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**ENGROSSED SUBSTITUTE HOUSE BILL 2111**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Conway, Wood, Green, Moeller, Darneille, Miloscia, Dickerson, P. Sullivan, Morrell, McDermott, Grant, Hudgins, Simpson and Ormsby)

READ FIRST TIME 02/28/07.

1           AN ACT Relating to making the governor the public employer of adult  
2 family home providers; amending RCW 41.56.030, 41.56.113, 41.04.810,  
3 43.01.047, and 70.128.040; reenacting and amending RCW 70.128.010;  
4 adding a new section to chapter 41.56 RCW; adding a new section to  
5 chapter 70.128 RCW; and creating new sections.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7                                   **PART I - COLLECTIVE BARGAINING**

8           NEW SECTION.   **Sec. 1.** A new section is added to chapter 41.56 RCW  
9 to read as follows:

10           (1) In addition to the entities listed in RCW 41.56.020, this  
11 chapter applies to the governor with respect to adult family home  
12 providers. Solely for the purposes of collective bargaining and as  
13 expressly limited under subsections (2) and (3) of this section, the  
14 governor is the public employer of adult family home providers who,  
15 solely for the purposes of collective bargaining, are public employees.  
16 The public employer shall be represented for bargaining purposes by the  
17 governor or the governor's designee.

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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