or a person with a disability.

(d) "Home care worker" means:

(A) A person:

(i) Who is hired directly by an elderly person or a person with a physical disability or by a parent or guardian of an elderly person or a person with a physical disability;

(ii) Who receives moneys from the Department of Human Services for the purpose of providing care to the elderly person or the person with a physical disability;

(iii) Whose compensation is funded in whole or in part by the department, an area agency or other public agency; and

(iv) Who provides either hourly or live-in home care services; or

(B) A personal support worker.

(e) "Person with a disability" means a person with a physical disability, developmental disability or mental illness.

(f) "Personal support worker" means a person:

(A) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;

(B) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;

(C) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and

(D) Who provides home care services in the home or community.

(g) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses.

(2) The department [of Human Services], an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

(3) The department shall collect:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry maintained by the commission;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

(4) If necessary to collect the information required by subsection (3) of this section:

(a) The department shall request the required information from any agency or support services brokerage that provides or arranges payroll services for home care workers; and

(b) The agency or support services brokerage shall provide the department with the requested information.

(5) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.

(6) The department:

(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and

(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505.

**SECTION 5.** (1) The amendments to ORS 410.606 by section 4 of this 2010 Act become operative on October 1, 2010.

(2) Notwithstanding subsection (1) of this section, the Department of Human Services and any agency and support services brokerage that provides or arranges payroll services for home care workers may take any action necessary before the operative date specified in subsection (1) of this section to enable the department, agency and support services brokerage to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department, agency and support services brokerage by the amendments to ORS 410.606 by section 4 of this 2010 Act.

**SECTION 6.** ORS 410.600 is amended to read:

410.600. As used in ORS 410.600 to 410.625:

(1) **“Activities of community inclusion” includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.**

[(1)] (2) **“Activities of daily living” includes but is not limited to the following:**

- (a) Bathing and personal hygiene;
- (b) Dressing and grooming;
- (c) Eating;
- (d) Mobility;
- (e) Bowel and bladder management; and
- (f) Cognition.

(3) **“Adult support services” means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual’s own home or the individual’s family’s home or to fully participate in community life or work, that:**

(a) **Complement existing services, activities or purchases available to the individual;**

(b) **Are designed, selected and managed by the individual or the individual’s legal representative;**

(c) **Are provided in accordance with an individualized plan; and**

(d) **Allow individuals to choose and have control over services and life goals.**

[(2)] (4) **“Area agency” has the meaning given that term in ORS 410.040.**

[(3)] (5) **“Commission” means the Home Care Commission established and operated pursuant to section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.625.**

[(4)] (6) **“Elderly person” has the meaning given that term in ORS 410.040.**

[(5)] (7) **“Home care services” means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker [in the home of] for an elderly person or a person with a disability.**

[(6)] (8) **“Home care worker” means:**

(a) A person:

[(a)] (A) **Who is hired directly by an elderly person or a person with a physical disability [who] or by a parent or guardian of an elderly person or a person with a physical disability;**



(B) Who receives moneys from the Department of Human Services for *[that purpose]* **the purpose of providing care to the elderly person or the person with a physical disability;**

*[(b)]* (C) Whose compensation is *[paid]* **funded** in whole or in part by the department, an area agency or other public agency *[that receives moneys from the department for that purpose];* and

*[(c)]* (D) Who provides either hourly or live-in home care services; **or**

**(b) A personal support worker.**

*[(7)]* (9) "Person with a disability" *[has the meaning given that term in ORS 410.040]* **means a person with a physical disability, developmental disability or mental illness.**

(10) "Personal support worker" means a person:

(a) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;

(b) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;

(c) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and

(d) Who provides home care services in the home or community.

*[(8)]* (11) "Self-management" includes but is not limited to the following activities, other than activities of daily living, required by an individual to continue living independently in the individual's own home:

(a) Medication and oxygen management;

(b) Transportation;

(c) Meal preparation;

(d) Shopping; and

(e) *[Client focused]* **Client-focused** general household work.

(12) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses.

**SECTION 7.** ORS 410.606, as amended by section 4 of this 2010 Act, is amended to read:

410.606. *[(1) Notwithstanding ORS 410.600, for purposes of this section:]*

*[(a) "Activities of community inclusion" includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.]*

*[(b) "Adult support services" means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual's own home or the individual's family's home or to fully participate in community life or work, that:]*

*[(A) Complement existing services, activities or purchases available to the individual;]*

*[(B) Are designed, selected and managed by the individual or the individual's legal representative;]*

*[(C) Are provided in accordance with an individualized plan; and]*

*[(D) Allow individuals to choose and have control over services and life goals.]*

*[(c) "Home care services" means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker for an elderly person or a person with a disability.]*

*[(d) "Home care worker" means:]*

*[(A) A person:]*

*[(i) Who is hired directly by an elderly person or a person with a physical disability or by a parent or guardian of an elderly person or a person with a physical disability;]*

*[(ii) Who receives moneys from the Department of Human Services for the purpose of providing care to the elderly person or the person with a physical disability;]*

[(iii) Whose compensation is funded in whole or in part by the department, an area agency or other public agency; and]

[(iv) Who provides either hourly or live-in home care services; or]

[(B) A personal support worker.]

[(e) "Person with a disability" means a person with a physical disability, developmental disability or mental illness.]

[(f) "Personal support worker" means a person:]

[(A) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;]

[(B) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;]

[(C) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and]

[(D) Who provides home care services in the home or community.]

[(g) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses.]

[(2)] (1) The Department of Human Services, an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

[(3)] (2) The department shall collect:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry maintained by the commission;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

[(4)] (3) If necessary to collect the information required by subsection [(3)] (2) of this section:

(a) The department shall request the required information from any agency or support services brokerage that provides or arranges payroll services for home care workers; and

(b) The agency or support services brokerage shall provide the department with the requested information.

[(5)] (4) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.

[(6)] (5) The department:

(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and

(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505.

**SECTION 8.** ORS 410.604 is amended to read:

410.604. (1) The Home Care Commission shall ensure the quality of home care services by:

(a) Establishing qualifications for home care workers with the advice and consent of the Department of Human Services [*as the single state Medicaid agency*];

(b) Providing training opportunities for home care workers and elderly persons and persons with disabilities who employ home care workers;

(c) Establishing and maintaining a registry of qualified home care workers;

(d) Providing routine, emergency and respite referrals of home care workers;

(e) Entering into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the commission; and

(f) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to (e) of this subsection.

(2)(a) The commission shall enter into an interagency agreement with the department to contract for a department employee to serve as executive director of the commission. The executive director shall be appointed by the Director of Human Services in consultation with the Governor and subject to approval by the commission, and shall serve at the pleasure of the Director of Human Services. The commission may delegate to the executive director the authority to act on behalf of the commission to carry out its duties and responsibilities, including but not limited to:

(A) Entering into contracts or agreements; and

(B) Taking reasonable or necessary actions related to the commission's role as employer of record for home care workers under ORS 410.612.

(b) The commission shall enter into an interagency agreement with the department for carrying out any of the duties or functions of the commission, for department expenditures and for the provision of staff support by the department.

(3) When conducting its activities, and in making decisions relating to those activities, the commission shall first consider the effect of its activities and decisions on:

(a) Improving the quality of service delivered by home care workers; *[and]*

(b) Ensuring adequate hours of service are provided to elderly persons and persons with disabilities by home care workers[.]; **and**

**(c) Ensuring that services, activities and purchases that are purchased by elderly persons and persons with disabilities other than home care services, including adult support services, are not compromised or diminished.**

(4) The commission has the authority to contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property in its own name.

**SECTION 9.** ORS 656.039 is amended to read:

656.039. (1) An employer of one or more persons defined as nonsubject workers or not defined as subject workers may elect to make them subject workers. If the employer is or becomes a carrier-insured employer, the election shall be made by filing written notice thereof with the insurer with a copy to the Director of the Department of Consumer and Business Services. The effective date of coverage is governed by ORS 656.419 (3). If the employer is or becomes a self-insured employer, the election shall be made by filing written notice thereof with the director, the effective date of coverage to be the date specified in the notice.

(2) Any election under subsection (1) of this section may be canceled by written notice thereof to the insurer or, in the case of a self-insured employer, by notice thereof to the director. The cancellation is effective at 12 midnight ending the day the notice is received by the insurer or the director, unless a later date is specified in the notice. The insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the director.

(3) When necessary the insurer or the director shall fix assumed minimum or maximum wages for persons made subject workers under this section.

(4) Notwithstanding any other provision of this section, a person or employer not subject to this chapter who elects to become covered may apply to an insurer for coverage. An insurer other than the State Accident Insurance Fund Corporation may provide such coverage. However, the State Accident Insurance Fund Corporation shall accept any written notice filed and provide coverage as provided in this section if all subject workers of the employers will be insured with the State Accident Insurance Fund Corporation and the coverage of those subject workers is not considered by the State Accident Insurance Fund Corporation to be a risk properly assignable to the assigned risk pool.

(5)(a) The Home Care Commission created by ORS 410.602 shall elect coverage on behalf of clients of the Department of Human Services **or the Oregon Health Authority** who employ home care workers to make home care workers subject workers if the home care worker is *[paid]* **funded** by the state on behalf of the client.

(b) As used in this subsection, "home care worker" has the meaning given that term in ORS 410.600.

**SECTION 10.** (1) The amendments to ORS 410.600, 410.604, 410.606 and 656.039 by sections 6 to 9 of this 2010 Act become operative on January 1, 2011.

(2) Notwithstanding subsection (1) of this section, the Home Care Commission may take any action necessary before the operative date specified in subsection (1) of this section to enable the commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the commission by the amendments to ORS 410.604 and 656.039 by sections 8 and 9 of this 2010 Act.

**SECTION 11.** ORS 410.606, as amended by sections 4 and 7 of this 2010 Act, is amended to read:  
410.606. (1) The Department of Human Services, an area agency, *[or]* other public agency **or support services brokerage** shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

*[(2) The department shall collect:]*

(2) **To facilitate the development and maintenance of the registry maintained by the commission and any training opportunity offered by the commission, and to meet the requirements of providing workers' compensation, the department, area agencies, other public agencies and support services brokerages shall report to the commission:**

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry *[maintained by the commission]*;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

(3) If necessary to collect the information required by subsection (2) of this section:

(a) The *[department]* **commission** shall request the required information from **the department or any agency or support services brokerage** that provides or arranges payroll services for home care workers; and

(b) The **department, agency or support services brokerage** shall provide the *[department]* **commission** with the requested information.

*[(4) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.]*

*[(5) The department:]*

*[(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and]*

*[(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505.]*

**SECTION 12.** (1) The amendments to ORS 410.606 by section 11 of this 2010 Act become operative on July 1, 2013.

(2) Notwithstanding subsection (1) of this section, the Home Care Commission, the Department of Human Services, area agencies, other public agencies and support services brokerages may take any action necessary before the operative date specified in subsection (1) of this section to enable the commission, the department, area agencies, other public agencies and support services brokerages to exercise, on and after the operative date specified

in subsection (1) of this section, all the duties, functions and powers conferred on the commission, the department, area agencies, other public agencies and support services brokerages by the amendments to ORS 410.606 by section 11 of this 2010 Act.

**SECTION 13.** This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 23, 2010

.....  
Chief Clerk of House

.....  
Speaker of House

Passed by Senate February 23, 2010

.....  
President of Senate

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

.....  
Governor

Filed in Office of Secretary of State:

.....M,....., 2010

.....  
Secretary of State





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T 860 246-6400  
[www.arcct.org](http://www.arcct.org)

February 6, 2012

Dawn Lambert, Chair  
Personal Care Attendant Quality Home Care Workforce Council  
Department of Social Services  
25 Sigourney Street  
Hartford, CT 06106-5033

Dear Ms. Lambert:

I am writing regarding the work of the Personal Care Attendant Quality Home Care Workforce Council and ask that you not only share this letter with all Council members, but ensure that it becomes a part of the Council's record of outside comment.

The Arc Connecticut supports actions that will increase the budgets of individuals with intellectual and developmental disabilities who self direct funds and hire their own staff. The right to self determination is one that cannot be impeded by the decisions of the Council and we therefore ask that your debate and recommendations prioritize protecting the rights and opportunities of individuals with disabilities of all kinds. Any reductions or dilutions of budgets, or actions that otherwise force a reduction or dilution in the supports an individual is able to purchase by increasing unit costs, will inevitably lead to reduced independence, increased seclusion and reduced opportunity to work, worship and live full and integrated lives in their communities.

I am happy to discuss opportunities to enhance opportunity for individuals with intellectual and developmental disabilities and the quality of support and care overall.

Thank you for your time and consideration.

Regards,

A handwritten signature in black ink, appearing to read 'Nora Duncan', written over a large, faint circular watermark or stamp.

Nora Duncan  
Executive Director









**State of Connecticut**  
**GENERAL ASSEMBLY**  
STATE CAPITOL  
HARTFORD, CONNECTICUT 06106-1591

January 31, 2012

Chairman Murphy,

Enclosed please find the video and written testimony you requested from Senator Markley and Rep. Sampson's Informational Hearing on the Governor's Executive Orders 9 & 10. Please feel free to contact either with any further questions you might have at 860-240-0381 or 860-240-8389.

