



**EXECUTIVE ORDER NO. 07-07**

**COLLECTIVE BARGAINING WITH ADULT FOSTER HOME PROVIDERS**

The availability of adult foster homes enables seniors and person with disabilities to live in the community in homelike settings when they are unable to live on their own. These homes allow vulnerable populations to live safely and securely while avoiding institutional care. In adult foster homes, medical and personal care services are provided in a manner that encourages independence and improves the quality of life of elderly persons and persons with disabilities.

Adult foster homes offer residents room, meals, laundry and other basic services as well as services directly related to their individual needs, such as incontinence care, assistance with eating, diabetic care, mobility and transfers, skilled nursing tasks, and dementia care. Approximately 75% of the homes are family-owned and family-occupied, while all homes are required to be licensed and to have a licensed provider or trained resident manager on site. The quality of the care provided by adult foster homes depends upon many factors, including the care provider's training and the continuity of the relationship between the resident and the care provider.

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

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

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

For purposes of this Executive Order, an "Eligible Adult Foster Home Provider" is a person who operates an adult foster home in the provider's home and who receives fees or payments from the state for providing adult foster care home services. "Eligible Adult Foster Care Home Provider" does not include a person:



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(a) who is a resident manager of an adult foster home who does not provide adult foster care home services in the resident manager's own home or who does not have a controlling interest in, or is not an officer or partner in, the entity that is the provider of adult foster care home services; (b) who is not a natural person; (c) who operates only a Relative Adult Foster Home as defined in OAR 411-050-0400(53); or (d) whose participation in collective bargaining is determined by the Department of Human Services to be inconsistent with this Executive Order or in violation of state or federal law.

**THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:**

1. DHS shall engage in collective negotiations and attempt to reach an agreement with SEIU Local 503, on behalf of Eligible Adult Foster Home Providers, concerning all terms and conditions of the relationship between the State and Eligible Adult Foster Home Providers that are within the State's control. Such terms and conditions shall include those that would be deemed to be mandatory subjects of bargaining under the Public Employee Collective Bargaining Act, ORS 243.650 *et seq.*, as if that law applied, including but not limited to service fees and the provision of health care coverage.
2. If collective negotiations fail to result in an agreement with SEIU Local 503 after a 150-calendar-day period of good faith negotiations, then DHS shall agree that either party to the negotiations may demand appointment of an arbitrator for binding arbitration, subject to the conditions set forth below. Either party to the negotiations may request from ERB a list of seven qualified, disinterested, unbiased persons to serve as a potential arbitrator so that that each party can alternatively strike three names from the list. The order of striking should be determined by lot. DHS shall agree that the arbitration process shall follow generally the procedures and timelines of ORS 243.746(3), (5) and (6) (except that the arbitrator's opinion and order shall not be filed with ERB) and require that the arbitrator's findings and opinion be based on the criteria of ORS 243.746(4). It is the State's intent that judicial review of the arbitrator's findings and opinion be available under the Uniform Arbitration Act, ORS 36.600 *et seq.*, and that an arbitration award may be vacated by a court for the reasons contained in ORS 36.705.



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3. To the extent that DHS may not implement an agreement or an arbitrator's findings and opinion under this Executive Order without first undertaking rule-making under the Administrative Procedures Act, ORS chapter 183, then the state will not be obligated to implement such agreement or arbitrator's findings and opinion until the necessary rule-making is completed.
4. Any arbitrator's findings or opinion that has a budgetary impact upon DHS shall be subject to the affected agency obtaining an appropriation to fund those impacts unless and until the Legislative Assembly enacts legislation to apply ORS 243.742, ORS 243.752, or similar provisions, to adult foster home collective bargaining.
5. This Executive Order is not intended to create any contractual rights or obligations, although it is expected that negotiations will result in a written agreement between the parties. It is intended solely as executive direction to the State agencies identified herein. Nothing in this Executive Order is intended to give to adult foster home providers, or imply that adult foster home providers have, any right to engage in a strike or a collective cessation of the delivery of foster home services. Nothing in this Executive Order is intended to authorize the execution of any fair-share agreements, unless and until the Legislative Assembly enacts legislation to allow for fair-share agreements, or to infringe upon the non-association rights of adult foster home providers. Nothing in this Executive Order is intended to provide SEIU Local 503 or any other individual or entity with third-party beneficiary rights.
6. Nothing in this Executive Order is intended to directly or indirectly limit choice in the selection by consumers or their families of adult foster home providers, or cause financial loss to them, including those not eligible for assistance from the State.
7. Adult foster home providers are not employees or agents of the State. Nothing in this Executive Order is intended to alter the existing relationship between adult foster home providers and the State or in any way imply an employer-employee or principal-agent relationship.




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8. This Executive Order is effective immediately.

Done at Salem, Oregon this first day of June, 2007.



  
GOVERNOR

ATTEST:

  
SECRETARY OF STATE