

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2111

60th Legislature
2007 Regular Session

Passed by the House March 14, 2007
Yeas 80 Nays 16

Speaker of the House of Representatives

Passed by the Senate April 10, 2007
Yeas 32 Nays 17

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2111** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

1 (2) There shall be collective bargaining, as defined in RCW
2 41.56.030, between the governor and adult family home providers, except
3 as follows:

4 (a) A statewide unit of all adult family home providers is the only
5 unit appropriate for purposes of collective bargaining under RCW
6 41.56.060.

7 (b) The exclusive bargaining representative of adult family home
8 providers in the unit specified in (a) of this subsection shall be the
9 representative chosen in an election conducted pursuant to RCW
10 41.56.070.

11 Bargaining authorization cards furnished as the showing of interest
12 in support of any representation petition or motion for intervention
13 filed under this section shall be exempt from disclosure under chapter
14 42.56 RCW.

15 (c) Notwithstanding the definition of "collective bargaining" in
16 RCW 41.56.030(4), the scope of collective bargaining for adult family
17 home providers under this section shall be limited solely to: (i)
18 Economic compensation, such as manner and rate of subsidy and
19 reimbursement, including tiered reimbursements; (ii) health and welfare
20 benefits; (iii) professional development and training; (iv) labor-
21 management committees; (v) grievance procedures; and (vi) other
22 economic matters. Retirement benefits shall not be subject to
23 collective bargaining. By such obligation neither party shall be
24 compelled to agree to a proposal or be required to make a concession
25 unless otherwise provided in this chapter.

26 (d) In addition to the entities listed in the mediation and
27 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
28 41.56.480, the provisions apply to the governor or the governor's
29 designee and the exclusive bargaining representative of adult family
30 home providers, except that:

31 (i) In addition to the factors to be taken into consideration by an
32 interest arbitration panel under RCW 41.56.465, the panel shall
33 consider the financial ability of the state to pay for the compensation
34 and benefit provisions of a collective bargaining agreement.

35 (ii) The decision of the arbitration panel is not binding on the
36 legislature and, if the legislature does not approve the request for
37 funds necessary to implement the compensation and benefit provisions of

1 the arbitrated collective bargaining agreement, the decision is not
2 binding on the state.

3 (e) Adult family home providers do not have the right to strike.

4 (3) Adult family home providers who are public employees solely for
5 the purposes of collective bargaining under subsection (1) of this
6 section are not, for that reason, employees of the state for any other
7 purpose. This section applies only to the governance of the collective
8 bargaining relationship between the employer and adult family home
9 providers as provided in subsections (1) and (2) of this section.

10 (4) This section does not create or modify:

11 (a) The department's authority to establish a plan of care for each
12 consumer or its core responsibility to manage long-term care services
13 under chapter 70.128 RCW, including determination of the level of care
14 that each consumer is eligible to receive. However, at the request of
15 the exclusive bargaining representative, the governor or the governor's
16 designee appointed under chapter 41.80 RCW shall engage in collective
17 bargaining, as defined in RCW 41.56.030(4), with the exclusive
18 bargaining representative over how the department's core responsibility
19 affects hours of work for adult family home providers. This subsection
20 shall not be interpreted to require collective bargaining over an
21 individual consumer's plan of care;

22 (b) The department's obligation to comply with the federal medicaid
23 statute and regulations and the terms of any community-based waiver
24 granted by the federal department of health and human services and to
25 ensure federal financial participation in the provision of the
26 services;

27 (c) The legislature's right to make programmatic modifications to
28 the delivery of state services under chapter 70.128 RCW, including
29 standards of eligibility of consumers and adult family home providers
30 participating in the programs under chapter 70.128 RCW, and the nature
31 of services provided. The governor shall not enter into, extend, or
32 renew any agreement under this chapter that does not expressly reserve
33 the legislative rights described in this subsection (4)(c);

34 (d) The residents', parents', or legal guardians' right to choose
35 and terminate the services of any licensed adult family home provider;
36 and

37 (e) RCW 43.43.832, 43.20A.205, or 74.15.130.

