

CHAPTER 128—S.F.No. 778

An act relating to collective bargaining; authorizing collective bargaining for family child care providers; authorizing collective bargaining for home and community-based long-term care services; appropriating money; proposing coding for new law in Minnesota Statutes, chapters 179A; 256B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

FAMILY CHILD CARE PROVIDERS REPRESENTATION ACT

Section 1. **[179A.50] REPRESENTATION OF FAMILY CHILD CARE PROVIDERS.**

Sections 179A.50 to 179A.52 shall be known as the Family Child Care Providers Representation Act.

Sec. 2. **[179A.51] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of sections 179A.50 to 179A.52, the terms in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of mediation services.

Subd. 3. **Exclusive representative.** "Exclusive representative" means an employee organization that has been elected and certified under section 179A.52, thereby maintaining the right to represent family child care providers in their relations with the state.

Subd. 4. **Family child care provider.** "Family child care provider" means an individual, either licensed or unlicensed, who provides legal child care services as defined under section 245A.03, except for providers licensed under Minnesota Rules, chapter 9503, or excluded from licensure under section 245A.03, subdivision 2, paragraph (a), clause (5), and who receives child care assistance to subsidize child care services for a child or children currently in their care, under sections 119B.03; 119B.05; and 119B.011, subdivisions 20 and 20a.

Sec. 3. **[179A.52] RIGHT TO ORGANIZE.**

Subdivision 1. **Rights of individual providers and participants.** For the purposes of the Public Employment Labor Relations Act, under chapter 179A, family child care providers shall be considered, by virtue of this section, executive branch state employees employed by the commissioner of management and budget or the commissioner's representative. This section does not require the treatment of family child care providers as public employees for any other purpose. Family child care providers are not state employees for purposes of section 3.736. Chapter 179A shall apply to family child care providers except as otherwise provided in this section. Notwithstanding section 179A.03, subdivision 14, paragraph (a), clause (5), chapter 179A shall apply to family child care providers regardless of part-time or full-time employment status. Family child care providers shall not have the right to strike.

Subd. 2. **Appropriate unit.** The only appropriate unit under this section shall be a statewide unit of all family child care providers who meet the definition in section 179A.51, and who have had an active

registration under chapter 119B within the previous 12 months. The unit shall be treated as an appropriate unit under section 179A.10, subdivision 2.

Subd. 3. **Compilation of list.** The commissioner of human services shall, by July 1, 2013, and monthly thereafter, compile and maintain a list of the names and addresses of all family child care providers who meet the definition in section 179A.51, and who have had an active registration under chapter 119B within the previous 12 months. The list shall not include the name of any participant, or indicate that an individual provider is a relative of a participant or has the same address as a participant. The commissioner of human services shall share the lists with others as needed for the state to meet its obligations under chapter 179A as modified and made applicable to family child care providers under this section, and to facilitate the representational processes under this section.

Subd. 4. **List access.** Beginning July 1, 2013, upon a showing made to the commissioner of the Bureau of Mediation Services by any employee organization wishing to represent the appropriate unit of family child care providers that at least 500 family child care providers support such representation, the commissioner of human services shall provide to such organization within seven days the most recent list of actively registered family child care providers compiled under subdivision 3, and subsequent monthly lists upon request for an additional three months. When the list is made available to an employee organization under this subdivision, the list must be made publicly available.

Subd. 5. **Elections for exclusive representative.** After July 31, 2013, any employee organization wishing to represent the appropriate unit of family child care providers may seek exclusive representative status pursuant to section 179A.12. Certification elections for family child care providers shall be conducted by mail ballot, and such election shall be conducted upon an appropriate petition stating that at least 30 percent of the appropriate unit wishes to be represented by the petitioner. The family child care providers eligible to vote in any such election shall be those family child care providers on the monthly list of family child care providers compiled under this section, most recently preceding the filing of the election petition. Except as otherwise provided, elections under this subdivision shall be conducted in accordance with section 179A.12.

