



**Substitute House Bill No. 5312**

**Public Act No. 12-33**

**AN ACT CREATING A PROCESS FOR FAMILY CHILD CARE PROVIDERS AND PERSONAL CARE ATTENDANTS TO COLLECTIVELY BARGAIN WITH THE STATE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2012*) For purposes of this section and sections 2 and 3 of this act:

(1) "Parent" means parent or legal guardian; and

(2) "Family child care providers" means persons who provide child care services under the child care subsidy program established pursuant to section 17b-749 of the general statutes (A) in a family day care home, as defined in section 19a-77 of the general statutes; or (B) in a home not requiring a license pursuant to subdivision (4) of subsection (b) of section 19a-77 of the general statutes.

Sec. 2. (NEW) (*Effective July 1, 2012*) (a) A family child care provider shall not be considered a state employee and shall be exempt from any and all provisions of the general statutes creating rights, obligations, privileges or immunities to state employees as a result of or incident to their state service.

(b) Family child care providers shall have the right to bargain

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collectively and shall have such other rights and obligations incident thereto as are created by sections 5-270 to 5-279, inclusive, of the general statutes except as set forth in subsections (d) to (g), inclusive, of this section, except:

(1) The following shall be prohibited subjects of bargaining: (A) The application of state employee benefits to family child care providers, including, but not limited to, health benefits and pensions; (B) a parent's right to (i) recruit, (ii) select, (iii) direct the activities of, and (iv) terminate the services of any family child care provider; and (C) a procedure for grievance arbitration against any parent;

(2) No provision of any agreement or award shall provide for a reduction in the services provided by family child care providers to children under section 17b-749 of the general statutes;

(3) Any provision in any agreement or award which would require an additional appropriation in order to maintain the levels of services provided by existing appropriations shall be presented to the General Assembly for approval in accordance with the budgetary process set forth in subdivision (8) of subsection (e) of this section;

(4) The provisions of section 5-280 of the general statutes shall not apply to family child care providers. An agreement or award reached pursuant to this section may include provisions calling for the state or its fiscal intermediary to deduct from reimbursement payments regular dues and initiation fees, and nonmember service fees limited to the lesser of regular dues, fees and assessments that a member is charged or the proportionate share of expenses incident to collective bargaining. Dues or fees may be charged only with respect to earnings from participation in the child care subsidy program established pursuant to section 17b-749 of the general statutes. No dues or fees may be charged for the first sixty days of a family child care provider's participation in a child care subsidy program established pursuant to

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said section 17b-749;

(5) The provisions of sections 5-276a and 5-276b of the general statutes and subsections (b) to (g), inclusive, of section 5-278 of the general statutes shall not apply to collective bargaining involving family child care providers. Any impasse between the parties shall be resolved in accordance with subsection (e) of this section;

(6) In any proceeding which may be filed under section 5-272 of the general statutes, the State Board of Labor Relations shall be without jurisdiction to consider any complaint against, or issue any remedy against, any parent; and

(7) Any election required in order to resolve any question concerning representation involving family child care providers shall be conducted by mail ballot. No provision of this section shall grant family child care providers a right to strike and such strikes are prohibited.

(c) On or after July 1, 2012, and monthly thereafter, the Commissioner of Social Services shall compile a list of the names of family child care providers who have participated in the child care subsidy program established pursuant to section 17b-749 of the general statutes within the previous six calendar months. Such list shall be considered a public record, as defined in section 1-200 of the general statutes.

(d) For purposes of sections 4-65a and 5-270 of the general statutes and subsection (a) of section 5-278 of the general statutes, the Department of Social Services shall be considered an executive branch employer and an organization representing family child care providers that has been designated by the State Board of Labor Relations, pursuant to section 5-275 of the general statutes or subsection (g) of this section, as the exclusive bargaining agent of such providers, shall

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have the right to bargain with the state concerning the terms and conditions of participation of family child care providers in the program covered by this section, including, but not limited to, (1) state reimbursement rates, (2) benefits, (3) payment procedures, (4) contract grievance arbitration, and (5) training, professional development and other requirements and opportunities appropriate for family child care providers.