1 (5) Upon meeting the requirements of subsection (6) of this
2 section, the governor must submit, as a part of the proposed biennial
3 or supplemental operating budget submitted to the legislature under RCW
4 43.88.030, a request for funds necessary to implement the compensation
5 and benefit provisions of a collective bargaining agreement entered
6 into under this section or for legislation necessary to implement the
7 agreement.

8 (6) A request for funds necessary to implement the compensation and
9 benefit provisions of a collective bargaining agreement entered into
10 under this section shall not be submitted by the governor to the
11 legislature unless the request has been:

12 (a) Submitted to the director of financial management by October
13 1st prior to the legislative session at which the requests are to be
14 considered; and

15 (b) Certified by the director of financial management as
16 financially feasible for the state or reflective of a binding decision
17 of an arbitration panel reached under subsection (2)(d) of this
18 section.

19 (7) The legislature must approve or reject the submission of the
20 request for funds as a whole. If the legislature rejects or fails to
21 act on the submission, any collective bargaining agreement must be
22 reopened for the sole purpose of renegotiating the funds necessary to
23 implement the agreement.

24 (8) If, after the compensation and benefit provisions of an
25 agreement are approved by the legislature, a significant revenue
26 shortfall occurs resulting in reduced appropriations, as declared by
27 proclamation of the governor or by resolution of the legislature, both
28 parties shall immediately enter into collective bargaining for a
29 mutually agreed upon modification of the agreement.

30 (9) After the expiration date of any collective bargaining
31 agreement entered into under this section, all of the terms and
32 conditions specified in the agreement remain in effect until the
33 effective date of a subsequent agreement, not to exceed one year from
34 the expiration date stated in the agreement.

35 (10) In enacting this section, the legislature intends to provide
36 state action immunity under federal and state antitrust laws for the
37 joint activities of adult family home providers and their exclusive

1 bargaining representative to the extent the activities are authorized
2 by this chapter.

3 **Sec. 2.** RCW 41.56.030 and 2006 c 54 s 2 are each amended to read
4 as follows:

5 As used in this chapter:

6 (1) "Public employer" means any officer, board, commission,
7 council, or other person or body acting on behalf of any public body
8 governed by this chapter, or any subdivision of such public body. For
9 the purposes of this section, the public employer of district court or
10 superior court employees for wage-related matters is the respective
11 county legislative authority, or person or body acting on behalf of the
12 legislative authority, and the public employer for nonwage-related
13 matters is the judge or judge's designee of the respective district
14 court or superior court.

15 (2) "Public employee" means any employee of a public employer
16 except any person (a) elected by popular vote, or (b) appointed to
17 office pursuant to statute, ordinance or resolution for a specified
18 term of office as a member of a multimember board, commission, or
19 committee, whether appointed by the executive head or body of the
20 public employer, or (c) whose duties as deputy, administrative
21 assistant or secretary necessarily imply a confidential relationship to
22 (i) the executive head or body of the applicable bargaining unit, or
23 (ii) any person elected by popular vote, or (iii) any person appointed
24 to office pursuant to statute, ordinance or resolution for a specified
25 term of office as a member of a multimember board, commission, or
26 committee, whether appointed by the executive head or body of the
27 public employer, or (d) who is a court commissioner or a court
28 magistrate of superior court, district court, or a department of a
29 district court organized under chapter 3.46 RCW, or (e) who is a
30 personal assistant to a district court judge, superior court judge, or
31 court commissioner. For the purpose of (e) of this subsection, no more
32 than one assistant for each judge or commissioner may be excluded from
33 a bargaining unit.

34 (3) "Bargaining representative" means any lawful organization which
35 has as one of its primary purposes the representation of employees in
36 their employment relations with employers.

1 (4) "Collective bargaining" means the performance of the mutual
2 obligations of the public employer and the exclusive bargaining
3 representative to meet at reasonable times, to confer and negotiate in
4 good faith, and to execute a written agreement with respect to
5 grievance procedures and collective negotiations on personnel matters,
6 including wages, hours and working conditions, which may be peculiar to
7 an appropriate bargaining unit of such public employer, except that by
8 such obligation neither party shall be compelled to agree to a proposal
9 or be required to make a concession unless otherwise provided in this
10 chapter.