Subd. 6. **Meet and negotiate.** If the commissioner certifies an employee organization as the majority exclusive representative, the state, through the governor or the governor's designee, shall meet and negotiate in good faith with the exclusive representative of the family child care provider unit regarding grievance issues, child care assistance reimbursement rates under chapter 119B, and terms and conditions of service, but this obligation does not compel the state or its representatives to agree to a proposal or require the making of a concession. The governor or the governor's designee is authorized to enter into agreements with the exclusive representative. Negotiated agreements and arbitration decisions must be submitted to the legislature to be accepted or rejected in accordance with sections 3.855 and 179A.22.

Subd. 7. **Meet and confer.** The state has an obligation to meet and confer under chapter 179A with family child care providers to discuss policies and other matters relating to their service that are not terms and conditions of service.

Subd. 8. **Terms and conditions of service.** For purposes of this section, "terms and conditions of service" has the same meaning as given in section 179A.03, subdivision 19.

Subd. 9. **Rights.** Nothing in this section shall be construed to interfere with:

(1) parental rights to select and deselect family child care providers or the ability of family child care providers to establish the rates they charge to parents;

(2) the right or obligation of any state agency to communicate or meet with any citizen or organization concerning family child care legislation, regulation, or policy; or

(3) the rights and responsibilities of family child care providers under federal law.

Subd. 10. **Membership status and eligibility for subsidies.** Membership status in an employee organization shall not affect the eligibility of a family child care provider to receive payments under, or serve a child who receives payments under, chapter 119B.

Sec. 4. [179A.53] NO USE OF SCHOLARSHIPS FOR DUES OR FEES.

Early learning scholarships shall not be applied, through state withholding or otherwise, toward payment of dues or fees that are paid to exclusive representatives of family child care providers.

EFFECTIVE DATE. This section is effective the day following final enactment of a law styled as Senate File No. 481 of the 88th legislature.

Sec. 5. SEVERABILITY.

Should any part of this act be declared invalid or unenforceable, or the enforcement or compliance with it is suspended, restrained, or barred, either by the state or by the final judgment of a court of competent jurisdiction, the remainder of this act shall remain in full force and effect.

Sec. 6. EXPIRATION.

Sections 1 to 4 expire June 30, 2017, if an exclusive representative has not been certified under Minnesota Statutes, section 179A.52, subdivision 6, by that date, provided that the commissioner of the Bureau of Mediation Services shall process any petition under Minnesota Statutes, section 179A.52, subdivision 5, pending as of June 30, 2017, and any certification of an exclusive representative resulting from a petition pending as of June 30, 2017, shall, for the purposes of this section, be treated as having occurred on the date the petition was initially filed. The revisor of statutes shall publish this expiration date with the codification of sections 1 to 4.

Sec. 7. EFFECTIVE DATE.

Except for Minnesota Statutes, section 179A.53, this article is effective the day following final enactment.

ARTICLE 2

INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES REPRESENTATION

Section 1. [179A.54] INDIVIDUAL PROVIDERS OF DIRECT SUPPORT SERVICES.

Subdivision 1. **Definitions.** For the purposes of this section:

(a) "Direct support services" has the meaning given to it under section 256B.0711, subdivision 1, paragraph (c).

(b) "Individual provider" has the meaning given to it under section 256B.0711, subdivision 1, paragraph (d).

(c) "Participant" has the meaning given to it under section 256B.0711, subdivision 1, paragraph (e).

(d) "Participant's representative" has the meaning given to it under section 256B.0711, subdivision 1, paragraph (f).

Subd. 2. **Rights of individual providers and participants.** For the purposes of the Public Employment Labor Relations Act, under chapter 179A, individual providers shall be considered, by virtue of this section, executive branch state employees employed by the commissioner of management and

budget or the commissioner's representative. This section does not require the treatment of individual providers as public employees for any other purpose. Individual providers are not state employees for purposes of section 3.736. Chapter 179A shall apply to individual providers except as otherwise provided in this section. Notwithstanding section 179A.03, subdivision 14, paragraph (a), clause (5), chapter 179A shall apply to individual providers regardless of part-time or full-time employment status.