Sincerely,

Senator Joe Markley  
Representative Rob Sampson

# State Senator Joe Markley

&

# State Representative Rob Sampson

House and Senate GOP Informational Hearing on Executive Orders 9 & 10

November 10<sup>th</sup>, 2011

1. **Sen. Joe Markley** (*Introduction*)
2. **State Rep. Rob Sampson** (*3:11*)
3. **Cathy Ludlum** – Employer of Personal Care Attn. Manchester, CT (*6:25 – 41:09*)
4. **Michelle Tyler** – Personal Care Attendant – Owns Cuddles & Kisses in Tolland, CT (*41:32 – 52:40*)
5. **Jillian Strogoff** – Personal Care Attendant Hartford, CT (*51:52 – 54:14*)
6. **Stephen Mendelsohn** – Disability Rights Advocate (*54:20 – 1:26:10*)
7. **Andrew Markowski** – CT State Director – National Federation of Independent Business (NFIB) (*1:26:33 – 1:54:40*)
8. **Jeanne Milstein** – State Child Advocate (*1:54:50 – 2:00:20*)
9. **Deborah G. Stevenson** – Constitutional Law Attorney & Chief Counsel We the People of Connecticut Inc. (*2:00:42-2:23:55*)
10. **Sharon Denson** – West Hartford resident who relies on the services of personal care attendants (*2:25:09 – 2:31:45*)
11. **Estelle Stevenson** – CT State Coordinator – We The People Foundation for Constitutional Education (*2:32:12 – 2:34:26*)
12. **Stanley Emond** – Cheshire resident whose parents require the services of caregivers (*2:34:40-2:36:38*)
13. **Debbie Barisano** – Personal care attendant testifying on behalf of the late Phyllis Ziotnick, who required the services of PCAs (*2:36:49 – 2:42:40*)
14. **Joe Velky** – Constitutional Advocate (*2:43:20 – 2:45:50*)
15. **Linda Garamella-Fusco** – Shelton Resident who is a daycare provider (*2:46:53 -2:50:00*)
16. **Claude Holcomb** – Independent living advocate (*2:50:42 – 2:55:40*)

House and Senate Republicans submitted the video of the 11/10/2011 Hearing on Executive Order 9 & 10 as testimony: <http://ct-n.com/ondemand.asp?ID=7156>

House & Senate Republicans Informational Hearing on Executive Orders 9 & 10 (Date Recorded: 11/10/2011)



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**TESTIMONY ON EXECUTIVE ORDER 10**  
**NOVEMBER 10, 2011**

Senator Markley, Representative Sampson, distinguished guests, good morning, and thank you for the opportunity to speak with you today.

My name is Cathy Ludlum, and I am here to express my strong concerns about Executive Order 10. I have 23 years of experience as an employer of personal assistants, and I am a participant in the Personal Care Assistance Waiver. There are many reasons why I think the Quality Home Care Workforce Council and the union that will follow will be harmful both to PCAs and to their employers with disabilities. I described the reasons in my testimony for the hearing on HB 6486, so I will not reiterate everything here. These two points bear repeating, however:

- **Trust** — Before I would consider working with 1199/SEIU, I must believe that there is a way for us to work together in an atmosphere of mutual respect and trust. Since 2009, the SEIU has made numerous strategy blunders that have prevented trust from developing. The fact that this Executive Order was created *without any input* from the disability community or personal assistants themselves has not increased my level of trust. Quite the opposite.
- **Cost** — At a time when Connecticut is raising taxes, consolidating agencies, and cutting programs, how can anyone even suggest that unionization itself will increase the wages of personal assistants? The math is very basic. Workers' wages will *decline* with union dues removed and nothing to show for it. This has already happened in certain Connecticut nonprofits, and in Michigan which just decertified both its daycare and personal assistants unions.

This brings us to the creation of Executive Order 10. As you can see by our stickers and posters, the disability community places enormous importance on the concept of *Nothing About Us Without Us*. No Executive Order so deeply affecting the lives of people with disabilities, senior citizens, and personal assistants should ever have been undertaken without including input from these constituencies from the start.

When I spoke to the Governor's office in August, I asked what stakeholders had been involved in the development of what was then the draft Executive Order, and I was told the Department of Social Services, the Department of Developmental Services, the Office of Policy and Management, and SEIU/1199.

I asked whether any input had been sought from Connecticut's five centers for independent living, the Connecticut Council for Persons with Disabilities, or the Connecticut Council on Developmental Disabilities. I could also have mentioned the Family Support Council and the University Center for Excellence in Disability at the University of Connecticut. All of these are State or Federal entities which could have provided valuable input from employers and their personal care attendants.

At any rate, the answer from the Governor's office was NO.

In the absence of this input, the Executive Order is fatally flawed, both in terms of getting anyone in our community to embrace it, but also in terms of content.

Here are just a few of its problems:

- The second WHEREAS refers to "non-professional services." My personal assistants *are* professionals. Most of them are not State-certified, but they are highly trained, highly skilled, and dedicated. To imply that their services are non-professional is an insult.
- The fourth WHEREAS perpetuates the stereotype that everyone on Medicaid has a low income. This ignores all the people like me, who receive PCA services through MED-Connect, the Medicaid buy-in program for people with disabilities who are employed.
- The Executive Order cites turnover as a problem, but I think some turnover is necessary and even healthy. While a 100% staffing change every month is not desirable, people should be able to advance in the directions they choose. I am concerned that unionization will create an incentive for bad employees to stay put.
- According to Section 2 (c), by 2013, the Quality Home Care Workforce Council will become an employment agency, responsible for recruiting personal assistants. First, there should be a discussion with the disability community about whether such an agency is needed. If so, should it exist within State government? If so, how will it be funded, given that our State is in fiscal distress?

- The same section mandates training for personal assistants and their employers. While there is some potential for good here, training is best done by the people who know their own needs, or family or personal assistants who are familiar with them. Many of us are put at risk if people's medical training blinds them to what we actually need. We would prefer to hire assistants with no experience who will be more responsive to us. I spoke to someone in Massachusetts, and one of his issues with the union there is the *three months* of training required of new personal assistants. Most employers do not have the luxury of waiting three months to replace an employee who needs to leave or is providing substandard care.
- While the Executive Order advocates "careful consideration" before changes are made to existing PCA programs, the timeline in the document makes this impossible. *Until today*, there has been no opportunity for public comment and no collaboration with the *primary* stakeholders. Most people realize that a thoughtful and considered strategic planning process takes months, not weeks.

I urge Governor Malloy to take today's event to heart and to rescind Executive Order 10 immediately. I agree that there should be a high-level dialogue about improving wages and benefits for personal assistants. This is not the way to go about it.

I also urge the Legislature to take measures such as those now being considered in Michigan to prevent "stealth" unionization of personal assistants and daycare providers. Of course workers should have a right to unionize, but they should also have the right to refuse unionization efforts without punishment or financial coercion. Otherwise, the system that claims to be supporting people who are oppressed will instead become their oppressor.

**Remember: Nothing About Us Without Us.**

Thank you.

## **Stop the SEIU from Hijacking Personal Assistance Services in Connecticut**

[http://www.facebook.com/home.php#!/home.php?sk=group\\_185712171462620](http://www.facebook.com/home.php#!/home.php?sk=group_185712171462620)

### **Testimony Regarding Governor Malloy's Executive Orders 9 & 10, Unionizing Day Care Workers and Personal Care Attendants, and Establishing a Personal Care Attendant Workforce Council**

My name is Stephen Mendelsohn, I am a disability advocate and an adult on the autism spectrum, and I am here to voice strong opposition Executive Orders 9 and 10. Others here today will be focusing on issues of paternalism and exclusion of people with disabilities ("Nothing About Us Without Us") in the issuing of EO 10, how unionization would lead to people with severe disabilities losing PCA hours and possibly becoming institutionalized at greater expense to the State, as well as interfering with this intimate relationship, the Governor's breach of the separation of powers as enumerated in the state Constitution, union coercion through card check intimidation and mandatory agency fees, and the breach of privacy of personal care attendants (PCAs) and day care workers whose contact information will be turned over to a labor union. All of these issues are valid and important. My focus today is to ask the question, *cui bono?* Who benefits from Executive Orders 9 and 10? The answer is clear: it is the Service Employees International Union (SEIU), which has worked in concert with the Malloy administration and has long sought to expand its union empire by meddling in self-directed home care and day care. Their goal is to force every PCA to pony up either union dues or "fair-share fees" to the union.

Last March, I testified before the Human Services Committee in opposition to HB 6486 concerning PCAs, which contained many similar provisions as EO 10. For those



who were not there or may not remember, I will restate and expand the reasons why SEIU should not be empowered to bully people with disabilities and their personal assistants with their aggressive and unsavory tactics.

I want to begin by refuting a deceptive claim made by SEIU spokesperson Deborah Chernoff last March before the Human Services Committee and more recently in the *New London Day*. She claimed that no one would be compelled to join the union under the earlier legislation and executive orders. The fact is that we do not have a right-to-work law in Connecticut; SEIU vigorously opposes representing only workers who willingly pay dues and giving individual workers the choice to do so or not. Therefore, those who do not support the union can be charged what are called "agency fees" or "fair-share fees" in lieu of dues, and be compelled to accept union "representation" if they wish to keep their jobs.

Mandatory dues can have a significant effect on PCAs and day care workers' wages. For instance, according to RewardingWork.org, in SEIU-run Massachusetts, minimum union dues for PCAs are \$6.50 per biweekly pay period. For a backup PCA working an occasional 3-hour shift at roughly \$12/hour, union dues could amount to 18% of a PCA's paycheck. There are many good reasons someone with a disability would want to hire lots of part-time PCAs, and the SEIU scheme would punish them.

PCAs, like the rest of us, deserve a right to privacy. But section 3 of EO 10 would mandate that the contact information of all PCAs become a public record available to the union. We know that in other communities, such as Fresno, CA, the SEIU has used this information to go to home care workers' homes, open their mail, and bully and intimidate people into voting for the SEIU over a rival union or no union. Do we really want to subject PCAs to SEIU intimidation? The card check provisions of both

executive orders make such intimidation even more likely, and we witnessed this last March when SEIU got hold of the PCA list and intimidated PCAs in their homes to try to get them to support HB 6486.

The SEIU's support for unfair labor practices, intimidation, and violence hardly stops here. In March 2009, the SEIU's own staff union, the Union of Union Representatives, picketed SEIU headquarters, charging SEIU with unfair labor practices as well as race and age discrimination. Melissa Pinnick, chief out-of-state SEIU organizer on this issue in Connecticut, was there with a bullhorn shouting, "How do you spell hypocrisy? S-E-I-U!" If the SEIU's organizers cannot trust their own union, why should people with disabilities, PCAs, and day care workers do so? Earlier this year, the SEIU posted to its blog a punk rock song, "Take 'Em Down" by Dropkick Murphys as the union's theme song with the lyrics, "When the boss comes callin' we gotta organize / Let 'em know / We gotta take the bastards down / Let them know / We gotta smash them to the ground ..." Who is the SEIU trying to smash to the ground here? Do we really want these purple shirts in the homes of our friends with severe disabilities?

SEIU's associations with radical and anti-American organizations also deserve examination. This past May, SEIU was heavily involved in a May Day parade in Los Angeles together with numerous Marxist and Communist organizations, and purple-shirted SEIU marchers were waving red Communist flags. Closer to home, as noted in the CPUSA's house organ, *People's World*, SEIU (and AFSCME) leaders routinely accept annual Amistad Awards from the Connecticut Communist Party and its leader, Joelle Fishman. Imagine the outrage if Tea Party leaders were found to accept awards from the Ku Klux Klan and David Duke.

Why is Governor Malloy seeking to empower a union with such an unsavory record of intimidation, coercion, even sympathy for fringe-left extremism—at the expense of people with disabilities, employees, and taxpayers?

Much as we all want better wages and benefits for PCAs and day care workers, do not drink the SEIU's toxic purple Kool-Aid—now apparently tinged with Marxist red. It makes no sense diverting limited resources to a new state agency and put union dues from low-wage PCAs into the pockets of the 322 out of 1031 SEIU employees who earn over \$75,000 a year. This is a form of "class struggle," but not the way the union would have it. Disability activists and defenders of constitutional government stopped forced unionization of PCAs in Pennsylvania after then-Governor Ed Rendell issued a similar executive order. We can and must stop it in Connecticut as well. Please work to overturn these executive orders through legislation and/or legal challenge.

Don't Mourn, Organize Against the SEIU and Executive Orders 9 and 10. We Shall Overcome.

Stephen Mendelsohn  
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New Britain, CT 06053-1532  
[smendelsohn5845@att.net](mailto:smendelsohn5845@att.net)

Sources:

<http://www.rewardingwork.org/en/State-Resources/Massachusetts/Frequently-asked-questions.aspx> "Dues equal 2% of PCA wages before taxes are taken out every pay period. There is also a minimum and maximum dues payment. **All PCAs will pay at least \$6.50/pay period** and PCAs only pay the 2% on their first 40 hours they work each week." (emphasis added)

Workers blow whistle on SEIU election fraud  
<http://www.youtube.com/watch?v=Vg06CC1vKX8>

SEIU Staff Union Pickets the SEIU! <http://www.youtube.com/watch?v=RwsVnbLruwI>

"SEIU Employees Picket Own Union Over Layoffs," San Francisco Chronicle, March 28, 2009 by Sam Hananel, Associated Press <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2009/03/28/MNIC16O7P4.DTL> "the UUR has filed unfair labor practice charges and age and race discrimination claims against the SEIU."

SEIU Blog: <http://www.seiu.org/2011/02/the-dropkick-murphys.php>

<http://countrythinker.com/home/politics/song-released-for-wisconsin-workers-we-gotta-take-the-bastards-down/> "Taken literally, the release of this song for use in a protest of legislation is essentially a call to overthrow the Wisconsin state government.... it is vastly more likely that someone would be inspired to violence by this song than [Sarah Palin's] political strategy map."

<http://www.unionfacts.com/unions/unionProfile.cfm?id=137>

"Critics Attack Malloy for Opening Door to Unionization," The Day (New London), September 26, 2011 by J. C. Reindl  
<http://www.theday.com/article/20110926/NWS12/309269958/Critics-attack-Malloy-for-opening-door-to-unionization>

Pictures of SEIU and Communists marching together:  
<http://www.ringospictures.com/index.php?page=20110501>

"Three Union Leaders to be honored at 'Keep the Ball Rolling' Event," People's World, November 28, 2009 <http://peoplesworld.org/three-union-leaders-to-be-honored-at-keep-the-ball-rolling-event/> "Three Connecticut labor leaders, Art Perry, Anna Montalvo and Gwen Mills, will be honored on Sunday, Dec. 6, with the annual Amistad Award presented by the People's World, on the occasion of the 90th anniversary of the Communist Party USA." ... "Art Perry has been an organizer and community and political activist since working at Southbury Training School as a member of New England Health Care Employees Union / District 1199 in the 1970s. His grassroots political organizing with working families has elected many progressives to local, state and federal office. He served with 1199 for 17 years, and is now Connecticut political director of SEIU 32BJ Justice for Janitors"

Labor History News, by Joelle Fishman  
<http://www.laborhistory.org/newsletterarchive?mode=PostView&bmi=733915>  
honoring Delphine Clyburn of 1199SEIU "The annual awards are presented to allies by the People's World on the occasion of the 92<sup>nd</sup> anniversary of the Communist Party USA."