(e) (1) If the organization representing family child care providers and the Department of Social Services do not reach an agreement not later than one hundred fifty days after negotiations have begun, the parties shall jointly select an arbitrator. The arbitrator selected shall have experience as an impartial arbitrator of labor-management disputes, and shall not be an individual employed as an advocate or consultant for labor or management in labor-management disputes. If the parties fail to agree on an arbitrator not later than one hundred sixty days after negotiations have begun, the selection of the arbitrator shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association.

(2) Each party shall submit to the arbitrator, and to each other, a proposal setting forth such party's position on how each of the unresolved issues shall be resolved.

(3) The arbitrator shall convene a hearing to allow the parties to provide evidence and argument to the arbitrator. The parties shall have the right to submit written briefs to the arbitrator. The arbitration record shall be officially closed at the close of the hearing, or the arbitrator's receipt of briefs, whichever is later.

(4) The arbitrator's authority is limited to selecting the complete proposal of one party or the other on any unresolved issue. The arbitrator shall issue an award not later than forty-five days after the close of the record.

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(5) The factors to be considered by the arbitrator in arriving at a decision are: (A) The nature and needs of the family child care program and the needs and welfare of parents and children served by that program, including interests in better recruitment, retention and quality with respect to the covered family child care provider; (B) the history of negotiations between the parties including those leading to the instant proceeding; (C) the existing conditions of employment of similar groups of workers; (D) changes in the cost of living; and (E) the interests and welfare of the covered family child care providers.

(6) The costs of the arbitrator and any fees associated with the arbitration proceeding shall be shared equally by the parties.

(7) Any agreement or award reached pursuant to this section shall be submitted to the General Assembly for approval by filing the agreement or award with the clerks of the House and Senate. No provision of any agreement or award resulting from the collective bargaining process which would require supercedence of any law or regulation shall take effect without affirmative legislative approval.

(8) Notwithstanding any other provision of this section, any provision in any agreement or award which would require an additional appropriation in order to maintain the levels of services provided by existing appropriations shall be presented to the General Assembly for approval in accordance with the budgetary process applicable to appropriations, including, but not limited to, affirmative legislative approval. Other provisions of the agreement or award shall be deemed approved unless affirmatively rejected by a majority of either house not later than thirty days after the filing with the clerk of that chamber, provided the thirty-day period shall not begin or expire unless the General Assembly is in regular session. Once approved by the General Assembly, any provision of an agreement or award need not be resubmitted by the parties to such agreement or award as part of a future agreement approval process unless changes in the language

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of such provision are negotiated by the parties.

(f) The only bargaining unit of family child care providers appropriate for the purpose of collective bargaining shall be a state-wide unit of all family child care providers.

(g) Any provider organization certified as the majority representative of family child care providers in any election held prior to the effective date of this section pursuant to Executive Order Number 9 of Governor Dannel P. Malloy may provide proof of such certification to the State Board of Labor Relations and the State Board of Labor Relations shall certify such majority representative as the exclusive bargaining agent for such providers without the requirement of an additional election unless and until such time as a question concerning representation is appropriately raised under this section and section 1 of this act.

Sec. 3. (NEW) (*Effective July 1, 2012*) The state shall not be liable for any action, including, but not limited to, any civil action, any grievance arbitration or any prohibited practice proceeding, brought by the exclusive bargaining agent of such child care workers based upon any alleged wrongdoing by a parent or child arising pursuant to section 2 of this act.

Sec. 4. (NEW) (*Effective July 1, 2012*) For purposes of this section and sections 5 to 7, inclusive, of this act:

(1) "Consumer" means a person who receives services from a personal care attendant under a state-funded program, including, but not limited to, (A) the program for individuals with acquired brain injuries, established pursuant to section 17b-260a of the general statutes, (B) the personal care assistance program, established pursuant to section 17b-605a of the general statutes, (C) the Connecticut home care program for the elderly, established pursuant to section 17b-342 of

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the general statutes, (D) the pilot program to provide home care services to disabled persons, established pursuant to section 17b-617 of the general statutes, (E) the individual and family support waiver program administered by the Department of Developmental Services, (F) the comprehensive waiver program administered by the Department of Developmental Services, and (G) any state-funded program that provides services from a personal care attendant;

(2) "Surrogate" means a consumer's legal guardian or a person identified in a written agreement as having responsibility for the care of a consumer;

(3) "Personal care attendants" means persons employed by a consumer or surrogate to provide personal care assistance to a consumer; and

(4) "Personal care assistance" means supportive home care, direct support services, personal care or another nonprofessional service provided to a person with a disability or an elderly person who requires assistance to (A) meet such person's daily living needs, (B) ensure such person may adequately function in such person's home, or (C) provide such person with safe access to the community.