Subd. 3. **Scope of meet and negotiate obligation.** If an exclusive representative is certified pursuant to this section, the mutual rights and obligations of the state and an exclusive representative of individual providers to meet and negotiate regarding terms and conditions shall extend to the subjects covered under section 256B.0711, subdivision 4, paragraph (c), but shall not include those subjects reserved to participants or participants' representatives by subdivision 4.

Subd. 4. **Rights of covered program participants.** No provision of any agreement reached between the state and any exclusive representative of individual providers, nor any arbitration award, shall interfere with the rights of participants or participants' representatives to select, hire, direct, supervise, and terminate the employment of their individual providers; to manage an individual service budget regarding the amounts and types of authorized goods or services received; or to receive direct support services from individual providers not referred to them through a state registry.

Subd. 5. **Legislative action on agreements.** Any agreement reached between the state and the exclusive representative of individual providers under chapter 179A shall be submitted to the legislature to be accepted or rejected in accordance with sections 3.855 and 179A.22.

Subd. 6. **Strikes prohibited.** Individual providers shall be subject to the prohibition on strikes applied to essential employees under section 179A.18.

Subd. 7. **Interest arbitration.** Individual providers shall be subject to the interest arbitration procedures applied to essential employees under section 179A.16.

Subd. 8. **Appropriate unit.** The only appropriate unit for individual providers shall be a statewide unit of all individual providers. The unit shall be treated as an appropriate unit under section 179A.10, subdivision 2. Individual providers who are related to their participant or their participant's representative shall not for such reason be excluded from the appropriate unit.

Subd. 9. **List access.** Beginning September 1, 2013, upon a showing made to the commissioner of the Bureau of Mediation Services by any employee organization wishing to represent the appropriate unit of individual providers that at least 500 individual providers support such representation, the commissioner of the Bureau of Mediation Services shall provide to such organization within seven days the most recent list of individual providers compiled under section 256B.0711, subdivision 4, paragraph (f), and three subsequent monthly lists upon request. The commissioner of the Bureau of Mediation Services shall provide lists compiled under section 256B.0711, subdivision 4, paragraph (f), upon request, to any exclusive representative of individual providers. To facilitate operation of this section, the commissioner of human services shall provide all lists to the commissioner of the Bureau of Mediation Services, upon the request of the commissioner of the Bureau of Mediation Services. When the list is available to an employee organization under this subdivision, the list must be made publicly available.

Subd. 10. **Representation and election.** Beginning October 1, 2013, any employee organization wishing to represent the appropriate unit of individual providers may seek exclusive representative status pursuant to section 179A.12. Certification elections for individual providers shall be conducted by mail ballot, and such election shall be conducted upon an appropriate petition stating that among individual providers who have been paid for providing direct support services to participants within the previous 12 months, a number of individual providers equal to at least 30 percent of those eligible to vote wish to be represented by the petitioner. The individual providers eligible to vote in any such election shall be those individual providers on the monthly list of individual providers compiled under section 256B.0711,

subdivision 4, paragraph (f), most recently preceding the filing of the election petition. Except as otherwise provided, elections under this section shall be conducted in accordance with section 179A.12.

Sec. 2. [256B.0711] QUALITY SELF-DIRECTED SERVICES WORKFORCE.

Subdivision 1. Definitions. For purposes of this section:

(a) "Commissioner" means the commissioner of human services unless otherwise indicated.

(b) "Covered program" means a program to provide direct support services funded in whole or in part by the state of Minnesota, including the Community First Services and Supports program; Consumer Directed Community Supports services and extended state plan personal care assistance services available under programs established pursuant to home and community-based service waivers authorized under section 1915(c) of the Social Security Act, and Minnesota Statutes, including, but not limited to, sections 256B.0915, 256B.092, and 256B.49, and under the alternative care program, as offered pursuant to section 256B.0913; the personal care assistance choice program, as established pursuant to section 256B.0659, subdivisions 18 to 20; and any similar program that may provide similar services in the future.