November 10, 2011

Michelle Tyler  
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Testimony for Executive Order 10

Good Morning,

Working as a personal assistant on and off for the last 9 years, I feel that I am pretty connected in the disability community. Over the last year I have spoken to many employers and PCAs about the proposals for unionization of PCAs. I have yet to find any who are in favor of these proposals.

When I read an article stating that stakeholders had been consulted in creating Executive Order 10, I inquired as to how many PCAs and employers were involved, and was told NONE!

Executive Order 10 states:

**WHEREAS**, reform of the PCA waiver programs requires careful consideration of the economic impact of such reform and must ensure Connecticut's right to receive the maximum amount of federal funds to which it is entitled to receive and, therefore, should include all of the relevant stakeholders.

So why are there no PCAs on the work force council?

Another problem with the executive order is a serious misunderstanding of what PCA work is all about. To quote Executive Order 10:

**WHEREAS**, personal care attendants typically earn low wages, no benefits, no paid time off, and receive no standardized training;

**WHEREAS**, as a result, the pool of personal care attendants in this State suffers from high turnover and inconsistent quality;

In my experience turnover doesn't come from low wages, lack of benefits or training. It comes from burning out PCAs by expecting them to work 40, 50, 60, or more hours every week. A good personal assistant cares deeply, and due to the emotional nature of this work, burnout SHOULD BE expected for anyone who builds their entire life around their employer. Because of how personal this relationship is, PCAs can become emotionally drained when working full time for the same person.

The relationship between employer and PCA is unique and it should be protected. Creating a work force council is inserting a third party in the mix that will negatively affect this relationship. I anticipate that this work force council will actually reduce the number of dedicated PCAs.

I am asking that you respect the people and respect the relationship!

Good morning, I am Claude Holcomb. I am an employer for several attendants, who support me in the community. I fought for many years to leave a nursing home and have been determined since to remain in the community. In my opinion, Executive Order Ten will take Connecticut back many years to a medical model where people with disabilities were viewed as sick and in need of skilled care. We may need support to live in the community, but this support can be successfully realized through attendant services, which are directed and managed by the individuals who need such supports.

Under the current Medicaid law in America, nursing home care is guaranteed to all Americans who qualify, and home care is only an option. For the past few years, the tide has been turning toward home care. We, the recipients of home care services have been trying to get the law changed so that home care is guaranteed to all Americans who qualify for such services and nursing home care is a last option for those who need it.

Local unions, which cover healthcare workers in nursing home settings, are also aware of this trend moving toward more home care. These unions see their memberships shrinking if America stops making institutional care a mandate to fund. Naturally, they would like to preserve their membership, in part by unionizing home care workers all over the country.

I am opposed to unionizing Connecticut attendants who work in our homes. If Executive Order Ten goes forward there will no longer be a level playing field between the individual employer and the attendant. The unionization of workers almost always results in individual workers receiving more hourly pay. However, the people who require home care services will not receive an increased allotment of funding to accommodate these pay increases, because Connecticut's Medicaid waiver funding programs have caps. If attendant wages are increased, and the total pie stays the same, then a person's hours of care will need to be reduced to cover these pay increases. Many people receiving attendant services are already living on the edge. Fewer hours of support may mean they end up living in nursing homes, which would mean the total cost to Connecticut would be greater.

Unionizing attendants will also make it more difficult for a person with a disability to fire someone for abuse or neglect. Abuse or neglect perpetrated by an attendant against a person in their own home would most likely happen without the presence of witnesses. It would be one person's word against another's and the union would advocate for the attendants. If I want to terminate someone now, I need a good reason. But when attendants become unionized, I will have to defend my decision to terminate someone unaided before the employee and their union steward. My care will cease while the case is being resolved.

How will the state handle a walkout or a slow down? If my care is stopped for a strike or to resolve a grievance, there will be no one to assist me, as is the case for people supported by an administrative structure, such as a nursing home or a group home. Our independence works because we are on an equal footing with the people we hire to provide our support.

Finally, I am concerned about the intention of the two-year study outlined in Executive Order Ten, because it will allow the unions to take control over people and services that are currently saving the state large sums of money.

I urge people who are sitting here today to think about the kinds of services and supports they would want for themselves, because the decisions that result from the implementation of Executive Order Ten may help the unions and hurt the people of this state. If you are here today because a union asked you to come and lend them your support, please think about this subject as you would have it apply to yourself if you were in need of home supports to live in the community.

I believe people in the disability community in Connecticut and the governor of this state who support this bill really need to rethink unionization for attendants in Connecticut.

November 10, 2011

My name is John Beidler, I reside in Southington, CT.

The Constitution is, believe it or not, extremely popular! And this gives me a glimmer of hope. How do I know this? For everything the government does, when a constitutional question arises, politicians and pundits alike ALL try to find a way to argue that their favorite programs are "constitutional." They seem to reach for the worst, most obvious nonsense to back up their laws rather than just admit the opposite.

How many times have you heard Obama or Bush or Malloy say something like this...."look, we know this action isn't constitutional, but we need to do it anyway. The constitution is an old tired document, and we need to get with the times...so let's get on track America, get on board, and forget that constitution thing. This new way is going to be much better!"

The US & CT Constitutions don't apply to you. They don't apply to me. They don't apply to any person at all. They are documents that lay out the rules for the federal government, and rules for the state government.

But documents don't enforce themselves. It takes you to understand what those rules are, and it takes you refusing to go along with anything outside of those Constitutional limits. That's how documents are enforced.

If you want to understand why liberty is being flushed down the toilet, and at the same time, if you want to understand how to turn things around, I have one simple suggestion for you.

Look in a mirror. Because liberty begins – and ends – with you.

Might I take a moment to remind you and read the Oath of Office Administered to Members of CT Senate & CT House of Representatives.

You do solemnly swear (or affirm) that you will support the Constitution of the United States, and the Constitution of the State of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the Office of Senator or State Representative to the best of your abilities; so help you God.

Please do so!



Jillian Strogoff  
50 Haddam Street  
Hartford, CT 06106

November 10, 2011  
Testimony Concerning Executive Order 10

Good Morning Ladies and Gentleman,

I am going to make this short and to the point. I am standing up for what we believe in which is Nothing About US Without US! I can't say and emphasize any clearer than those 5 words can.

I am absolutely shocked that Governor Malloy threw this executive order into play! Honestly, wasn't there anything else more important that can use the attention of a executive order? When during the legislative session it was a bill. There were many people that testified against that bill. Where was Governor Malloy or his testimony? Even yet why wasn't somebody that represented the Governor there to testify? That bill died out.

It looks like Governor Malloy wanted to suprise us with this executive order. Why hasn't he organized meetings to talk with Employers and Employees ? He is not understanding our needs and what is important to us. Why is this so important that the Governor over stepped the Legislators to have this executive order immediatly? Why can't Governor Malloy wait until he has involved US and be more collaborated without trying to rush this through?

Nothing About US Without US!

Thank you.

Dear Legislators, Ladies and Gentlemen,

I am a licensed Family Childcare provider in the town of Tolland. I have been licensed continuously since 1995. It was recently brought to my attention that the Governor of our State is seeking to unionize workers such as myself in an attempt to bring to us collectively better benefits and rights. I am opposed to this effort and wish to share my perspective on it.

The cost for childcare in America is staggering for families and honestly I do not know of a provider that enters into the field expecting to grow wealthy. It is labor intensive and requires a great deal of patience and love for young children. The 2-1-1 service in Connecticut conducts regular availability and pricing surveys by region. All concerned can easily see what their competitors are charging for care and what the market will bear for such services. This said, the State would be of no help in securing greater pay for our childcare services.

As an independent business owner, I am entirely confident in creating and maintaining contracts of care for my client families. They are fair and yet provide me with much needed and deserved time off for vacation and holiday. My contract allows me two weeks of paid vacation and paid holidays. My client families have never begrudged my need for or right to take reasonable time off with pay. The State does not need to assist me on this.

I must abide by the State of Connecticut Daycare Licensing Regulations, but I am not an employee of the State of Connecticut. I believe it is in the best interest of family daycare providers to have freedom to set practices that affect their parent fees and personal benefits. If the Governor were interested in determining satisfaction rating among Family Daycare workers in our State, perhaps a survey would be more meaningful place to start than more government intervention.

Thank you for listening to my perspective on this matter.

Sincerely,

Jennifer L. Harris  
61 Brookmoor Road  
Tolland, CT 06084

Good morning. My name is Debbie Barisano, and I am the Founder of the Connecticut Association of Personal Assistance. It is my privilege to read this testimony on behalf of Phyllis Zlotnick, renowned disability advocate, who recently passed away. Even as her condition deteriorated, Phyllis continued to fight against the unionization of personal assistants. One of her last public acts was to submit testimony for the March 8 hearing on HB 6486. Phyllis was aware of Executive Order 10, and the points she made for that hearing still apply.

**Phyllis D Zlotnick**  
4 Hillcrest  
South Windsor, CT 06074  
pzlotnick1@yahoo.com  
860-649-6024

RE: HB 6486, AN ACT CONCERNING HOME HEALTH CARE SERVICES AND THE ESTABLISHMENT OF A PERSONAL CARE ATTENDANT WORKFORCE COUNCIL

I am a recipient of services under the State's Personal Care Assistance Program. Many individuals have asked how I and other employers of PCA's would be negatively impacted by HB 6486. Please consider my reasons for opposing this bill.

Under the current PCA program, I am allowed to self-direct my own supports within a limit number of hours as determined by my case worker. I hire employees I feel can best meet my individual needs.

You must understand that our small, but vital, Personal Care Assistance Program (operating under a Title XIX waiver) is unique from other home care programs. It was designed specifically for those with physical disabilities, many of whom are employed. Unfortunately, we are being swept in with all in-home programs under this bill.

- I do my own hiring and my own training, and I've done so for over 40 years. I don't want some faceless council training them when they don't know my needs.
- We don't want a return of the medical model. The current program is for people who want to live in the community, be as independent as possible, and rely on assistants hired and trained by us to act as our hands and legs. DSS has determined that we are capable of performing these activities. Anyone who can't direct their own care has options available to them through other stay at home programs.

- The union wants to bargain for better pay for PCA's. Where's that funding going to come from? The only place would be the hours I am given by DSS to meet my independent living needs. There isn't enough money available now to provide decent durable medical equipment (DME), so how can PCA's get a larger paycheck without my hours being cut?
- I don't want people picketing or on strike down my street the way the union does at group homes now.
- Enhanced pay for PCA's does not mean better care and union membership does not insure quality care. What's inside the heart and soul of the assistant means so much more. I've had employees over the years who also happened to be union members (1199). I had to let them go for reasons such as: 1) One left me half naked because she wasn't getting paid for her transportation time - she considered that finishing dressing me and giving me breakfast would cut into what should be her transportation time; 2) Another said NO to most of what I needed because the union said those jobs were supposed to be done by others like homemakers, health aides, nurses, etc.
- I don't want to be forced to hire only union members from the Council's "approved" list. I don't want to be told who can come into MY HOME!
- In order to qualify for this waiver, we the consumer, must be able to self-direct our needs. If this Council/Union runs the program, tells us what they will and will not do, the tail will wag the dog. I'll be told who I can hire from a select list. If there are problems between me and my PCA, I will have to await a Union decision. Who dresses and feeds me in the intervening weeks? What if they won't perform the task I need due to Union rules?

Why does the union (SEIU) want this bill so badly?? Why is all this better for me? I've had some of my aides for 15 years. They are here faithfully, knowing they're under paid, because they care about me. Currently, none of them want to join the union. If they won't join the Union, do I have to reward their loyalty by firing them?

Union labels have their purpose, but they don't necessarily belong everywhere. We are like David to the Union's Goliath. We are not companies, groups, states nor organizations. We are just individual human beings with extra needs trying to fight to be treated as such.

Phyllis Zlotnick

# Collective Bargaining Agreement 2011-2013

*by and between the*

**State of Washington and SEIU Healthcare 775NW**

*Effective July 1, 2011 through June 30, 2013*



## **Addendums and Updates are Online**

This version of the Collective Bargaining Agreement was printed in June 2011. Please refer to our union's website at <http://ip.seiu775.org> for any addendums or updates to this contract. You can also call our Member Resource Center toll-free at 1 (866) 371-3200 with any questions about your Collective Bargaining Agreement with the State of Washington.

# Table of Contents

Preamble .....	2
Article 1 Recognition .....	2
Article 2 Union Rights .....	2
Article 3 Employer Rights .....	3
Article 4 Union Membership and Union Security.....	4
Article 5 Bargaining Unit Information .....	4
Article 6 Deduction of Dues, Contributions and Fees .....	5
Article 7 Production of Agreement .....	5
Article 8 Grievance and Dispute Resolution .....	5
Article 9 Compensation.....	6
Article 10 Comprehensive Health Care Benefits .....	7
Article 11 Worker's Compensation .....	7
Article 12 Paid Time Off .....	8
Article 13 Payroll, Electronic Deposit and Tax Withholding .....	8
Article 14 No Discrimination .....	8
Article 15 Referral Registry .....	8
Article 16 Training.....	9
Article 17 Union-Management Communications Committee.....	10
Article 18 Duty To Bargain .....	11
Article 19 Consumer Rights .....	11
Article 20 Policies and Practices .....	11
Article 21 Hours Of Work .....	11
Article 22 Retirement Benefits.....	11
Article 23 Uninterrupted In-Home Care Services.....	12
Article 24 Savings or Separability Clause.....	12
Article 25 Complete Agreement.....	12
Article 26 Term Of The Agreement.....	12
Appendix A Wage Scale .....	13
Appendix B Definitions .....	13

## Preamble

This document constitutes an Agreement by and between the Governor of the State of Washington hereinafter referred to as the "Employer," and SEIU Healthcare 775NW hereinafter referred to as the "Union," and in accordance with the provisions of RCW 74.39A.270.

