

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 12-33—sHB 5312**

*Labor and Public Employees Committee  
Human Services Committee*

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

**SUMMARY:** This act allows certain family child care providers and personal care attendants (PCAs) to collectively bargain with the state through an employee organization (i.e., a union) over reimbursement rates, benefits, payment procedures, contract grievance arbitration, training, professional development, and other requirements and opportunities. It explicitly states that child care providers and PCAs are not state employees and, except for the bargaining rights provided in the act, do not have the rights, obligations, privileges, and immunities statutorily provided to state employees.

It establishes a collective bargaining and arbitration process for child care providers and PCAs and grants them many of the same rights and duties given to state employees under the collective bargaining law for state employees. It also specifically excludes certain subjects from collective bargaining and prohibits any provision in a contract or arbitration award from reducing child care provider or PCA services. It requires the General Assembly to affirmatively approve any contract or arbitration award that would require additional appropriations to maintain existing service levels.

The act creates a PCA Workforce Council to study and plan for improving PCA quality, stability, and availability. It also (1) requires the Department of Social Services (DSS) and the council to compile and maintain lists of covered child care providers and PCAs, respectively, and (2) provides liability protection for the state under certain circumstances.

EFFECTIVE DATE: July 1, 2012

**§ 1 — FAMILY CHILD CARE PROVIDERS**

The act applies to child care providers paid by the state's Care-4-Kids program to provide day care in (1) licensed family day care homes (i.e., private family homes, generally with up to six children) or (2) their own homes for the children of neighbors or relatives. The Care-4-Kids program subsidizes child care costs for low- and moderate-income families while a parent is working or attending a Temporary Family Assistance-approved education or training program (i.e., a Jobs First participant).

**§ 4 — PERSONAL CARE ATTENDANTS**

PCAs provide in-home and community-based personal care assistance to the

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elderly and people with disabilities (consumers). They often are paid through Medicaid waiver programs, which offer an alternative to Medicaid-funded institutional care. Under the act, “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 needs assistance to (1) meet daily living needs, (2) ensure that he or she can adequately function at home, or (3) provide him or her with safe access to the community.

The act applies to PCAs employed by a consumer or surrogate (a consumer’s legal guardian or a person responsible for the consumer’s care) to provide personal care assistance to a consumer under any state-funded program, including the:

1. Medicaid Acquired Brain Injury Waiver Program,
2. Medicaid Personal Care Assistance Waiver Program for adults with disabilities,
3. Connecticut Home Care Program for Elders,
4. Connecticut Home Care Program for Disabled Adults Pilot Program, and
5. Individual and Family Support and Comprehensive Medicaid waiver programs administered by Department of Developmental Services (DDS).

### §§ 2 & 6 — COLLECTIVE BARGAINING

#### *Union and Employer Determination*

Under the act, the exclusive bargaining agents (unions) for family child care providers or PCAs must be certified by the State Board of Labor Relations (SBLR) under either the (1) statutory procedure used to certify state employees’ unions or (2) procedure for certifying a family child care providers’ union or PCA union established under Governor Malloy’s Executive Orders 9 and 10, respectively. The act requires the SBLR to certify a union without an additional election if the union can prove that it was certified under one of the executive orders before July 1, 2012. Any elections to resolve representation issues must be conducted by mail ballot.

The act limits child care providers to one statewide bargaining unit. It allows PCAs to be in (1) one statewide bargaining unit, (2) a statewide unit of PCAs who provide services under a DSS program, or (3) a statewide unit of PCAs who provide services under a DDS program. PCAs who are members of the consumer’s or surrogate’s family cannot be excluded from a bargaining unit due to their familial relationship. Under the act, as under the law for state employees, the SBLR determines PCA bargaining units.

For child care providers, the act, like existing law, specifies that DSS is an executive branch employer represented by the Office of Policy and Management (OPM) in collective bargaining negotiations. The act places the newly created PCA Workforce Council within the executive branch but does not say the council is the PCAs’ employer.

#### *Collective Bargaining Subjects*

Under the act, PCAs and child care providers, although not considered state

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employees, have many of the same bargaining rights, obligations, and protections, and are subject to the same prohibitions as state employees. Thus, among other things, they have the right to organize, cannot be discharged or discriminated against for organizing, and are not permitted to strike. However, the act prohibits them from bargaining over (1) state employee pension or health care benefits; (2) a parent's or consumer's or surrogate's right to hire, fire, and direct a child care provider's or PCA's activities, respectively; and (3) grievance arbitration against parents, consumers, or surrogates.