Sec. 5. (NEW) (*Effective July 1, 2012*) (a) There is established the Personal Care Attendant Workforce Council to ensure the quality of long-term personal home care. Said council shall be composed of the following members:

(1) The Commissioner of Social Services, or the commissioner's designee;

(2) The Commissioner of Developmental Services, or the commissioner's designee;

(3) The Healthcare Advocate, or the Healthcare Advocate's

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designee;

(4) The Secretary of the Office of Policy and Management, or the secretary's designee;

(5) Three appointed by the Governor one of whom shall be a member of an organization representing the interests of consumers with developmental disabilities, one of whom shall be a member of an organization representing the interests of consumers with physical disabilities, and one of whom shall be a member of an organization representing the interests of elderly consumers;

(6) One appointed by the speaker of the House of Representatives who shall be a member of an organization representing the interests of consumers with developmental disabilities;

(7) One appointed by the president pro tempore of the Senate who shall be a member of an organization representing the interests of consumers with physical disabilities;

(8) One appointed by the majority leader of the House of Representatives who shall be a member of an organization representing the interests of elderly consumers;

(9) One appointed by the majority leader of the Senate who shall be a member of an organization representing the interests of consumers with developmental disabilities;

(10) One appointed by the minority leader of the House of Representatives who shall be a member of an organization representing the interests of consumers with physical disabilities; and

(11) One appointed by the minority leader of the Senate who shall be a member of an organization representing the interests of elderly consumers.



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(b) All initial appointments to the council shall be made not later than August 1, 2012. The chairperson of the council shall be appointed by the Governor from among its members. The chairperson shall convene the first meeting of the council not later than September 1, 2012. Members of the council shall serve coterminously and at the pleasure of the appointing authority in accordance with section 4-1a of the general statutes. A majority of the members of the Personal Care Attendant Workforce Council shall constitute a quorum for the transaction of any business. Members of the Personal Care Attendant Workforce Council shall receive no compensation for their service but shall be reimbursed for actual expenses necessarily incurred in performance of their duties. The council shall be within the Department of Social Services for administrative purposes only.

(c) The Personal Care Attendant Workforce Council shall have the following duties and responsibilities relating to personal care attendants: (1) Study issues relating to the recruitment, retention and adequacy of personal care attendants; and (2) develop a plan to improve the quality, stability and availability of personal care attendants by (A) developing a means to identify and recruit personal care attendants, (B) developing training and educational opportunities for personal care attendants and consumers, (C) developing one or more registries to (i) provide routine, emergency and respite referrals of qualified personal care attendants to consumers and surrogates who are authorized to receive long-term, in-home personal care services by a personal care attendant, (ii) enable consumers and surrogates to access information about prospective personal care attendants such as their training, educational background and work experience, and (iii) provide appropriate employment opportunities for personal care attendants, and (D) establishing standards for wages, benefits and conditions of employment for personal care attendants.

(d) On or after July 1, 2013, the commissioners of the departments

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having cognizance of the covered waiver programs shall review the plans recommended by the Personal Care Attendant Workforce Council pursuant to subsection (c) of this section. The commissioners shall include in budgetary requests submitted to the Office of Policy and Management requests for funding necessary to implement aspects of such plans that meet said commissioners' approval.

(e) (1) For purposes of sections 4-65a and 5-270 of the general statutes and subsection (a) of section 5-278 of the general statutes, the Personal Care Attendant Workforce Council shall be within the executive branch of state government. An organization representing personal care attendants that has been designated by the State Board of Labor Relations, pursuant to section 5-275 of the general statutes or subsection (f) of section 6 of this act, as the exclusive bargaining agent of such personal care attendants, shall have the right to bargain with the state concerning the terms and conditions of participation of personal care attendants in the programs covered by this section and section 4 of this act, including, but not limited to, (A) state reimbursement rates, (B) benefits, (C) payment procedures, (D) contract grievance arbitration, and (E) training, professional development and other requirements and opportunities appropriate for such personal care attendants.