## Article 1 Recognition

SEIU Healthcare 775NW ("Union") is recognized as the sole and exclusive representative for all individual providers of in-home care services ("home care workers," "caregivers," or "individual providers") as defined in RCW 74.39A.240 and under the provisions of 74.39A.270, excluding supervisors, confidential employees, and all other employees. Provided there is no question concerning representation or the definition of the bargaining unit pursuant to statute and the rules of the Public Employment Relations Commission, if the Union merges with other organizations, consolidates parts of other organizations, modifies its name or makes any other similar changes, recognition by the Employer will follow as designated by SEIU Healthcare 775NW and the Service Employees International Union. The parties also recognize that other agencies and/or contractors or subcontractors of the Employer may continue to be responsible for implementation and administration of certain provisions of this Agreement as specifically provided herein or as directed by the Employer.

## Article 2 Union Rights

### 2.1 Union Representatives

The Employer shall recognize Union advocates and Union staff representatives in the course of their representational duties. The Union shall advise the State's Labor Relations Office of the names and phone numbers of Union advocates and representatives by written notice within thirty (30) days of appointment by the Union and include the nature, scope and authority granted each by the Union.

### 2.2 Access

Duly authorized representatives of the Union may have access at reasonable times to those areas of the Employer's premises that are open to the general public. Access to the Employer's premises shall be subject to the same general rules applicable to other non-employees and shall not interfere with or disturb the normal operation of the Employer. Advocates and other worker representatives shall perform representational activities or other Union business with individual providers only during the non-working time of the individual provider and shall not otherwise interfere with the work of individual providers or home care services provided.

### 2.3 Union Bulletin Boards

The Union shall have a right to bulletin board space in the offices of the Employer, its agencies, contractors, or subcontractors that individual providers necessarily frequent due to work-related business. The Union shall be solely responsible for the costs and maintenance of all bulletin boards. The Union will provide cork bulletin boards (no larger than two feet by three feet [2'x3']). The bulletin boards will be clearly marked as Union bulletin boards

and will be maintained by Union worker representatives and/or Union staff. Union communications may not be posted in any other location or agency.

The parties agree that the Union and the Employer or its agencies, contractors or subcontractors (whichever is appropriate) will discuss the location in the facility for the Union bulletin board, and if they are unable to agree on a location the Employer will attempt to remedy the situation, appropriate to their subcontracted agent. The Employer shall inform contractors and subcontractors of the rights of the Union to bulletin board space.

#### **2.4 Websites**

Websites maintained by the Aging and Disability Services Administration of the Department of Social and Health Services (ADSA/DSHS) that individual providers might reasonably access to seek employment-related information shall contain a link to the Union's website, provided that the link is in compliance with RCW 42.52.160 and RCW 42.52.180.

#### **2.5 Orientation Materials Provided by Employer**

Orientation materials distributed by the Employer, its agencies, contractors or subcontractors to individual providers shall include union membership applications and union orientation materials. Union materials distributed by the Employer shall be neutral in tone. It shall be the Union's responsibility to provide the Employer with sufficient copies of such materials for distribution during orientation and training.

#### **2.6 Access to Pay Envelopes**

The Employer agrees to include information provided by the Union in pay envelopes sent to individual providers, subject to the following conditions:

- A. The Union shall provide such materials to the Department no later than thirty (30) calendar days prior to the first day upon which the Union requests that the materials be included in pay envelopes mailed to individual providers.
- B. Except by consent of the Employer, the size and weight of such materials to be included in the pay envelopes for any pay period shall not exceed two (2) pieces of printed materials, one (1) of which may be no larger than eight and one-half inches by eleven inches (8.5"x11") and no heavier than twenty pound (20lb.) weight, and the other of which may be a pre-printed number ten (#10) or smaller return envelope of standard weight.
- C. The subject matters and contents of any materials provided shall be in conformance with RCW 42.52.160 and RCW 42.52.180.
- D. The Union agrees to reimburse the Department for any increase in postage costs arising from the inclusion of the Union materials.

### **Article 3 Employer Rights**

**3.1** It is understood and agreed by the parties that the Employer has core management rights. Except to the extent modified by this Agreement, the Employer reserves exclusively all the inherent rights and authority to manage and operate its facilities and programs. The parties agree that all rights not specifically granted in this Agreement are reserved solely to the Employer and the Employer has the right to decide and implement its decisions regarding such management rights. The wages, benefits, hours, and working conditions of bargaining unit members shall continue to

be mandatory subjects of bargaining between the parties and as provided in Article 18, Duty to Bargain.

#### **3.2 Rights Reserved to the Employer**

Examples of the rights reserved solely to the Employer, its agents and officials and to the extent these rights may be limited by other provisions of this Agreement as expressly provided herein include, but are not limited to, the right:

- A. To operate so as to carry out the statutory mandate of the Employer.
- B. To establish the Employer's missions, programs, objectives, activities and priorities within the statutory mandates.
- C. To plan, direct and control the use of resources, including all aspects of the budget, in order to achieve the Employer's missions, programs, objectives, activities and priorities; however, this paragraph shall not be interpreted to limit the Union's right to advocate for budget allocations that may be different from what the Employer may propose.
- D. To manage, direct and control all of the Employer's activities to deliver programs and services.
- E. To develop, modify and administer policies, procedures, rules and regulations and determine the methods and means by which operations are to be carried out.
- F. To establish qualifications of individual providers and reasonable standards of accountability except as otherwise limited by this Agreement under Article 16, Training.
- G. To make and execute contracts and all other instruments necessary or convenient for the performance of the Employer's duties or exercise of the Employer's powers, including contracts with public and private agencies, organizations or corporations and individuals to pay them for services rendered or furnished.
- H. To develop the means and processes necessary for the establishment of a referral registry of individual providers and prospective individual providers.
- I. To determine the management organization, including recruitment, selection, retention and promotion to positions not otherwise covered by this Agreement.
- J. To extend, limit or contract out any or all services and/or programs of the Employer except as otherwise limited under Article 18, Duty to Bargain and specific to contracting out of bargaining unit work.
- K. To take whatever actions the Employer deems necessary to carry out services in an emergency. The Employer shall be the sole determiner as to the existence of an emergency in keeping with a reasonable and prudent standard.
- L. To modify any and all operations and work requirements in order to more efficiently and effectively provide services as a result of any existing and/or new laws, rules and regulatory provisions of state and/or federal origin which may in any way affect the Employer's ability to provide services.
- M. To determine the method, technological means and numbers and kinds of personnel by which operations are undertaken.
- N. To maintain and promote the efficiency of public operations entrusted to the Employer.

**3.3** The above enumerations of Employer rights are not inclusive and do not exclude other Employer rights not specified, including but not limited to those duties, obligations or authority provided under RCW 74.39A.250 through RCW 74.39A.280 and to the extent not

otherwise expressly limited by this Agreement. The exercise or non-exercise of rights retained by the Employer shall not be construed to mean that any right of the Employer is waived.

**3.4** No action taken by the Employer with respect to a management right shall be subject to a grievance or arbitration procedure or collateral action/suit, unless the exercise thereof violates an express written provision of this Agreement.

### **3.5 Fulfillment of Statutory Obligation**

As provided under RCW 74.39A.270 (6) this Agreement expressly reserves:

The right of the Washington State Legislature to make programmatic modifications to the delivery of state services under RCW 74, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided.

Nothing contained in this Agreement shall be construed as to subtract from, modify or otherwise diminish these rights in any manner.

## **Article 4 Union Membership and Union Security**

### **4.1 Union Security**

Not later than thirty (30) days following the first pay period of employment, or the effective date of employment, whichever is later, every home care worker covered by this Agreement shall, as a condition of employment and continued eligibility to receive payment for services provided, become and remain a member of the Union paying the periodic dues, or for nonmembers of the Union, the fees uniformly required. The Employer shall cause the State as payor, but not as the employer, to enforce this union security provision according to RCW 41.56.113 by deducting from the payments to bargaining unit members the dues required for Union membership, or, for nonmembers of the Union, a fee equivalent to the dues. Any individual provider home care workers who fail to satisfy this obligation shall, within thirty (30) days of written request by the Union to the Employer, be provided written notice of their discontinued eligibility to receive payment for services until such a time as this obligation is satisfied. Subsequent to written notice being issued, any such individual provider home care worker who fails to satisfy this obligation within thirty (30) days shall have his or her eligibility to receive payment from the State for providing services discontinued.

### **4.2 Right of Non-Association**

It is the intent of this Agreement that the provisions of this Article safeguard the right of home care workers to remain non-members based on bona fide religious tenets or teachings of a church or religious body of which such home care worker is a member. Such home care workers shall pay an amount of money equal to the periodic dues and fees uniformly required under Section 4.1, to a nonreligious charity or to another charitable organization mutually agreed upon by the home care worker affected and the Union. On at least a quarterly basis, the home care worker shall furnish written proof to the Union that such payment has been made. Any home care worker who claims a right of non-association based on bona fide religious tenets or teachings of a church or religious body of which such home care worker is a member shall provide written notice of that claim to the Union, and shall, at the same time, provide the Union with the name(s) and address(es) of one (1) or more nonreligious charitable organizations to which the home

care worker is prepared to make alternative payments in lieu of the payments required by this union security provision.

Within sixty (60) days after it receives written notice of a claimed right of non-association, the Union shall provide a written response to the worker, setting forth the position of the Union as to both:

- A. The eligibility of the home care worker to make alternative payments; and
- B. The acceptance or rejection by the Union of the charitable organization(s) suggested by the home care worker.

Any disputes regarding the eligibility of the home care worker to make alternative payments and/or if the Union and home care worker are unable to mutually agree to a nonreligious charitable organization, the matter shall be forwarded to the Public Employment Relations Commission (PERC) for final disposition.

### **4.3 Indemnify and Hold Harmless**

The Union and each home care worker authorizing the assignment of pay for the purpose of payment of union dues hereby agree to undertake to indemnify and hold harmless from all claims, demands, suits or other forms of liability that shall arise against the Employer for or on account of any deduction made from the pay of such home care worker. This paragraph shall not be interpreted to limit the right of the Union to use the Dispute Resolution Process contained in this agreement to collect dues, fees, and contributions owed.

## **Article 5 Bargaining Unit Information**

### **5.1 Information to be Provided**

The Employer shall provide information about the bargaining unit and each member of the bargaining unit and shall provide this information to the Union on a regular monthly basis. Such information shall be transmitted electronically in a common, commercially-available electronic format specified by the Union, and shall include the home care worker's full name, individual provider number, cumulative lifetime hours worked as an individual provider, hours or units (day, week, or month) worked in a month for which payment has been made, home address, mailing address, home phone number, personal wireless telephone numbers, electronic mail addresses, wage rate, program or service code, amount paid during the current month of payment, union member type and deduction type, vacation (or paid time off) hours paid and vacation (or paid time off) hours forfeited.

The Employer shall make a good faith effort to provide other information to the Union, if not otherwise prohibited by force of law, including hire date, a unique home care worker identifier number, termination date, date of birth, gender, primary preferred language, relationship to consumer employer and marital status. The Employer and the Union shall coordinate to reconcile any questions about the bargaining unit information and records.

### **5.2 Collection of Additional Information**

The Employer shall amend all of the employment-related documents and forms required to be completed by individual provider home care workers so as to allow individual provider home care workers to provide the Employer with electronic mail addresses and personal wireless telephone numbers.

### **5.3 Privacy**

Unless otherwise provided for under Title 42 RCW, the following are exempt from public inspection and copying and shall not be



released by the Employer except as necessary to comply with the provisions of this Agreement:

The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of individual provider home care workers as defined in RCW 74.39A.240 and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of individual provider home care workers as defined in RCW 74.39A.240, which may be held by the Employer in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of individual provider home care workers as defined in RCW 74.39A.240.

## **Article 6 Deduction of Dues, Contributions and Fees**

### **6.1 Dues Deductions**

In accordance with RCW 41.56.113, the Employer shall cause the appropriate agency to deduct the amount of dues or, for non-members of the Union, a fee equivalent to the dues from each home care worker's monthly payment for services (paycheck or direct deposit).

### **6.2 Voluntary Deductions**

The Employer shall cause the appropriate agency to deduct voluntary contributions to one (1) union fund or committee payable to the Union from each home care worker's monthly payment for services (paycheck) upon receipt of proper authorization for such deductions from the home care worker or the Union. The Employer shall allow deductions to such a fund or committee to be made in any amount specified by an individual provider. The deductions shall be transferred to the Union monthly by electronic means.

### **6.3 Implementation Costs**

The cost of any new computer programming changes required by this Article shall be borne by the Employer. The ongoing regular cost of such deductions shall be borne by the Employer.

## **Article 7 Production of Agreement**

**7.1** The Union and the Employer shall jointly share the costs of producing and printing this Agreement in sufficient quantities for distribution to the members of the bargaining unit, and of translating it in up to ten (10) languages (other than English) most commonly spoken among members of the bargaining unit as determined by the Union, provided that the cost to the Employer shall not exceed eighty thousand dollars (\$80,000) during the life of this Agreement. Any costs over and above eighty thousand dollars (\$80,000) shall be borne exclusively by the Union.

**7.2** In addition to the actual text of the Agreement and by mutual agreement of the parties, the printed copy of the Agreement may contain introductory statements, highlights, or graphics included for the purposes of making the Agreement easier to understand and in order to provide the information most important to home care workers (such as their wage scales, benefits, and rights) in an easily-accessible, user-friendly format.