11 (5) "Commission" means the public employment relations commission.

12 (6) "Executive director" means the executive director of the
13 commission.

14 (7) "Uniformed personnel" means: (a) Law enforcement officers as
15 defined in RCW 41.26.030 employed by the governing body of any city or
16 town with a population of two thousand five hundred or more and law
17 enforcement officers employed by the governing body of any county with
18 a population of ten thousand or more; (b) correctional employees who
19 are uniformed and nonuniformed, commissioned and noncommissioned
20 security personnel employed in a jail as defined in RCW 70.48.020(5),
21 by a county with a population of seventy thousand or more, and who are
22 trained for and charged with the responsibility of controlling and
23 maintaining custody of inmates in the jail and safeguarding inmates
24 from other inmates; (c) general authority Washington peace officers as
25 defined in RCW 10.93.020 employed by a port district in a county with
26 a population of one million or more; (d) security forces established
27 under RCW 43.52.520; (e) fire fighters as that term is defined in RCW
28 41.26.030; (f) employees of a port district in a county with a
29 population of one million or more whose duties include crash fire
30 rescue or other fire fighting duties; (g) employees of fire departments
31 of public employers who dispatch exclusively either fire or emergency
32 medical services, or both; or (h) employees in the several classes of
33 advanced life support technicians, as defined in RCW 18.71.200, who are
34 employed by a public employer.

35 (8) "Institution of higher education" means the University of
36 Washington, Washington State University, Central Washington University,
37 Eastern Washington University, Western Washington University, The
38 Evergreen State College, and the various state community colleges.

1 (9) "Home care quality authority" means the authority under chapter
2 74.39A RCW.

3 (10) "Individual provider" means an individual provider as defined
4 in RCW 74.39A.240(4) who, solely for the purposes of collective
5 bargaining, is a public employee as provided in RCW 74.39A.270.

6 (11) "Child care subsidy" means a payment from the state through a
7 child care subsidy program established pursuant to RCW 74.12.340 or
8 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor
9 program.

10 (12) "Family child care provider" means a person who: (a) Provides
11 regularly scheduled care for a child or children in the home of the
12 provider or in the home of the child or children for periods of less
13 than twenty-four hours or, if necessary due to the nature of the
14 parent's work, for periods equal to or greater than twenty-four hours;
15 (b) receives child care subsidies; and (c) is either licensed by the
16 state under RCW 74.15.030 or is exempt from licensing under chapter
17 74.15 RCW.

18 (13) "Adult family home provider" means a provider as defined in
19 RCW 70.128.010 who receives payments from the medicaid and state-funded
20 long-term care programs.

21 **Sec. 3.** RCW 41.56.113 and 2006 c 54 s 3 are each amended to read
22 as follows:

23 (1) Upon the written authorization of an individual provider
24 ~~((~~or~~))~~, a family child care provider, or an adult family home provider
25 within the bargaining unit and after the certification or recognition
26 of the bargaining unit's exclusive bargaining representative, the state
27 as payor, but not as the employer, shall, subject to subsection (3) of
28 this section, deduct from the payments to an individual provider
29 ~~((~~or~~))~~, a family child care provider, or an adult family home provider
30 the monthly amount of dues as certified by the secretary of the
31 exclusive bargaining representative and shall transmit the same to the
32 treasurer of the exclusive bargaining representative.

33 (2) If the governor and the exclusive bargaining representative of
34 a bargaining unit of individual providers ~~((~~or~~))~~, family child care
35 providers, or adult family home providers enter into a collective
36 bargaining agreement that:

1 (a) Includes a union security provision authorized in RCW
2 41.56.122, the state as payor, but not as the employer, shall, subject
3 to subsection (3) of this section, enforce the agreement by deducting
4 from the payments to bargaining unit members the dues required for
5 membership in the exclusive bargaining representative, or, for
6 nonmembers thereof, a fee equivalent to the dues; or

7 (b) Includes requirements for deductions of payments other than the
8 deduction under (a) of this subsection, the state, as payor, but not as
9 the employer, shall, subject to subsection (3) of this section, make
10 such deductions upon written authorization of the individual provider
11 (~~or the~~), family child care provider, or adult family home provider.