(2) (A) No provision of any agreement or award which may be reached pursuant to collective bargaining between the state and any organization representing personal care attendants shall interfere with the right of a consumer or surrogate to hire, refuse to hire, supervise, direct the activities of, or terminate the employment of any personal care attendant.

(B) In those covered programs where budgets provided to consumers receiving direct support services are allocated using the individual budget methodology, budgets shall be increased to account for additional expenses caused by a contract or award negotiated in

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accordance with this section which includes increases in wages or benefits.

(f) (1) Not later than October 1, 2012, and monthly thereafter, the Personal Care Attendant Workforce Council shall compile and maintain a registry list of the names and addresses of all personal care attendants who have been paid through the state-funded programs identified in subdivision (1) of section 4 of this act within the previous six calendar months. The list shall not include the name of any consumer, or indicate that a personal care attendant is a relative of a consumer or has the same address as a consumer. Any fiscal intermediary that provides administrative services to the state concerning state-funded programs shall assist and cooperate with said council in compiling and maintaining such list. The Personal Care Attendant Workforce Council shall utilize such list for the purposes of this section and sections 6 and 7 of this act. Such list shall be a public record, as defined in section 1-200 of the general statutes.

(2) Not later than seven days after receiving a request from an employee organization, as defined in subsection (d) of section 5-270 of the general statutes, that is interested in representing an appropriate unit of personal care attendants, the Personal Care Attendant Workforce Council shall provide to the employee organization the most recent list of personal care attendants compiled pursuant to subdivision (1) of this subsection.

Sec. 6. (NEW) (*Effective July 1, 2012*) (a) Personal care attendants shall not be considered state employees and shall be exempt from any and all provisions of the general statutes creating rights, obligations, privileges or immunities to state employees as a result of or incident to their state service.

(b) Personal care attendants shall have the right to bargain collectively and shall have such other rights and obligations incident

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thereto as are created by sections 5-270 to 5-279, inclusive, of the general statutes except as set forth in subsections (c), (d) and (f) of this section, except:

(1) The following shall be prohibited subjects of bargaining: (A) A consumer or surrogate's right to (i) hire or refuse to hire, (ii) supervise, (iii) direct the activities of, or (iv) terminate the employment of any personal care attendant, (B) any proposal that would prevent surrogates from hiring personal care attendants not on the registry list described in section 5 of this act, (C) any proposal that would prevent consumers or surrogates from requiring any additional training, (D) a procedure for grievance arbitration against any consumer or surrogate, and (E) application of state employee benefits to personal care attendants, including, but not limited to, health benefits and pensions;

(2) No provision of any agreement or award shall provide for a reduction in Medicaid funds provided to the state, nor shall any provision of any agreement or award provide for a reduction in the services of personal care attendants to consumers. Any provision in any agreement or award which would require an additional appropriation in order to maintain the levels of services provided by existing appropriations shall be submitted to the General Assembly for approval in accordance with subdivision (8) of subsection (c) of this section;

(3) The provisions of section 5-280 of the general statutes shall not apply to personal care attendants. An agreement or award reached pursuant to this section may include provisions calling for the state or its fiscal intermediary to deduct from reimbursement payments the regular dues, fees and assessments that a member is charged and nonmember service fees limited to the lesser of dues and initiation fees required of members or the proportionate share of expenses incident to collective bargaining. Dues or fees may be charged only with respect to earnings from participation in the waiver programs covered by this

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section. No dues or fees may be charged for the first sixty days of a personal care attendant's participation in a program covered by this section;

(4) The provisions of sections 5-276a and 5-276b of the general statutes and subsections (b) to (g), inclusive, of section 5-278 of the general statutes shall not apply to collective bargaining involving personal care attendants. Any impasse between the parties shall be resolved in accordance with subsection (c) of this section;

(5) In any proceeding which may be filed under section 5-272 of the general statutes, the State Board of Labor Relations shall be without jurisdiction over, or authority to issue any remedy against, any consumer or surrogate; and

(6) Any election required in order to resolve any question concerning representation involving personal care attendants shall be conducted by mail ballot. No provision of this section shall grant personal care attendants a right to strike and such strikes are prohibited.