**7.3** Regarding the production of the Agreement in languages other than English and the inclusion of introductory statements, highlights, or graphics, the parties agree that all disputes regarding

the interpretation or application of this Agreement shall be determined based solely on the original English-language Agreement signed by the parties, and not upon any other language version or upon any introductory statements, highlights, or graphics.

**7.4** To the extent that the Union incurs costs associated with this Article prior to the effective date of this Agreement and not exceeding eighty thousand dollars (\$80,000), those costs shall be agreed upon and reimbursed by the Employer on or immediately after the effective date of this Agreement.

## **Article 8 Grievance and Dispute Resolution**

### **8.1 Dispute Resolution Philosophy**

The Employer and the Union commit to address and resolve issues in a fair and responsible manner at the lowest possible level, and to use mediation and conflict resolution techniques when possible. Our relationship depends on mutual respect and trust based on our ability to recognize and resolve disagreements rather than avoiding them. Prior to filing a grievance, the Union and the Employer will attempt wherever possible to resolve problems informally and not to resort to the formal grievance procedure.

### **8.2 Grievance Definition**

A grievance is defined as a contention of a misapplication or violation concerning the application or interpretation of this Agreement.

### **8.3 Grievance/Dispute Resolution Procedure**

#### **Step 1. Informal Resolution**

The home care worker and/or a Union representative may confer with the Employer's designated representative and attempt to resolve the issue informally.

#### **Step 2. Written Grievance**

If the grievance is not resolved at Step 1, the home care worker and/or Union representative shall set forth the grievance in writing including a statement of the pertinent facts surrounding the grievance, the date on which the incident occurred, the alleged violations of the Agreement, and the specific remedy requested.

The written grievance shall be submitted to the Employer within thirty (30) calendar days of the occurrence of the alleged violation or within thirty (30) calendar days of when the home care worker or the Union could reasonably have been aware of the incident or occurrence giving rise to the grievance. The written grievance shall be submitted by email.

The Employer or the Employer's designee shall meet with the grievant and his or her Union representative within fourteen (14) calendar days of receipt of the written grievance, in order to discuss and resolve the grievance. Subsequent to this meeting, if the grievance remains unresolved, the Employer will provide a written response to the grievance by email within fourteen (14) calendar days from the date the parties met to discuss the grievance. If the response does not resolve the grievance, the Union may, within fourteen (14) calendar days of receipt of the response, proceed to Step 4, Arbitration.

#### **Step 3. (Optional) Mediation**

As an alternative prior to final and binding arbitration in Step 4, if the matter is not resolved in Step 2 the parties may choose by mutual agreement to submit the matter to mediation in order to resolve the issue. The party requesting mediation of the dispute must notify the other party by email no later than fourteen (14)

calendar days of receipt by the Union of the emailed response from the Employer in Step 2. The party receiving the request for mediation must notify the other party by email within fourteen (14) calendar days of receipt of the request whether or not it agrees to mediate the dispute. If the party receiving the request does not agree to mediate the dispute, the Union may, within fourteen (14) calendar days of the email notification of the decision not to mediate, proceed to Step 4, Arbitration.

If the parties agree to mediation, they shall select a neutral mediator. Both parties shall submit a statement of their position on the issue. The mediator may also bring the parties together in person to attempt to resolve the issue.

The parties shall each pay one half (1/2) the costs or fees, if any, of the neutral mediator. Each party shall be responsible for its own costs, including the costs of representation, advocacy and the costs of that party's appointed representatives.

If the issue is successfully resolved by mediation, the decision shall be binding on all parties, and shall, unless specifically agreed otherwise, form a precedent for similar issues. If the issue is not successfully resolved through mediation, the Union may, within fourteen (14) calendar days of receipt of a written declaration of impasse or rejection of a settlement offer from either party, proceed to Step 4, Arbitration.

#### **Step 4. Arbitration**

If the grievance is not settled at Step 2 or 3, it may, within the time frames noted above, be referred by the Union to final and binding arbitration. The arbitrator shall be mutually agreed upon by the parties, or, upon failure to agree upon an arbitrator, the Union shall, within fifteen (15) calendar days of the request for arbitration, request a list of seven (7) arbitrators from the American Arbitration Association. The parties shall select an arbitrator by alternately striking names from the list of seven (7) arbitrators. A coin toss shall determine which party shall first strike.

The award of the arbitrator shall be final and binding upon both parties. The parties shall each pay one half (1/2) the costs of the arbitration, including the fees of the arbitrator and the proceeding itself, but not including the costs of representation, advocacy, or witnesses for either party. The arbitrator shall have no power to add to, subtract from, or change any of the terms or provisions of this Agreement.

#### **8.4 Time Limitations**

The parties agree that the time limitations provided in this Article are essential to the prompt and orderly resolution of any grievance, and that each will abide by the time limitations. To this end, grievances must be processed within the periods of time specified above. Days are calendar days, and will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday or holiday, the last day will be the next day that is not a Saturday, Sunday or holiday. Any grievance not properly presented in writing and within the time limits specified, or any grievance not moved to the next step within the specified time limits shall be considered to have been withdrawn. If the Employer fails to meet the time limitations specified, the Union may move the grievance to the next step. Time limitations may be extended by mutual agreement of the parties.

**The minimum pay rate is \$10.03/hour.  
You earn an additional pay increase for  
each 2,000 hours you work. Wage scale  
steps range from \$10.17 at 2,001 hours  
of work to \$11.07 at 14,001 or more  
hours of work (Article 9.1)**

## **Article 9 Compensation**

### **9.1 Wages**

Effective July 1, 2011, current home care workers will be placed on a step commensurate with their IP hours of work retroactively calculated to July 1, 2005. Bargaining unit home care workers will be paid according to the wage scale found in Appendix A. During the life of this Agreement wages shall be adjusted upward for each home care worker based upon accumulation of hours not including time spent as mentors pursuant to Section 9.2. All home care workers shall be paid strictly on an hourly basis. Except as modified by this Agreement, all home care workers shall be paid strictly according to the wage scale. Any non-hourly payment arrangements, or arrangements to pay any home care worker according to any other rate than the rates contained in Appendix A, are hereby void.

### **9.2 Mentor, Preceptor, and Trainer Pay**

Pursuant to Article 16.9, a home care worker who is assigned by the Training Partnership as a mentor, preceptor, or trainer of other home care workers or prospective home care workers shall be paid an additional one dollar (\$1.00) per hour differential in addition to his or her regular hourly wage rate, and in addition to any other differentials or adjustments, for each hour that he or she works as a mentor, preceptor, or trainer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

### **9.3 Mileage Reimbursement**

Home care workers shall be compensated for the use of their personal vehicles to provide services to their consumers (such as essential shopping and travel to medical services) authorized under the care or service plans. Such compensation shall be paid on a per-mile-driven basis at the standard mileage rate recognized by the Internal Revenue Service up to a maximum of sixty (60) miles per month per consumer. The Employer will make all necessary changes to work forms, the payroll system and the CARE tool to assure that accurate mileage can be tracked and compensated.

Home care workers providing transportation to services funded by the Home and Community Based Services (HCBS) waivers, the DDD Individual and Family Services Program, or the Veteran's Directed Home Services and identified in the consumer's Individual Support Plan, in excess of sixty (60) miles per month, will be reimbursed up to an additional maximum authorized by the case manager.

**You can get reimbursed for mileage  
(up to 60 miles per client per month)  
at the IRS rate (Article 9.3)**

## **Article 10 Comprehensive Health Care Benefits**

### **10.1 Coverage**

The Employer agrees to make periodic contributions on behalf of all home care workers covered by this Agreement to the SEIU 775 Multiemployer Health Benefits Trust Fund ("Trust") in the amount specified in Section 10.2 below.

If required to contribute to the cost of health care benefits through a payroll deduction, eligible home care workers shall provide written authorization before receiving coverage.

***If you meet eligibility requirements, you qualify for health, dental, vision, and pharmacy benefits through the SEIU Healthcare Health Benefits Trust (Article 10.1)***

### **10.2 Contributions**

The Employer shall contribute two dollars and twenty-one cents (\$2.21) per Department-paid hour worked to the Trust, effective July 1, 2011. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacations.

Contributions required by this provision shall be paid to the Trust on or before the fifteenth (15th) day of the month following the month in which service hours are paid. Contributions shall be transmitted together with a remittance form as may reasonably be required by the Trust or their designee.

Eligibility for health care benefits shall be determined solely by the Trust.

The Trust shall determine the appropriate level of contribution, if any, by eligible home care workers provided; however, that if such contribution is required to be a deduction from home care workers' paychecks performed by the State, such deduction shall be the same for each eligible home care worker and in whole dollar amounts. Ongoing costs for deduction of home care worker premiums for health care shall be paid by the Employer. At least sixty (60) days notice of changes in deduction amounts must be given to allow the Employer to implement requested changes.

### **10.3 Payroll Deductions**

With adequate advance notice of no fewer than sixty (60) days, the Employer shall perform any such premium-share payroll deductions as directed by the Trust and as authorized by any home care worker. Initial and ongoing computer programming and operation costs associated with the implementation of this Article and Section shall be paid by the Employer.

### **10.4 Purpose of Trust**

For the purposes of offering individual health care insurance, dental insurance, and vision insurance to members of the bargaining unit, the Employer shall become and remain a participating employer in the Trust during the complete life of this Agreement, and any extension thereof.

### **10.5 Trust Agreement**

The Employer and the Union hereby agree to be bound by the provisions of the Fund's Agreement and Declaration of Trust, and by all resolutions and rules adopted by the Trustees pursuant to the powers delegated. The Employer accepts the Employer Trustees of

the Fund and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Fund and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the designated Trust in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Trust. The Employer shall ask the Board of Trustees to modify the Trust Agreement, so that the Employer appoints one or more Employer Trustees. If such modification is made, the Employer shall appoint the appropriate Trustees.

### **10.6 Indemnify and Hold Harmless**

The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, the Trust shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, health care providers, vendors, insurance carriers or home care workers covered under this Agreement.

## **Article 11 Worker's Compensation**

### **11.1 Worker's Compensation Coverage**

The Employer shall provide worker's compensation coverage for all home care workers in the bargaining unit. All home care workers shall complete any required health and safety training. Costs for implementing and continuing home care worker premium deductions for worker's compensation insurance shall be paid by the Employer.

***The State pays the full cost of workers' compensation (L&I) insurance, which pays for medical bills and treatment for on-the-job injuries or illness, as well as for time-loss when you are unable to do your IP home care job (Article 11.1)***

### **11.2 Worker's Compensation Premiums**

To the maximum extent permissible by law, the home care worker premium share for worker's compensation insurance shall be paid by the Employer. The Employer may, in its sole discretion, seek a statutory change or a change in rule to accomplish this objective. If applicable laws or rules prevent the Employer from paying the premium share at any time during the life of this Agreement, or if the Employer believes in good faith that the applicable laws and rules prevent the Employer from paying the home care workers' premium share during the life of this Agreement and the Employer chooses not to exercise its discretion to seek a statutory or rule change, the Employer shall adjust each step of the wage scale established under Article 9, Compensation of this Agreement upward by an amount equivalent to the home care worker premium share for worker's compensation insurance.

### **11.3 Third Party Administrator**

The Employer shall contract with a third party administrator in order to administer the worker's compensation coverage provided to home care workers in the bargaining unit. The third party administrator shall be responsible for claims management and verification, recommending and implementing risk management procedures, and preventing worker's compensation fraud.

**You will receive one (1) hour of paid time off (PTO) for every forty (40) hours worked. PTO is capped at eighty (80) hours a year. It is the same as vacation leave (Article 12)**

## **Article 12 Paid Time Off**

Home care workers shall be eligible for paid time off (PTO). Home care workers shall accrue one (1) hour of PTO for every forty (40) hours worked. PTO hours shall cap at eighty (80) hours. In order to be eligible to be paid for PTO, a home care worker must have the consent of his or her consumer and inform a designated agent of the Employer no less than two (2) weeks before the PTO begins.

## **Article 13 Payroll, Electronic Deposit and Tax Withholding**

### **13.1 Modern Payroll System**

The State will in good faith continue the program it has initiated for implementing a modern payroll system for the purposes of calculating and making payments to individual providers.

The system will, at a minimum, be capable of collecting and reporting demographic data, including but not limited to information outlined in Article 5, Bargaining Unit Information: calculating and applying variable wage rates; combining several consumers' service hours in a single payment; adding and editing deductions at variable levels for health care premiums, taxes, union deductions, wage garnishments, and other purposes; providing web-based reporting of hours; providing for direct deposit; and providing a reasonable level of ease and cost-control in making changes to fields and/or records for individual or system-wide payments and deductions with no significant additional cost to the Employer.

### **13.2 Twice Monthly Payment**

When the State has finished installing the modern payroll system, it will initiate the process by which to convert payroll so that individual provider home care workers will be paid on a twice-monthly basis.

### **13.3 Timely and Accurate Payment**

Home care workers shall be entitled to receive timely and accurate payment for services authorized and rendered. To promote a timely and accurate payroll system, the Employer and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues.

### **13.4 Electronic Deposit**

Home care workers shall have the right to authorize electronic deposit of any payment issued to them for services or other reimbursement.

**The state withholds Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare Contributions from each home care worker's paycheck as appropriate (Article 13.5)**

## **13.5 Tax Withholding**

The Employer, at its expense, shall withhold from each home care worker's paycheck the appropriate amount of Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare contributions.

## **13.6 Changes to Payroll and Payment Systems**

Unless specifically otherwise noted in this Agreement, the Employer shall bear all costs for any changes to payroll or payment systems required to implement this Agreement, including both the costs of any initial programming changes and the ongoing costs of operating payroll and payment systems.

## **Article 14 No Discrimination**

**14.1** The Union and the Employer are mutually committed to a policy of nondiscrimination. The Employer shall not discriminate with respect to wages, hours, or terms and conditions of employment as provided for in this Agreement on the basis of race, color, physical and/or mental disability, marital status, national origin, ancestry, gender identity, sex, sexual orientation, age, political belief, faith, veterans status, citizenship status, union membership and activities and in keeping with applicable federal, state or local law.