12 (3)(a) The initial additional costs to the state in making
13 deductions from the payments to individual providers (~~or~~), family
14 child care providers, and adult family home providers under this
15 section shall be negotiated, agreed upon in advance, and reimbursed to
16 the state by the exclusive bargaining representative.

17 (b) The allocation of ongoing additional costs to the state in
18 making deductions from the payments to individual providers (~~or~~), family
19 child care providers, or adult family home providers under this
20 section shall be an appropriate subject of collective bargaining
21 between the exclusive bargaining representative and the governor unless
22 prohibited by another statute. If no collective bargaining agreement
23 containing a provision allocating the ongoing additional cost is
24 entered into between the exclusive bargaining representative and the
25 governor, or if the legislature does not approve funding for the
26 collective bargaining agreement as provided in RCW 74.39A.300 (~~or~~), RCW
27 41.56.028, or section 1 of this act, as applicable, the ongoing
28 additional costs to the state in making deductions from the payments to
29 individual providers (~~or~~), family child care providers, or adult
30 family home providers under this section shall be negotiated, agreed
31 upon in advance, and reimbursed to the state by the exclusive
32 bargaining representative.

33 (4) The governor and the exclusive bargaining representative of a
34 bargaining unit of family child care providers may not enter into a
35 collective bargaining agreement that contains a union security
36 provision unless the agreement contains a process, to be administered
37 by the exclusive bargaining representative of a bargaining unit of

1 family child care providers, for hardship dispensation for license-
2 exempt family child care providers who are also temporary assistance
3 for needy families recipients or WorkFirst participants.

4 **Sec. 4.** RCW 41.04.810 and 2006 c 54 s 4 are each amended to read
5 as follows:

6 Individual providers, as defined in RCW 74.39A.240, (~~and~~) family
7 child care providers, as defined in RCW 41.56.030, and adult family
8 home providers, as defined in RCW 41.56.030, are not employees of the
9 state or any of its political subdivisions and are specifically and
10 entirely excluded from all provisions of this title, except as provided
11 in RCW 74.39A.270 (~~and~~), 41.56.028, and section 1 of this act.

12 **Sec. 5.** RCW 43.01.047 and 2006 c 54 s 5 are each amended to read
13 as follows:

14 RCW 43.01.040 through 43.01.044 do not apply to individual
15 providers under RCW 74.39A.220 through 74.39A.300 (~~or to~~),
16 child care providers under RCW 41.56.028, or adult family home
17 providers under section 1 of this act.

18 **PART II - NEGOTIATED RULE MAKING**

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.128 RCW
20 to read as follows:

21 (1) Solely for the purposes of negotiated rule making pursuant to
22 RCW 34.05.310(2)(a) and 70.128.040, a statewide unit of all adult
23 family home licensees is appropriate. As of the effective date of this
24 section, the exclusive representative of adult family home licensees in
25 the statewide unit shall be the organization certified by the American
26 arbitration association as the sole representative after the
27 association conducts a cross-check comparing authorization cards
28 against the department of social and health services' records and finds
29 that majority support for the organization exists. If adult family
30 home licensees seek to select a different representative thereafter,
31 the adult family home licensees may request that the American
32 arbitration association conduct an election and certify the results of
33 the election.

1 (2) In enacting this section, the legislature intends to provide
2 state action immunity under federal and state antitrust laws for the
3 joint activities of licensees and their exclusive representative to the
4 extent such activities are authorized by this chapter.

5 **Sec. 7.** RCW 70.128.010 and 2001 c 319 s 6 and 2001 c 319 s 2 are
6 each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Adult family home" means a residential home in which a person
10 or persons provide personal care, special care, room, and board to more
11 than one but not more than six adults who are not related by blood or
12 marriage to the person or persons providing the services.