Other provisions of the collective bargaining laws for state employees that do not apply to unionized childcare providers and PCAs include:

1. the timetable for negotiations and arbitration (the act replaces it with a new timetable);
2. the requirement for a party to pay interest on overdue arbitration awards;
3. the legislature's approval process (which the act replaces with a new approval process);
4. the requirement for the legislature to appropriate funds needed for an approved contract or award;
5. allowances for negotiations to continue past the legislature's budget deadline and contracts to be retroactive;
6. a requirement that the provisions in an approved contract supersede any conflicting laws or regulations;
7. the mandate for coalition bargaining for pension and health benefits (i.e., the State Employees Bargaining Agent Coalition); and
8. an exemption from binding arbitration for non-mandated collective bargaining subjects.

### *No Reductions in Services*

Under the act, no provision in a contract or arbitration award can reduce child care provider or PCA services. Any provision that would require an additional appropriation to maintain existing service levels must be affirmatively approved by the General Assembly. The act also denies the SBLR jurisdiction over any complaints against parents (for child care providers), consumers, or surrogates (for PCAs) for unfair labor practices under the collective bargaining law for state employees.

### *Union Dues and Nonmember Service Fees*

Existing collective bargaining law for state employees requires nonmember service fees, instead of union dues, to be deducted from the wages of an employee who does not wish to join the union representing his or her bargaining unit. The act does not require that these fees be deducted from a PCA's or child care provider's payments, but it allows a contract or arbitration award to require the state or its fiscal intermediary to deduct dues and initiation fees or nonmember service fees from the state payments. Under the act, the nonmember service fees must be the lesser of either the dues, fees, and assessments paid by union members or a proportionate share of the union's costs for collective bargaining.

The act explicitly limits the deduction of dues and fees to payments from the

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Care-4-Kids program (for child care providers) or the waiver program in which a PCA's consumer is participating. (PCAs in non-waiver programs such as the Connecticut Home Care Program for Elders and the pilot program cannot have union dues or nonmember service fees deducted from their payments.) No dues or fees can be deducted from a child care provider's or PCA's payments during the first 60 days that they are participating in their respective programs.

### *Collective Bargaining and Arbitration Process*

The act establishes a contract negotiation and arbitration process separate from the process used by state employees' unions. The process is the same for family child care providers and PCAs. The act gives the parties 150 days to negotiate a contract. (It does not specify when negotiations must begin.) If the parties have not reached an agreement within that time, they must jointly select an arbitrator who (1) has experience as an impartial arbitrator in labor-management disputes and (2) is not employed as an advocate or consultant for labor or management in labor-management disputes. If the parties cannot agree on an arbitrator within 10 days, the act requires an arbitrator to be selected using the procedure under the American Arbitration Association's voluntary labor arbitration rules.

Once the parties have an arbitrator, the act requires them to submit their position on how each unresolved issue should be resolved (last best offer). The arbitrator must then hold a hearing to allow them to provide evidence and arguments. The parties can also submit written briefs. Under the act, the arbitration record is closed at the end of the hearing or once the arbitrator receives the briefs, whichever is later. The act does not specify a timeline for the hearing process to occur, but the arbitrator must issue an award within 45 days of the records closure. It requires the parties to split the costs and fees incurred in the arbitration process.

In coming to a decision, the act requires the arbitrator to select one party's proposal on each unresolved issue (issue-by-issue last best offer decisions). The arbitrator must consider:

1. the nature and needs of the particular program and the needs and welfare of the parents, children, or consumers served by the program, including better recruitment, retention, and quality of family child care providers or PCAs, as the case may be;
2. the history of negotiations between the parties;
3. the existing employment conditions of similar groups of workers;
4. cost of living changes; and
5. the interests and welfare of the covered family child care providers or PCAs.

Unlike state employee collective bargaining, the arbitrator is not required to consider the ability of the employer to pay.

### *General Assembly Approval*

The act requires any contract or arbitration award to be written and submitted to the General Assembly for approval. Any provision in the contract or award that

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would supersede a law or regulation must be affirmatively approved by the General Assembly. In addition, any provision that requires additional appropriations to maintain existing service levels must be approved under the budgetary process applicable to appropriations, including affirmative legislative approval. Presumably, the Office of Labor Relations will determine what provisions of a contract or award supersede a law or regulation, or require an appropriation, as it does for the state's other collectively bargained contracts.

Under the act, contract or award provisions that do not (1) supersede existing laws and regulations and (2) involve additional appropriations are automatically approved unless the General Assembly affirmatively rejects them by a majority vote of either chamber within 30 days after they were filed. The General Assembly must be in regular session when the 30-day deadline begins and ends.

Once a contract or award has been approved, any identical provision repeated in future contracts or awards does not need to be resubmitted to the General Assembly.

### § 5 & 6 — PROVISIONS SPECIFIC TO PCAS

The act includes several provisions that apply only to PCAs.