**14.2** This Article shall not be construed as otherwise limiting or impeding the statutory right of consumers and prospective consumers to select, hire, supervise the work of, and terminate any home care worker providing services to them as provided pursuant to RCW 74.39A.270(4). Nor shall it be interpreted so as to prevent the referral registry operated by the Employer, its agencies, contractors and subcontractors, from making referrals on the basis of bona fide job-related skills (e.g. language fluency or the physical ability to lift and transfer a consumer) or legitimate consumer preferences such as gender.

## **Article 15 Referral Registry**

### **15.1 Eligibility for Referral Registry**

Any member of the bargaining unit who is seeking new consumers or additional hours, and who has completed the legally required amount of training or other training as may be determined by the Department of Social and Health Services, and who has successfully cleared a criminal background check, shall be eligible for listing on any referral registry operated by the Employer, its agencies, contractors and/or subcontractors. The Employer retains all rights not otherwise modified herein and shall be the sole determiner of eligibility requirements for all others who participate in the referral registry system.

### **15.2 Seniority Preference**

Where consumer choice factors are equal, seniority shall prevail in determining the order of referral on any referral registry operated by the Employer.

Due to language requirements and/or consumer preference factors, the registry may bypass a senior home care worker who, by virtue of seniority would be referred to a particular consumer. In such cases, the referral will be given to the most senior available home care worker who can satisfy language requirements and/or the consumer preference. Additionally, in such cases the Employer shall give the bypassed home care worker the next opportunity for referral for additional work, subject to the provisions of this Section.

This Section shall not prevent the Employer from making multiple worker referrals to the same consumer, so long as referrals are made in seniority order.

This Section specific to applications of seniority preference shall not go into effect until such time as adequate systems for tracking cumulative hours are developed, tested and implemented.

### **15.3 Removal from Referral Registry**

Once a worker is listed on the registry, he or she may only be removed from the registry for the following reasons:

- A. Upon his or her request, he or she is removed from the referral registry because he or she is not seeking additional referrals from the registry; or,
- B. Upon his or her request, he or she is temporarily removed from active status on the registry because he or she is not seeking additional referrals or more consumer hours on a temporary basis; or
- C. He or she works no hours as an individual provider for twelve (12) or more consecutive months; or,
- D. For just cause.

### **15.4 Election of Remedies**

Any request for a fair hearing to contest the removal from the referral registry by or on behalf of the individual provider or prospective individual provider, shall be considered a waiver by the affected individual provider or prospective individual provider of his or her right to file a grievance to contest the removal from the referral registry.

## **Article 16 Training**

### **16.1 Training Partnership**

Pursuant to RCW 74.39A.009 (23) and 74.39A.360, there shall be established a Training Partnership (or "Partnership"). The Training Partnership will possess the capacity to provide training, peer mentoring, workforce development, and other services to individual providers. The Employer shall become and remain a participating employer in such a Partnership during the complete life of this Agreement, and any extension thereof.

### **16.2 Partnership Agreement**

By being a participating employer during the complete life of this Agreement and any extension thereof, the Employer and the Union hereby agree to be bound by the provisions of the Partnership's Operating Agreement, and by all resolutions and rules adopted by the Trustees of the Partnership pursuant to the powers delegated. The Employer accepts the Employer Trustees of the Partnership and their duly elected successors as its representatives on the Board. The Union accepts the Union Trustees of the Partnership and their duly elected successors as its representatives on the Board. The Employer and the Union agree to cooperate with the Trustees of the Partnership in distributing benefit plan information and in obtaining and providing such census and other data as may be required by the Partnership.

### **16.3 Coverage**

The Employer agrees to make periodic contributions to the Training Partnership identified in Section 16.1, on behalf of all home care workers covered by this Agreement, in the amount specified in Section 16.4 below.

### **16.4 Contributions**

Effective July 1, 2011, the Employer shall contribute to the Partnership seventeen cents (\$0.17) per Department-paid hour worked by all home care workers covered by this Agreement. Department-paid hours shall not include consumer participation hours, training hours, paid time off or vacation.

If the State is unsuccessful in receiving approval from the Center for Medicare and Medicaid Services (CMS) for the above payment method, the parties shall meet to bargain over the amount and an alternative method of payment. Additionally, in the event any other significant change in legal training requirements occurs, the parties agree to bargain over the effects of changes.

Contributions required by this provision shall be paid to the Partnership on or before the twenty-fifth (25th) day of the month following the month for which service hours are paid. Contributions shall be transmitted together with a remittance report containing such information, in such manner, and on such form as may be required by the Partnership or its designee.

### **16.5 Minimum Basic Training Requirements**

All legally required basic training for individual providers shall be provided through the Partnership. Upon completion of the required basic training requirements, or upon termination, individual providers shall be compensated at their regular rate of pay for all hours spent in legally-required basic training.

The parties intend that all orientation and safety training occur as close to the date of hire as possible, so as to prevent the creation of any barriers to the timely provision of Medicaid benefits to consumers.

### **16.6 Minimum Continuing Education Training Requirements**

Each individual provider shall complete all legally required continuing education training through the Partnership. The continuing education requirement must be satisfied every calendar year. The purpose of continuing education is to improve and enhance the knowledge and skills of individual providers relative to the care needs of their consumer(s). Completion of all continuing education hours is a prerequisite for maintaining eligibility to work as an individual provider. Upon completion of required continuing education training, or upon termination, individual providers shall be compensated at their regular rate of pay for all hours spent in legally-required continuing education training.

### **16.7 Exemptions from Minimum Training Requirements**

All existing exemptions from minimum training requirements under law shall continue to apply to training for individual providers. The Partnership shall recognize all exemptions from required basic training for individual providers required by law.

### **16.8 Minimum Training Requirements for Exempted Individual Providers**

All individual providers currently exempted from the existing full training requirements shall continue to be required to complete their current specified requirements under law.

The Partnership shall recognize all minimum training requirements for any individual providers exempted from required basic training required by law.

Any individual provider who is exempted from basic training requirements, or any portion thereof, may voluntarily enroll, at his or her own expense, in any training offered by the Partnership for which that individual provider is otherwise eligible.

### **16.9 Mentoring**

Pursuant to RCW 74.39A.330, the Training Partnership shall offer a peer mentoring program to all new individual providers by the date specified in the statute. The purpose of the mentoring program is to provide general information about serving as an individual provider and to assist the mentee in problem solving around work related challenges faced by individual providers. Mentors will not infringe on the rights of the consumer to select, hire, fire or instruct the mentee in the performance of the individual provider's duties or with the case manager's exercise of his or her responsibilities. Mentors shall not discuss confidential information about the consumer who employs a mentee without a written release of information from that consumer. The Employer shall not be responsible for employing, paying, tracking or verifying hours of mentor work.

To be mentors, individual providers must have completed all applicable required training appropriate to their date of hire, plus peer mentorship training. Prior to appointment, mentors must meet the same qualifications as an individual provider and must meet all other qualifications set forth by the Partnership.

Once selected, peer mentors will complete training before being assigned to mentor up to ten (10) new workers. Peer mentors will be eligible to receive continuing education credit for mentor training, while mentees' mentoring hours count towards satisfaction of basic training requirements.

### **16.10 Advanced Training**

Pursuant to RCW 74.39A.350, the Partnership shall prepare to offer advanced training for individual providers by the date specified in the statute.

### **16.11 Training Curriculum and Instructors**

The Employer shall be responsible for setting standards for training instructors and approving curriculum to the extent required by law.

### **16.12 Training Provisions, Tracking and Reporting**

The parties agree that it is their intention that the Partnership will be capable of the following:

1. Providing all types of training required by law and that meets training standards set in administrative rule.
2. Providing all types of curricula and methods of delivery authorized in rule by the Employer.
3. Registering all individual providers eligible for training.
4. Alerting individual providers and the Employer within a reasonable timeframe of impending training completion deadlines.
5. Maintaining evidence of appropriate current professional licenses for all training instructors, when applicable.
6. Providing fully supplied clinical settings and ADA compliant facilities for training.
7. Evaluating knowledge and skills competency prior to the administration of the certification examination.
8. Issuing state-provided Certifications of Completion to those individual providers that successfully complete their course work.

9. Providing the Employer with reports on student course evaluations at least quarterly.
10. Maintaining training records for a reasonable amount of time and making such records available to individual providers upon request.
11. Tracking the training status of all individual providers and providing the Employer with all such reasonable training-related data as may be necessary for administration and enforcement.

### **16.13 Access to Training**

#### **A. Union Presentation Compensation**

The Employer agrees to compensate up to thirty (30) minutes of time for a presentation on Union issues to all individual providers receiving the Union portion of required basic training. Any additional time for a presentation on Union issues agreed upon between the Union and the Partnership shall not be paid by the Employer.

#### **B. Employer Access to Training**

The Partnership shall provide all statewide training schedules for all basic training, advanced training and continuing education courses, including dates, locations and times, to facilitate the Employer's observation of training courses. The schedules shall be provided within two (2) weeks after the training is first scheduled and shall be provided in an electronic format to the designated Employer contact person for training.

### **16.14 Indemnify and Hold Harmless**

The Partnership shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, training providers, vendors, or home care workers covered under this Agreement.

## **Article 17 Union-Management Communications Committee**

### **17.1 Purpose**

The Employer and the Union agree to engage in discussions on topics of mutual interest, including but not limited to: implementation of this Agreement; new initiatives, rules or policies proposed by the Union, by the Employer, or by the Department; and implementation of the provisions of Article 20.6 of the Agreement.

### **17.2 Meetings**

The parties shall meet at least quarterly unless otherwise mutually agreed. Meetings should be held at mutually convenient times and ADA accessible locations. The parties are encouraged to select participants for these discussions who are representative of the issues to be discussed and who bring to the discussion the authority to make decisions on behalf of the parties. The Union-Management Communications Committee (UMCC) shall consist of up to five (5) representatives of the Union and up to five (5) representatives of the Employer. Home care workers serving as representatives of the Union as described above shall receive a stipend from the appropriate agency for their time spent in UMCC meetings. The parties will be solely responsible for determining dispensations, if any, of other expenses of their respective representatives and/or resource persons as attendees.

## **Article 18 Duty To Bargain**

Nothing contained in this Agreement shall be construed as to diminish the obligation of the parties to discuss and/or negotiate over those subjects appropriate under the law and to the extent that the Employer and/or its agencies, contractors or subcontractors, has lawful control over those subjects. This specifically includes the wages, benefits, hours and terms and conditions of employment of members of the bargaining unit.

## **Article 19 Consumer Rights**

### **19.1 Information Regarding Consumers**

This Agreement shall not be interpreted as to require the Employer to release confidential personal information regarding any consumer of in-home care services to the Union without the written permission of any such consumer. Personal information includes, but is not limited to: names, addresses, telephone numbers, email addresses, any identification numbers including social security numbers or any other personal information regarding consumers.

### **19.2 Consumer Confidentiality**

Union representatives and individual providers shall maintain strict standards of confidentiality regarding consumers and shall not disclose personal information pertaining to consumers obtained from any source unless the disclosure is with the express written consent of the consumer or compelled by legal processes or otherwise required by law.

### **19.3 Non-Waiver**

The above enumerations of consumers' rights are not inclusive and do not exclude other rights not specified, including those rights and authority provided under the law. The exercise or non-exercise of rights retained by the consumer shall not be construed to mean that any right of the consumer is waived; including, but not limited to the statutory right of consumers and prospective consumers to select, hire, supervise the work of, and terminate any home care worker.

### **19.4 Consumers Not Subject to Grievance Procedure**

No action taken by the consumer with respect to this Article or any consumer rights shall be subject to the grievance and arbitration procedures provided for in this Agreement.

## **Article 20 Policies and Practices**

### **20.1 Medicaid Integration Projects**

Workers performing services as individual provider home care workers under Medicaid Integration Projects shall be members of the bargaining unit and this Agreement shall be in full force and effect with respect to such home care workers for all covered hours of work for such workers described in RCW 74.39A.240.

### **20.2 Hours Cuts**

Whenever the consumer suffers a reduction in hours or seeks an increase in hours, the Employer will make a reasonable effort to consult with the consumer's individual provider prior to making a final determination.

### **20.3 Cash and Counseling**

In the event that the Employer implements any "Cash and Counseling" or similar program, workers employed by consumers under

such program(s) shall be members of the bargaining unit and this Agreement shall be in full force and effect with respect to all covered hours of work for such workers described in RCW 74.39A.240.

### **20.4 Provider Reclassification**

The Employer shall not reclassify or cause to be reclassified any individual provider home care worker unless requested by the individual provider.

### **20.5 Exclusion**

In no event shall any task, type of work or hours of work that are not typically authorized as personal care under the Employer's Medicaid personal care, community options program entry system, chore services program, or respite care program, or respite care or residential services and support to persons with developmental disabilities under RCW 71A.12 or respite care as defined in RCW 74.13.270, be considered covered work or covered hours of work under this Agreement, and this Agreement shall not be in force and effect with respect to such work or hours of work.

### **20.6 Delivery of Quality Home Care Services**

The Employer and the Union agree that they have a mutual interest in promoting and ensuring quality in the home care sector. Changes to the existing system needed to realize this quality may include, but are not limited to: care integration across programs and settings, the provision of holistic care, the improvement of services for consumers with complex needs, and the development of metrics needed to measure improvements in health and other defined outcomes. The parties agree to communicate openly with each other about ideas that would improve the quality of services to consumers. The Union Management Communications Committee may be a forum for these discussions.

## **Article 21 Hours Of Work**

### **21.1 Hours of Work when Consumers have Complex Behavioral and Cognitive Issues**

Effective September 1, 2007, the Employer shall increase the hours of work for individual providers working for consumers with complex behavioral and cognitive issues by:

- A. Introducing a "behavior score" to CARE that will add authorized hours based upon the frequency and severity of problem behaviors. Each of the behaviors measured in CARE will be weighted based on severity and frequency of occurrence and the result will be a "behavior score" between one (1) and four (4) that will be added to the considerations that determine the authorization of hours by the CARE tool.
- B. Establishing two (2) new classification categories in CARE for extremely high Activities of Daily Living CARE tool scores. These new classifications would involve clinically complex care giving and/or care giving involving moderate to severe cognitive impairments. When consumers qualify for more than one classification category they will be placed in the category with the highest base hours.