13 (2) "Provider" means any person who is licensed under this chapter
14 to operate an adult family home. For the purposes of this section,
15 "person" means any individual, partnership, corporation, association,
16 or limited liability company.

17 (3) "Department" means the department of social and health
18 services.

19 (4) "Resident" means an adult in need of personal or special care
20 in an adult family home who is not related to the provider.

21 (5) "Adults" means persons who have attained the age of eighteen
22 years.

23 (6) "Home" means an adult family home.

24 (7) "Imminent danger" means serious physical harm to or death of a
25 resident has occurred, or there is a serious threat to resident life,
26 health, or safety.

27 (8) "Special care" means care beyond personal care as defined by
28 the department, in rule.

29 (9) "Capacity" means the maximum number of persons in need of
30 personal or special care permitted in an adult family home at a given
31 time. This number shall include related children or adults in the home
32 and who received special care.

33 (10) "Resident manager" means a person employed or designated by
34 the provider to manage the adult family home.

35 (11) "Adult family home licensee" means a provider as defined in
36 this section who does not receive payments from the medicaid and state-
37 funded long-term care programs.

1 **Sec. 8.** RCW 70.128.040 and 1995 c 260 s 3 are each amended to read
2 as follows:

3 (1) The department shall adopt rules and standards with respect to
4 adult family homes and the operators thereof to be licensed under this
5 chapter to carry out the purposes and requirements of this chapter.
6 The rules and standards relating to applicants and operators shall
7 address the differences between individual providers and providers that
8 are partnerships, corporations, associations, or companies. The rules
9 and standards shall also recognize and be appropriate to the different
10 needs and capacities of the various populations served by adult family
11 homes such as but not limited to ~~((the))~~ persons who are
12 developmentally disabled ~~((and the))~~ or elderly. In developing rules
13 and standards the department shall recognize the residential family-
14 like nature of adult family homes and not develop rules and standards
15 which by their complexity serve as an overly restrictive barrier to the
16 development of the adult family homes in the state. Procedures and
17 forms established by the department shall be developed so they are easy
18 to understand and comply with. Paper work requirements shall be
19 minimal. Easy to understand materials shall be developed for
20 applicants and providers explaining licensure requirements and
21 procedures.

22 (2)(a) In developing the rules and standards, the department shall
23 consult with all divisions and administrations within the department
24 serving the various populations living in adult family homes, including
25 the division of developmental disabilities and the aging and adult
26 services administration. Involvement by the divisions and
27 administration shall be for the purposes of assisting the department to
28 develop rules and standards appropriate to the different needs and
29 capacities of the various populations served by adult family homes.
30 During the initial stages of development of proposed rules, the
31 department shall provide notice of development of the rules to
32 organizations representing adult family homes and their residents, and
33 other groups that the department finds appropriate. The notice shall
34 state the subject of the rules under consideration and solicit written
35 recommendations regarding their form and content.

36 (b) In addition, the department shall engage in negotiated rule
37 making pursuant to RCW 34.05.310(2)(a) with the exclusive

1 representative of the adult family home licensees selected in
2 accordance with section 6 of this act and with other affected interests
3 before adopting requirements that affect adult family home licensees.

4 (3) Except where provided otherwise, chapter 34.05 RCW shall govern
5 all department rule-making and adjudicative activities under this
6 chapter.

7 **PART III - GENERAL PROVISIONS**

8 NEW SECTION. **Sec. 9.** Part headings used in this act are not any
9 part of the law.

10 NEW SECTION. **Sec. 10.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

14 NEW SECTION. **Sec. 11.** If any part of this act is found to be in
15 conflict with federal requirements that are a prescribed condition to
16 the allocation of federal funds to the state, the conflicting part of
17 this act is inoperative solely to the extent of the conflict and with
18 respect to the agencies directly affected, and this finding does not
19 affect the operation of the remainder of this act in its application to
20 the agencies concerned. Rules adopted under this act must meet federal
21 requirements that are a necessary condition to the receipt of federal
22 funds by the state.

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