(c) (1) If the organization representing personal care attendants and the state do not reach an agreement not later than one hundred fifty days after negotiations have begun, the parties shall jointly select an arbitrator. The arbitrator selected shall have experience as an impartial arbitrator of labor-management disputes and shall not be an individual employed as an advocate or consultant for labor or management in labor-management disputes. If the parties fail to agree on an arbitrator not later than one hundred sixty days after the negotiations have begun, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association.

(2) Each party shall submit to the arbitrator, and to the other party, a

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proposal setting forth such party's position on how each of the unresolved issues shall be resolved.

(3) The arbitrator shall convene a hearing to allow each party to provide evidence and argument to the arbitrator. Each party shall have the right to submit written briefs to the arbitrator. The arbitration record shall be officially closed at the close of the hearing or the arbitrator's receipt of briefs, whichever is later.

(4) The arbitrator's authority is limited to selecting the complete proposal of one party or the other's on any unresolved issue. The arbitrator shall issue an award not later than forty-five days after the close of the record.

(5) The factors to be considered by the arbitrator in arriving at a decision are: (A) The nature and needs of the personal care assistance program and the needs and welfare of consumers, including interests in better recruitment, retention and quality with respect to the covered personal care attendants; (B) the history of negotiations between each party including those leading to the proceeding; (C) the existing conditions of employment of similar groups of workers; (D) changes in the cost of living; and (E) the interests and welfare of the covered personal care attendants.

(6) The costs of the arbitrator and any fees associated with the arbitration proceeding shall be shared equally by each party.

(7) Any agreement or award reached pursuant to this section shall be reduced to writing and submitted to the General Assembly for approval by filing the agreement or award with the clerks of the House of Representatives and Senate. No provision of any agreement or award resulting from the collective bargaining process which would require supercedence of any law or regulation shall take effect without affirmative legislative approval.

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(8) Notwithstanding any other provision of sections 5 to 7, inclusive, of this act, any provision of any agreement or award requiring the appropriation of additional funds shall be subject to the state's regular budgetary approval process, subject to funds being made available and affirmative legislative approval. Other provisions of the agreement or award shall be deemed approved unless affirmatively rejected by a majority of either house not later than thirty days after the filing with the clerk of that chamber, provided the thirty-day period shall not begin or expire unless the General Assembly is in regular session. Once approved by the General Assembly, any provision of an agreement or award need not be resubmitted by the parties to such agreement or award as part of a future agreement approval process unless changes in the language of such provision are negotiated by the parties.

(d) The provisions of this section shall not alter the obligations of the state or the consumer to provide the state's or the consumer's share of Social Security, federal and state unemployment contributions, Medicare or workers' compensation insurance.

(e) The bargaining units of personal care attendants appropriate for the purpose of collective bargaining shall be (1) a state-wide unit of all personal care attendants, (2) a state-wide unit of personal care attendants who provide services under programs administered by the Department of Social Services, or (3) a state-wide unit of personal care attendants who provide services under programs administered by the Department of Developmental Services. Personal care attendants who are members of the consumer's or surrogate's family shall not be excluded from the bargaining unit because of such personal care attendant's familial relationship to a consumer or surrogate.

(f) Any organization certified as the majority representative of personal care attendants in any election held prior to the effective date of this section, pursuant to Executive Order Number 10 of Governor Dannel P. Malloy, may provide proof of such certification to the State

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Board of Labor Relations and the State Board of Labor Relations shall certify such majority representative as the exclusive bargaining representative for such personal care attendants without the requirement of an additional election unless and until such time as a question concerning representation is appropriately raised under this section and section 2 of this act.

Sec. 7. (NEW) (*Effective July 1, 2012*) The Commissioners of Social Services and Developmental Services shall submit any application for a waiver of federal law necessary to effectuate the provisions of sections 4 to 6, inclusive, of this act, in accordance with the provisions of section 17b-8 of the general statutes. The Commissioners of Social Services and Developmental Services and any other department or agency of the state shall take all actions reasonably necessary to obtain approval for any such waiver and to ensure the continuation of necessary federal funding.

Sec. 8. (NEW) (*Effective July 1, 2012*) The state shall not be liable for any action, including, but not limited to, any civil action, any grievance arbitration or any prohibited practice proceeding, brought by the exclusive bargaining agent of such personal care attendants based upon any alleged wrongdoing by a consumer or surrogate arising pursuant to sections 5 to 7, inclusive, of this act.

Approved May 14, 2012