## **Article 22 Retirement Benefits**

### **22.1 Intent**

It is the intent of the parties to develop a new model of retirement benefits that provides retirement security for home care workers and that manages risk for the Employer and union members. The parties commit to work jointly to develop this model.

***We're continuing to work with the State to establish a retirement benefit trust fund to provide retirement benefits to unionized home care workers (Article 22.1)***

### **22.2 Development of a Retirement Benefit Trust**

At such time that the parties have negotiated an Employer contribution towards a retirement benefit, the parties shall join a multi-employer Taft-Hartley trust for the purpose of providing retirement benefits to unionized home care workers in Washington State. The Employer agrees to become and remain a participating member of the trust.

### **22.3 Development Funding**

The Union shall, through its national benefits staff, arrange for research and staff support to the parties to support the joint effort of the parties to develop this new model of retirement benefits.

## **Article 23 Uninterrupted In-Home Care Services**

**23.1** Neither the Union, the individual provider home care workers or their agents shall, directly or indirectly, authorize, assist, encourage and/or participate in any way in any illegal strike activity, walkouts, slowdowns, sickouts or other similar interference with services to consumers provided by individual providers. The Union, individual provider home care workers and their agents shall not, for purposes of enforcing this Agreement, conduct picketing against the Employer and any or all branches and departments of Washington State government, the State of Washington, its agents and/or its representatives. The Union, individual provider home care workers and their agents shall not picket for any reason against consumers in locations where individual providers perform services. In the event that the Employer believes that any such activity is imminent or is occurring, the Employer's representative shall contact the President or Secretary-Treasurer of the Union prior to taking any personnel or legal action in order to afford the Union the opportunity to inform its members of this contract provision and the law.

**23.2** In recognition of consumers' right to select, hire, supervise the work of, and terminate any individual provider providing services to them, the parties agree that the Employer does not have the authority to lock out the Union or the individual providers.

## **Article 24 Savings or Separability Clause**

**24.1** This Agreement shall be subject to all present and future applicable federal, state and local laws and rules and regulations of governmental authority. Should any provision of this Agreement, or the application of such provision to any person or circumstance be invalidated or ruled contrary to law by Federal or State court, or duly authorized agency, the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby.

**24.2** In the event of such invalidation, the parties shall promptly meet to negotiate a substitute provision. Any changes or amendments to this Agreement shall be in writing and duly executed by the parties and their representatives.

## **Article 25 Complete Agreement**

**25.1** The parties hereto acknowledge that during the negotiations which resulted in this Agreement, each party had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are fully set forth in this Agreement. It is further understood that this Agreement fully and completely sets forth all understandings and obligations between the parties, constitutes the entire Agreement between the parties, and both parties in their own behalf and on behalf of their respective members waive any and all claims or demands they have made or could have made for any acts or omissions by either party or their respective members, agents, employees or assigns.

**25.2** The Agreement expressed herein in writing constitutes the entire Agreement between the parties and no oral or written statement shall add to or supersede any of its provisions unless mutually agreed to by the parties and as otherwise provided for in this Agreement.

## **Article 26 Term Of The Agreement**

### **26.1 Effective Dates**

Except for those provisions requiring a legislative appropriation of funds, this Agreement shall go into full effect July 1, 2011, and shall continue in full effect, unless amended by mutual written agreement of the parties, through June 30, 2013. Those provisions requiring a legislative appropriation shall go into full effect on July 1, 2011, or as otherwise provided for in this Agreement, if approved.

### **26.2 Successor Negotiations**

The parties shall begin negotiations for a successor agreement no later than April 1, 2012. If no successor agreement has been reached, or if the legislature has not approved appropriations required to fund the economic provisions of a successor agreement as of June 30, 2013, all the terms of this Agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one (1) year from the expiration date of this Agreement.



## Appendix A Wage Scale

July 1, 2011 – June 30, 2013

Cumulative Career Hours	Wage
0-2000	\$10.03
2001-4000	\$10.17
4001-6000	\$10.33
6001-8000	\$10.46
8001-10000	\$10.61
10001-12000	\$10.76
12001-14000	\$10.91
14001 plus hours	\$11.07

Note: Wages shall be adjusted upwards by one dollar (\$1.00) an hour for individual providers who perform duties as mentors, preceptors, or trainers as assigned by the Training Partnership. Time worked as a mentor will not count toward cumulative care hours.

## Appendix B Definitions

For purposes of this Agreement, the following definitions shall apply. This is not a complete list of all terms found in this Agreement.

**Individual provider (also referred to as home care worker or caregiver):** a person, including a personal aide, who has contracted with the Department to provide personal care or respite care services to functionally disabled persons under the Medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270 and who solely for the purpose of collective bargaining is employed by the Employer as provided in RCW 74.39A.270.

**Consumer:** a person to whom an individual provider provides any such services.

**SEIU Healthcare 775NW (also referred to as Union):** sole and exclusive bargaining representative for the statewide bargaining unit of individual providers as defined in RCW 74.39A.270. [www.seiu775.org](http://www.seiu775.org).

**Department (also referred to as Payor):** the Washington State Department of Social and Health Services (DSHS). [www.dshs.wa.gov](http://www.dshs.wa.gov).

**Advocate:** an individual provider covered by the Collective Bargaining Agreement authorized in writing by SEIU Healthcare 775NW to engage in representational activities.

**Worker Representative:** an individual provider covered by the Collective Bargaining Agreement who may perform a variety of duties as defined by the Union.

**Union Representative:** an authorized bargaining representative employed by SEIU Healthcare 775NW.

**Registry:** a referral registry of individual providers and prospective individual providers established in order to provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers.

**ADA:** the Americans with Disabilities Act. Used in this Agreement, it means buildings or locations that are accessible to persons with disabilities or compliant with local laws which define accessibility.

**PERC:** the Public Employment Relations Commission. A neutral state agency that is charged with the administration of state collective bargaining laws to ensure the public of quality public services. [www.perc.wa.gov](http://www.perc.wa.gov).

**RCW:** the Revised Code of Washington. All of the state laws have numbers which start with RCW. You can find the RCWs referred to in this Agreement at the legislature's web site, [www.leg.wa.gov/legislature](http://www.leg.wa.gov/legislature).

## Important Phone Numbers for Home Care Workers



**SEIU Healthcare 775NW  
Member Resource Center**

(866) 371-3200 [www.seiu775.org](http://www.seiu775.org)

**Send a message to the Governor  
and your legislators**

(800) 562-6000 [www.leg.wa.gov](http://www.leg.wa.gov)

**Questions about health, dental,  
and vision insurance**

(866) 371-3200 [www.myseiubenefits.org](http://www.myseiubenefits.org)

**Workers compensation claims or information**

(866) 897-0386 Sedgewick CMS

**Home Care Quality Authority  
and Referral Registry**

(800) 970-5456 [www.hcqa.wa.gov](http://www.hcqa.wa.gov)

# Collective Bargaining Agreement

by and between the

State of Washington and SEIU Healthcare 775NW

## 2011-2013 Highlights

### SEIU Healthcare 775NW

represents more than 40,000 home care workers across Washington, all of whom provide quality in-home care to seniors and people with disabilities.

#### • Wages

*The minimum hourly pay rate is \$10.03/hour. You earn an additional pay increase for each 2,000 hours you work. Wage scale steps range from \$10.17 at 2,001 hours of work to \$11.07 at 14,001 or more hours of work (Article 9.1).*

#### • Health Benefits

*If you meet eligibility requirements, you qualify for health, dental, vision, and pharmacy benefits through the SEIU Healthcare NW Health Benefits Trust (Article 10.1).*

#### • Workers' Compensation (L&I)

*The State pays the full cost of workers' compensation (L&I) insurance, which pays for medical bills and treatment for on-the-job injuries or illness, as well as for time-loss when you are unable to do your IP home care job (Article 11.1).*

#### • Taxes

*The state withholds Federal Income Tax, Social Security, Federal and State Unemployment Insurance and Medicare Contributions from each home care worker's paycheck as appropriate (Article 13.5).*

#### • Other

*Mileage Reimbursement: You can get reimbursed for mileage (up to 60 miles per client per month) at the IRS rate. If you provide your client transportation to services for specific programs, you can get reimbursed for more than 60 miles per client per month (Article 9.3).*

*Paid Time Off: You will receive one (1) hour of paid time off (PTO) for every forty (40) hours worked. PTO is capped at eighty (80) hours a year. It is the same as vacation leave (Article 12).*

*Retirement: We're continuing to work with the State to establish a retirement benefit trust fund to provide retirement benefits to unionized home care workers (Article 22.1).*

*Training: We worked hard to defend quality training and home care workers who work as a mentor, preceptor or trainer get paid an additional one dollar (\$1.00) per hour (Article 16).*

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**ATTACHMENT No. 1**

**AGREEMENT**

**BETWEEN**

**SACRAMENTO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY**

**AND**

**SERVICE EMPLOYEES INTERNATIONAL UNION -**

**UNITED HEALTHCARE WORKERS, WEST**

**COVERING**

**IN-HOME SUPPORTIVE SERVICES UNIT**

**December 1, 2009 – November 30, 2011**

## TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
	<b>PREAMBLE</b>	
	<b>ARTICLE I RECOGNITION</b>	
1.1	Recognition.....	1
	<b>ARTICLE II UNION RIGHTS</b>	
2.1	List and Information .....	1
2.2	Official Representatives and Stewards .....	2
2.3	Union Membership and Agency Shop .....	2
2.4	Referrals of Members to the Union .....	3
	<b>ARTICLE III MANAGEMENT RIGHTS</b>	
3.1	Management Rights.....	4
	<b>ARTICLE IV GENERAL PROVISIONS</b>	
4.1	Consumer Rights .....	4
4.2	Consumer Confidentiality - Right to Privacy.....	4
4.3	Non-Discrimination .....	4
4.4	No Work Stoppages.....	5
4.5	Liability of Public Authority .....	5
4.6	Savings Clause .....	5
4.7	State Law Contingency .....	5
4.8	Paid Time Off.....	5

<u>Section</u>		<u>Page</u>
<b>ARTICLE V GRIEVANCE PROCEDURE</b>		
5.1	Definition and Procedural Steps .....	5
5.2	Scope of Arbitration .....	7
5.3	Time Limits .....	7
<b>ARTICLE VI WAGES</b>		
6.1	Wages.....	7
6.2	Wage Contingency .....	7
<b>ARTICLE VII HEALTH BENEFITS</b>		
7.1	Health Benefits .....	8
<b>ARTICLE VIII REGISTRY</b>		
8.1	Registry Services.....	9
8.2	Appeal Process.....	10
<b>ARTICLE IX LABOR-MANAGEMENT COMMITTEE</b>		
9.1	Labor-Management Committee .....	10
<b>ARTICLE X TERM</b>		
10.1	Term .....	11

## **PREAMBLE**

This AGREEMENT is entered into by the SACRAMENTO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY, hereinafter referred to as the Public Authority, and the SERVICE EMPLOYEES INTERNATIONAL UNION – UNITED HEALTHCARE WORKERS, WEST, hereinafter referred to as the Union.

## **ARTICLE I RECOGNITION**

### **1.1 RECOGNITION**

The Public Authority recognizes the Union as the exclusive representative of IHSS independent providers in the County of Sacramento. This Agreement does not apply to others affiliated with or employed by the Public Authority, including without limitation, administrative and operational staff in the office.

## **ARTICLE II UNION RIGHTS**

### **2.1 LIST AND INFORMATION**

a. The Public Authority shall, on a monthly basis, provide the Union a list of all providers including name, address, telephone number, social security number and hours worked, if available. The list shall be provided in a mutually agreed upon format.

b. The Union shall defend, indemnify, and hold harmless the Public Authority and their respective boards, directors, officers and employees from any and all claims, demands, suits or any other action arising from disclosure to the Union of any and all IHSS provider information.

c. The Public Authority will include official Union notices in mailings to the bargaining unit from the Public Authority, if the Union provides such notices to the Public Authority ten (10) days prior to the mailing date and if the Union reimburses any additional mailing costs to the Public Authority, in the event that Union materials increase those costs. The Union will similarly accommodate the Authority in its mailings.



d. The Public Authority will provide a bulletin board at its office for use by the Union, provided the communications displayed are related to official organization business, such as times and places of Union membership meetings.

e. The Public Authority will provide to Union Provider e-mail, telephone and cell phone information when available through Case Management Information and Payroll systems (CMIPS).

## **2.2 OFFICIAL REPRESENTATIVES AND STEWARDS**

a. The Union shall notify the Public Authority of their official representatives, including stewards, and changes in such representatives. The official representatives and stewards shall not be recognized by the Public Authority until such list or changes are received by the Executive Director of the Public Authority and the Director of Labor Relations.

b. At such time as the Public Authority conducts provider orientation or training, the Union shall be offered a role in informing providers about the Union.

