

# House Research Act Summary

**CHAPTER:** 128 (HF 950/SF 778)

**SESSION:** 2013 Regular Session

**TOPIC:** Family child care providers and direct support services providers/representation

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**Date:** June 4, 2013

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## Article 1

### Family Child Care Providers Representation Act.

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- 1 Representation of family child care providers.** Identifies legislation as the Family Child Care Representation Act.
- 2 Definitions.** Provides definitions of terms used in the act. Family child care provider means legal licensed or non-licensed family child care providers who provide child care services under the child care assistance programs in chapter 119B. Center-based child care services are not included.
- 3 Right to organize.**
  - Subd. 1. Rights of individual providers and participants.** States that family child care providers are executive branch state employees for the purposes of the Public Employment Labor Relations Act (PELRA). Family child care providers do not have the right to strike. Providers are covered under these provisions regardless of part-time or full-time employment status.
  - Subd. 2. Appropriate unit.** The bargaining unit shall be a statewide unit of all family child care providers with an active registration under chapter 119B within the previous 12 months.

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**Subd. 3. Compilation of list.** Directs the commissioner to compile and maintain a list of family child care providers who have had active registration under chapter 119B within the previous 12 months.

**Subd. 4. List access.** Provides for access to the list of family child care providers compiled by the commissioner. Any employee organization must show that at least 500 family child care providers support representation in order to gain access to the list compiled by the commissioner. Lists are publicly available.

**Subd. 5. Elections for exclusive representative.** Provides for representation elections upon a showing that 30 percent of those in the appropriate unit wish to be represented. Certification of a labor organization would follow the processes under PELRA and a certification election is to be conducted by mail ballot. Providers eligible to vote are those on the monthly list of providers compiled by the commissioner.

**Subd. 6. Meet and negotiate.** If the commissioner certifies a labor organization as the exclusive representative, the state shall meet and negotiate over grievance issues, child care assistance reimbursement rates and terms and conditions of employment. Requires the legislature to approve or reject a negotiated agreement or arbitration award.

**Subd. 7. Meet and confer.** The state and the exclusive representative may also meet and confer on other issues.

**Subd. 8. Terms and conditions of service.** Provides a cross reference to the current statutory definition in section 179A.03, subdivision 19 which includes hours of employment, compensation, and fringe benefits except retirement.

**Subd. 9. Rights.** States that nothing in the bill shall be construed to interfere with:

- parental rights to select or reject providers or the ability of providers to establish the rate they charge to parents;
- the right or obligation of any state agency to communicate with others; and
- the rights and responsibilities of providers under federal law.

**Subd. 10. Membership status and eligibility for subsidies.** States that membership status in an employee organization shall not affect eligibility to provide care or be paid under subsidy programs.

**4 No use of scholarships for dues or fees.** Prohibits use of early learning scholarship funds for payment of union dues or fees.

**5 Severability.** Provides that should any part of the act be declared invalid or unenforceable or enforcement suspended, constrained, or barred the remainder of the act remains in effect.

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- 6 Expiration.** Sections 1 to 4 expire June 30, 2017 if an exclusive representative has not been certified by that date.
- 7 Effective date.** Article 1 is generally effective the day following final enactment.

**Article 2****Individual Providers of Direct Support Services Representation.****1 Individual providers of direct support services.**

**Subd. 1. Definitions.** Provides definitions for this section through cross reference to section 2 for the following terms: direct support services, individual provider, participant, and participant's representative.

**Subd. 2. Rights of individual providers and participants.** Provides that individual providers are considered executive branch state employees employed by the commissioner of MMB. Individual providers, however, are not public employees for any other purpose. Individual providers are covered under these provisions regardless of part-time or full-time employment status.

**Subd. 3. Scope of meet and negotiate.** Specifies that compensation rates, payments and practices, fringe benefits, and access to training and educational opportunities, employment opportunities within covered programs, and access to and dissemination of information in the registry.

**Subd. 4. Rights of covered program participants.** States that no agreement or arbitration award interferes with participant rights to select, hire, supervise or terminate the employment of individual providers, to manage individual service budgets, or to receive direct support services from providers not referred through a state registry.

**Subd. 5. Legislative action on agreements.** Agreements must be submitted for legislative approval or rejection.

**Subd. 6. Strikes prohibited.** Individual providers may not strike.

**Subd. 7. Interest arbitration.** Provides for interest arbitration.

**Subd. 8. Appropriate unit.** The only appropriate unit for individual providers shall be a statewide unit of individual providers.

**Subd. 9. List access.** Beginning September 1, 2013, an employee organization may show the commissioner of mediation services that at least 500 individual providers support representation; subsequently the commissioner of human services must

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provide to the organization the most recent list of individual providers compiled by the commissioner.

**Subd. 10. Representation and election.** Beginning October 1, 2013, any employee organization seeking to represent providers may seek exclusive representative status. Representation elections are to be conducted by mail ballot; the election may be conducted upon presentation of a petition stating that at least 30 percent of the unit wishes to be represented by the petitioner. Individual providers eligible to vote in an election are those providers on the list compiled by the commissioner of DHS.

## 2 **Quality self-directed services workforce.**

**Subd. 1. Definitions.** Provides the following definitions:

- commissioner is the commissioner of human services;
- covered program means one that provides direct support services and includes the Community First Services and Supports program, Consumer Directed Community Supports, extended state plan personal care assistance services under home and community-based waivers and under the alternative care program; the personal care assistance choice program and similar programs;
- direct support services means MA covered services; assistance with activities of daily living and instrumental activities of daily living; and similar programs and services for the elderly or disabled;
- individual provider means a person selected by and working under the direction of a participant in a covered program; it does not cover an employee of a provider agency;
- participant means a person receiving direct support services through a covered program; and
- participant's representative is a legal guardian or person with authority to act on a participant's behalf.

**Subd. 2. Operations of covered programs.** Directs that all covered programs operate under the requirements of this bill.

**Subd. 3. Use of employee workforce.** Reserves the right of participants to receive services through a provider agency.

**Subd. 4. Duties of Department of Human Services.** Specifies that the commissioner shall establish rates of compensations, payment terms and practices, benefits, provide for orientation programs for new providers, provide for training,

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maintain public registries, provide referrals, employment opportunities, and establish other appropriate terms and conditions of employment. The commissioner's authority over the items enumerated above is subject to the state's obligations to meet and negotiate with an exclusive representative.

By September 1, 2013, and then monthly thereafter, the commissioner must compile and maintain a list of names and addresses of individual providers who have been paid for providing direct support services within the previous six months.

- 3 Severability.** Provides that if any part of the act is declared invalid or unenforceable or otherwise suspended, restrained, or barred, the remainder remains in effect.
- 4 Expiration.** Sections 1 and 2 expire June 30, 2017 if an exclusive representative has not been certified.
- 5 Effective date.** Article 2 is effective the day following final enactment.

**Article 3**

## Appropriations.

- 1 Appropriations.** Appropriates \$1,900,000 in FY 14-15 to the commissioner of human services; \$59,000 in FY 14 to the commissioner of mediation services; and \$470,000 in FY 14-15 to the commissioner of management and budget for the purposes of this act.