#### *Collective Bargaining*

The act prohibits PCAs from bargaining over any proposal that prevents (1) surrogates from hiring PCAs not on the registry list described in the act or (2) consumers or surrogates from requiring any additional training of their PCAs. Furthermore, no agreement or arbitration award can provide for a reduction in Medicaid funds provided to the state.

Whenever a PCA contract or award includes increases in wages or benefits, the act also requires programs where consumers' budgets for direct support services are allocated through an "individual budget methodology" (a Medicaid term related to the allocation of resources) to increase a consumer's budget to accommodate the additional expenses.

#### *Other*

The act states that it does not alter the obligations of the state or a consumer to pay their respective shares of Social Security, federal and state unemployment contributions, Medicare, or workers' compensation insurance.

### § 5 — PCA WORKFORCE COUNCIL

The act establishes a 13-member PCA Workforce Council made up of state officials and representatives of the populations served by PCAs and lists their duties and responsibilities.

The council consists of the following members:

1. the social services and developmental services commissioners, Healthcare Advocate, OPM secretary, or any of their respective designees;
2. one representative each from an organization for consumers (a) with

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- developmental disabilities, (b) with physical disabilities, and (c) who are elderly, appointed by the governor;
3. two members of one or more organizations representing consumers with developmental disabilities, one each appointed by the House speaker and Senate majority leader;
  4. two members of one or more organizations representing consumers with physical disabilities, one each appointed by the Senate president pro tempore and the House minority leader; and
  5. two members of one or more organizations representing elderly consumers, one each appointed by the House majority leader and Senate minority leader.

Initial appointments to the council must be made by August 1, 2012. The governor appoints a chairperson from among the members, and he or she must call the first meeting by September 1, 2012. A majority of the members constitutes a quorum for transacting business. Council members serve coterminously and at the pleasure of the appointing authority. They receive no compensation, but are reimbursed for necessary expenses.

The council is in the Executive Branch and in DSS for administrative purposes only.

### *Council Duties*

The act requires the council to (1) study PCA recruitment, retention, and adequacy and (2) develop a plan to improve PCA quality, stability, and availability. The plan must do this by:

1. developing a means to identify and recruit PCAs;
2. developing PCA and consumer training and educational opportunities;
3. developing one or more registries to (a) provide routine, emergency, and respite referrals of qualified PCAs to consumers and surrogates who are authorized to receive long-term, in-home PCA personal care services; (b) enable consumers and surrogates to access information about prospective PCAs including their training, educational background, and work experience; and (c) provide appropriate employment opportunities for PCAs; and
4. establishing standards for PCA wages, benefits, and employment conditions.

On or after July 1, 2013, the DSS and DDS commissioners must review the council's plan. If they approve the plan, they must include requests for funding to implement it or any aspects of it in any budgetary requests they submit to OPM.

### § 7 — STATE FEDERAL WAIVER APPLICATION REQUIRED

The act requires the DSS and DDS commissioners to submit any federal Medicaid waiver application necessary to carry out the act's provisions according to the waiver application process provided in state law, which includes legislative oversight. The commissioners, and any other state agency, must take all necessary and reasonable actions to obtain approval of the waiver to ensure continued

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federal funding. (The federal government reimburses the state for half of what it spends on Medicaid waiver-covered services.)

### § 2 — CHILD CARE PROVIDER LIST

Starting July 1, 2012, the act requires the DSS commissioner to compile monthly lists of the child care providers who have participated in the Care-4-Kids program within the previous six months. The lists are a public record subject to the state's Freedom of Information Act (FOIA).

### § 5 — PCA REGISTRY LIST

By October 1, 2012, the council must compile and maintain a monthly registry list of the names and addresses of all PCAs who have been paid through the state-funded programs identified in the act within the previous six calendar months. The list cannot (1) include the name of any consumer or (2) indicate that a PCA is a relative of, or has the same address as, a consumer.

The act requires any fiscal intermediary that provides administrative services to the state for state-funded programs to help the council compile and maintain the registry list. (In certain programs, the state uses a contracted entity, such as Allied Community Resources, to help clients manage the financial aspects of hiring a PCA and other direct care providers.) The council must use the list to carry out its duties, assist those seeking to form a PCA union, and help DSS and DDS apply for any federal Medicaid waivers necessary to carry out the act's provisions. The list is accessible to the public under FOIA.

If it receives a request for the list from any employee organization interested in forming a PCA union, the council, within seven days, must provide the organization with the most recent list of PCAs it has compiled.

### §§ 3 & 8 — LIABILITY

The act protects the state from liability in any legal action, grievance arbitration, or prohibited practice proceeding brought by a union against a parent (for child care providers), consumer, or surrogate (for PCAs) for a violation of the act's provisions regarding collective bargaining, the PCA Workforce Council, or federal Medicaid waivers and compliance.

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