## **2.3 UNION MEMBERSHIP AND AGENCY SHOP**

a. The Union agrees that it has a duty to provide fair and non-discriminatory representation to all providers in the unit regardless of whether they are members of the Union.

b. Effective January 1, 2005, providers who were paid seventeen (17) or more hours in the previous month must either become and remain members of the Union and pay Union dues, or pay an agency fee to the Union in an amount which does not exceed that which may be lawfully collected. Such dues or fees shall, as a condition of continued employment, be deducted from the provider's paycheck on a monthly basis starting the first day of the month following the completion of forty-five (45) days of employment, subject to the limitations and practices of the State's payroll system. Providers who may qualify as conscientious religious objectors must present a written declaration to the Union and Public Authority that he/she is a member of a bona fide religion, body, or sect which has historically held a conscientious objection to joining or financially supporting any employee organization as a condition of employment; and pay a sum equal to the agency fee to one (1) of three (3) non-religious, non-labor, tax exempt charities agreed to by the parties.

c. The sole source for determining paid hours for Union dues deductions will be the previous month's Paid Hours (PH) report generated by the State Department of Social Services.

d. The Union shall indemnify, defend, and hold the Public Authority harmless against any and all claims, demands, suits, orders, or judgments, or any other forms of liability that arise out of or by reason of this article, or action taken or not taken

by the Public Authority under this article. This includes, but is not limited to, the Public Authority's attorney fees and costs.

e. The individual provider's earnings must be sufficient after required federal and state deductions are made to cover the amount of dues or agency shop fees, subject to the following limitations:

1. When an individual provider is in a non-pay status for an entire pay period, no dues payment or agency shop fee will be withheld or due for that pay period.
2. When an individual provider is paid less than seventeen hours (17) during any month, no dues payment or agency shop fee will be withheld or due for that month.
3. All required federal and state deductions shall have priority over Union dues and agency shop fees.

The Public Authority and the Union will cooperate in the implementation and subsequent administration of this section.

f. The Public Authority shall make available at orientations a notice advising providers that there is an agency shop agreement with the Union and that all providers subject to the Agreement must either join the Union, pay an agency fee to the Union or execute the above described declaration claiming a conscientious religious objection.

## **2.4 REFERRALS OF MEMBERS TO THE UNION**

a. When the Public Authority receives calls from providers asking questions about matters relating to any of the terms and conditions of the Agreement, the staff will have available the Union's name, address, telephone number and website and refer members to the Union as appropriate.

b. No later than January 1, 2010, the Public Authority will include a link on its web page to the Union's web page.

c. As appropriate, in communications with providers, the Public Authority will include the Union's name, address, telephone number and website.

d. The Public Authority staff will make their best effort to answer calls from Providers regarding issues such as the registry, trainings and job requirements in a timely manner.

## **ARTICLE III MANAGEMENT RIGHTS**

### **3.1 MANAGEMENT RIGHTS**

Unless otherwise expressly specified in this Agreement, the rights of the Public Authority include, but are not limited to, the exclusive right to determine the mission of its governing body, committees and other related work groups; maintain the efficiency of its operations; determine the methods, means and personnel by which its operations are to be conducted; and take all necessary actions to carry out its mission in emergencies.

## **ARTICLE IV GENERAL PROVISIONS**

### **4.1 CONSUMER RIGHTS**

a. The parties reaffirm that, under the statute and ordinance establishing the Public Authority, IHSS consumers have the sole and undisputed right to:

1. Hire providers of their choice;
2. Remove providers from their service at will;
3. Determine in advance and under all circumstances who can and cannot enter their home; and
4. Supervise and direct the work of providers providing services to them within the scope of authorized services.

### **4.2 CONSUMER CONFIDENTIALITY – RIGHT TO PRIVACY**

The Union shall neither seek nor receive information regarding the name, address, phone number or any other personal information regarding consumers. Union representatives and IHSS providers shall maintain strict standards of confidentiality regarding consumers and shall not disclose personal information obtained, from whatever source, pertaining to consumers, unless disclosure is compelled by legal process or otherwise authorized by law.

### **4.3 NON-DISCRIMINATION**

There shall be no discrimination in the interpretation, application, or enforcement of the express terms of this Agreement because of sex, race, creed, color, national origin, sexual orientation, age, disability, or Union activities against any provider by the Public Authority or the Union.

#### **4.4 NO WORK STOPPAGES**

During the term of this Agreement, the Union, its members and representatives, agree not to engage in, authorize, sanction or support any strike, slowdown, stoppage of work, curtailment of production, or refusal to perform any duties.

#### **4.5 LIABILITY OF PUBLIC AUTHORITY**

The Public Authority is an independent legal entity, separate and apart from the County of Sacramento. The Public Authority has no power to bind the County to any contractual or legal obligations. Nor may the obligees of the Public Authority seek recourse against the County of Sacramento for any financial or legal obligation of the Public Authority.

#### **4.6 SAVINGS CLAUSE**

Should any section, clause or provision of this Agreement be declared illegal, unlawful or unenforceable by final judgment of a court of competent jurisdiction, such invalidation of such section, clause, or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this Agreement.

#### **4.7 STATE LAW CONTINGENCY**

If during the term of this Agreement, there are changes in state law that changes the funding available to the Public Authority for background checks, time off, and/or training the parties agree to meet and confer at the earliest mutually agreeable date.

#### **4.8 PAID TIME OFF**

During the term of this Agreement, the parties will meet to discuss the administrative issues pertaining to provision of paid time off for IHSS Providers. This discussion will be conducted pursuant to Article 9.1 "Labor Management Committee" of the Agreement. At the time of this agreement parties recognize there is no funding available to implement paid time off.

### **ARTICLE V GRIEVANCE PROCEDURE**

#### **5.1 DEFINITION AND PROCEDURAL STEPS**

a. A grievance is any dispute which involves the interpretation or application of any provision of this Agreement excluding, however, those provisions of this Agreement which specifically provide that the decision of any Authority official or consumer shall be final, the interpretation or application of those provisions not being

subject to the grievance procedure. The Union may represent the grievant at any stage of the process.

b. Provider participation in the grievance procedure in any capacity shall be solely on the provider's own time, and shall not be treated as within any recipient's allocated service hours, or as paid time. Unless the Public Authority and the Union have mutually agreed in writing to the contrary, the filing or pendency of a grievance shall not delay or interfere with any Public Authority action while the grievance is being processed.

c. Grievances must be filed within ten (10) days of the incident or occurrence about which the grievant claims to have a grievance and shall be processed in the following manner:

d. Step 1 (Informal): Any provider who believes that a provision of this Agreement has been violated shall discuss the complaint with the Public Authority's Executive Director or such representative as the Director may designate. A decision by the Public Authority shall be issued within ten (10) days following the discussion.

e. Step 2 (Formal): If a grievance is not satisfactorily resolved in Step 1 above, the Union may submit the grievance in writing within ten (10) days of notice of the Step 1 decision to the Director of Labor Relations. The grievance shall state which provision of the Agreement has been violated, and the remedy sought, if any.

f. The Director of Labor Relations or designee shall have ten (10) days in which to respond to the grievance in writing. If the Union requests a meeting with the Director of Labor Relations or designee, such a meeting will be held. If a meeting is held, the written response shall be ten (10) days after the meeting.

g. Step 3 (Arbitration): No grievance may be processed under this section which has not first been filed and investigated in accordance with Step 2 above and filed within ten (10) days of the written response of the Director of Labor Relations or designee. If the parties are unable to reach a mutually satisfactory accord on any grievance which arises and is presented during the term of this Agreement, either the Union or the Public Authority may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the Union and the Director of Labor Relations. Within twenty (20) days of the request for arbitration, the parties shall mutually select an arbitrator.

h. In the event the parties are unable to agree on an arbitrator within the twenty (20) days, the parties shall solicit from the State Mediation and Conciliation Service a list of seven (7) arbitrators. The parties shall alternately strike names from the list until one (1) arbitrator's name remains. If an arbitrator selected declines appointment or is otherwise unavailable, a new list shall be requested, and the selection shall be made as above, unless an arbitrator can be mutually agreed upon.

i. The fees and expenses of the arbitrator and of the court reporter, if required, shall be shared equally by the Union and the Public Authority. Each party, however, shall bear the costs of its own presentation, including preparation and post-hearing briefs, if any.

## **5.2 SCOPE OF ARBITRATION**

a. The decision of the arbitrator shall be final and binding.

b. The arbitrator shall have no authority to add to, delete, or alter any provisions of this Agreement, nor shall the arbitrator substitute his/her discretion in any case where the Public Authority is given or retains such discretion. The arbitrator shall limit his/her decision to the application and interpretation of the provisions of this Agreement.

## **5.3 TIME LIMITS**

Each party involved in a grievance shall act quickly so that the grievance may be resolved promptly. Every effort should be made to complete action within the time limits contained in the grievance procedure, but with the written consent of all parties, the time limitation for any step may be extended.

# **ARTICLE VI WAGES**

## **6.1 WAGES**

a. Effective December 1, 2009 wages shall be \$10.40 per hour.

b. At least ninety (90) days prior to December 1, 2010 the parties shall re-open negotiations regarding the subject of wages and contingency only.

c. Notwithstanding the existence of this Agreement, the subject of negotiations pursuant to Subsection b. above shall be independently subject to the impasse procedures (Section 8) of the Resolution Establishing the Labor Relations Policy and Procedure for the Sacramento County IHSS Public Authority and may be amended during what would otherwise be the term of this Agreement pursuant to those procedures.

## **6.2 WAGE CONTINGENCY**

a. If during the term of this Agreement, the state approves an amount less than the full funding or the state sharing ratio changes from its current level, the County's financial contribution is capped at no more than the cost to the County that existed on December 1, 2009.

- b. If the state wage contribution drops below \$10.50 the parties may renegotiate the current \$.70 contribution towards health benefits.

## **ARTICLE VII HEALTH BENEFITS**

### **7.1 HEALTH BENEFITS**

- a. Health benefits will be provided under the following conditions:
1. A provider is eligible for health benefits if he/she is paid 85 or more hours per month for the three previous consecutive months.
  2. Eligibility for the benefits will continue if the provider is paid 85 hours at least one (1) out of three (3) subsequent consecutive months. If a provider does not continue to meet eligibility requirements in one (1) out of three (3) subsequent consecutive months, he/she will no longer receive benefits and will have to requalify in accordance with Subsection 1. above.
  3. The sole source for determining paid hours for health benefits eligibility will be the previous month's Paid Hours (PH) report generated by the State Department of Social Services.
  4. For the duration of this agreement, the Public Authority shall contribute up to \$465.59 per month for each eligible provider who selects the approved health plan. No more than 3,409 providers shall be entitled to participate in the health care plan at the same time.
  5. The Public Authority shall continue to make available a dental plan for each eligible provider who is enrolled in the health care plan. The Public Authority shall contribute up to \$11.50 per month for each eligible provider.
  6. If the cost of the health benefits increase, or if the parties agree there has been a significant reduction of paid hours for benefits computation, during the term of this Agreement, either party may request a re-opener of this Agreement on the health benefits only to address one or more of the following:
    - To decrease the # of covered providers
    - To replace the current plan
    - To review cost containment within the current plan
    - To increase the monthly Public Authority share

- To increase the monthly provider share

If the parties are unable to reach agreement regarding changes in the health benefits as described above, status quo continues with the Public Authority benefits contribution remaining as set forth in Section 7.1(a)(4).

b. The Public Authority contribution for health and dental benefits shall continue only to the extent that State funding equals or exceeds that currently authorized in the Welfare and Institutions Code. The Public Authority shall not be obligated to provide health and/or dental benefit contributions should the State contribution be reduced or eliminated for any reason. Furthermore, the Public Authority contribution for dental benefits shall continue only to the extent that the federal funding equals or exceeds that currently authorized by the federal government. The Public Authority shall not be obligated to provide dental benefit contributions should the federal contribution be reduced or eliminated for any reason.

c. In the event that health care reform at the state and/or federal level provides a new way for IHSS workers to receive health benefits that both parties agree significantly changes the current benefits structure or cost, the parties will re-open negotiations solely on that issue.

d. In the event that the state and/or federal funding sources for benefits are reduced during the term of this agreement, the number of enrolled beneficiaries will be reduced commensurate with the state and/or federal reductions. Necessary reductions will be accomplished by attrition to the levels necessary to meet the reduced funding availability.

## **ARTICLE VIII REGISTRY**

### **8.1 REGISTRY SERVICES**

a. It is recognized that one of the Public Authority's primary missions is assuring registry services to facilitate the referral of providers for recipients to consider for hiring.

b. The Public Authority and the Union will meet and confer regarding those registry matters which impact provider conditions of employment.

c. The Public Authority and Union agree to meet once annually to consult on issues related to the registry upon request by the Union.



## **8.2 APPEAL PROCESS**

a. The Public Authority retains the exclusive right to list, refer with or without comment, suspend, or remove an individual provider from the registry. The individual provider will receive written notice from the Public Authority upon such decision including the right to appeal. A copy of the written notice will be sent to the Union. The Union or the provider may file a written appeal for such refusal to list, referral with comment, suspension, or removal from the registry to the Executive Director of the Public Authority within ten (10) days after notice of the decision.

b. The Union may appeal through Step 2 of the grievance procedure of the Agreement. The Step 2 decision will be final and binding. The Union shall not have the right to refer the matter to binding arbitration.

## **ARTICLE IX LABOR-MANAGEMENT COMMITTEE**

### **9.1 LABOR-MANAGEMENT COMMITTEE**

a. In order to encourage open communication, promote harmonious relations, and resolve matters of mutual concern, the parties agree to create a labor-management committee. The committee will be governed by the following:

1. The committee will meet every month or as mutually agreed to by the parties.
2. The topics for such meetings may include, but not limited to, mutual respect, payroll problems, health and safety issues, and training and education.
3. The agenda for each meeting will be decided seven (7) days in advance of the meeting, unless otherwise mutually agreed to by the parties.
4. The committee will be composed of three (3) representatives appointed by the Public Authority and three representatives appointed by the Union.
5. By mutual agreement, either party may invite additional participants who are relevant to a specific topic on the agenda.

**ARTICLE X  
TERM**

**10.1 TERM**

This Agreement shall remain in full force and effect from December 1, 2009 to and including November 30, 2011.

Date: \_\_\_\_\_

SERVICE EMPLOYEES INTERNATIONAL  
UNION – UNITED HEALTHCARE  
WORKERS, WEST

SACRAMENTO COUNTY  
IN-HOME SUPPORTIVE SERVICES  
PUBLIC AUTHORITY

\_\_\_\_\_  
REBECCA MALBERG  
Chief Negotiator

\_\_\_\_\_  
STEVE KEIL  
Assistant to the County Executive for  
Labor Policy and Negotiations