(c) "Direct support services" means personal care assistance services covered by medical assistance under section 256B.0625, subdivisions 19a and 19c; assistance with activities of daily living as defined in section 256B.0659, subdivision 1, paragraph (b), and instrumental activities of daily living as defined in section 256B.0659, subdivision 1, paragraph (i); and other similar, in-home, nonprofessional long-term services and supports provided to an elderly person or person with a disability by their employee or the employee of their representative to meet such person's daily living needs and ensure that such person may adequately function in the person's home and have safe access to the community.

(d) "Individual provider" means an individual selected by and working under the direction of a participant in a covered program, or a participant's representative, to provide direct support services to the participant, but does not include an employee of a provider agency, subject to the agency's direction and control commensurate with agency employee status.

(e) "Participant" means a person who receives direct support services through a covered program.

(f) "Participant's representative" means a participant's legal guardian or an individual having the authority and responsibility to act on behalf of a participant with respect to the provision of direct support services through a covered program.

Subd. 2. Operation of covered programs. All covered programs shall operate consistent with this section, including by affording participants and participants' representatives within the programs of the option of receiving services through individual providers as defined in subdivision 1, paragraph (d), notwithstanding any inconsistent provisions of section 256B.0659 or 256B.04, subdivision 16.

Subd. 3. Use of employee workforce. The requirement under subdivision 2 shall not restrict the state's ability to afford participants and participants' representatives within the covered programs who choose not to employ an individual provider, or are unable to do so, the option of receiving similar services through the employees of provider agencies, rather than through an individual provider.

Subd. 4. Duties of the Department of Human Services. (a) The commissioner shall afford to all participants within a covered program the option of employing an individual provider to provide direct support services.

(b) The commissioner shall ensure that all employment of individual providers is in conformity with this section and section 179A.54, including by modifying program operations as necessary to ensure proper classification of individual providers, to require that all relevant vendors within covered programs assist and cooperate as needed, including providers of fiscal support, fiscal intermediary, financial management, or similar services to provide support to participants and participants' representatives with regard to employing

individual providers, and to otherwise fulfill the requirements of this section, including the provisions of paragraph (f).

(c) The commissioner shall:

(1) establish for all individual providers compensation rates, payment terms and practices, and any benefit terms, provided that these rates and terms may permit individual provider variations based on traditional and relevant factors otherwise permitted by law;

(2) provide for required orientation programs within three months of hire for individual providers newly hired on or after January 1, 2015, regarding their employment within the covered programs through which they provide services;

(3) have the authority to provide for relevant training and educational opportunities for individual providers, as well as for participants and participants' representatives who receive services from individual providers, including opportunities for individual providers to obtain certification documenting additional training and experience in areas of specialization;

(4) have the authority to provide for the maintenance of a public registry of individuals who have consented to be included to:

(i) provide routine, emergency, and respite referrals of qualified individual providers who have consented to be included in the registry to participants and participants' representatives;

(ii) enable participants and participants' representatives to gain improved access to, and choice among, prospective individual providers, including by having access to information about individual providers' training, educational background, work experience, and availability for hire; and

(iii) provide for appropriate employment opportunities for individual providers and a means by which they may more easily remain available to provide services to participants within covered programs; and

(5) establish other appropriate terms and conditions of employment governing the workforce of individual providers.

(d) The commissioner's authority over terms and conditions of individual providers' employment, including compensation, payment, and benefit terms, employment opportunities within covered programs, individual provider orientation, training, and education opportunities, and the operation of public registries shall be subject to the state's obligations to meet and negotiate under chapter 179A, as modified and made applicable to individual providers under section 179A.54, and to agreements with any exclusive representative of individual providers, as authorized by chapter 179A, as modified and made applicable to individual providers under section 179A.54. Except to the extent otherwise provided by law, the commissioner shall not undertake activities in paragraph (c), clauses (3) and (4), prior to July 1, 2015, unless included in a negotiated agreement and an appropriation has been provided by the legislature to the commissioner.

(e) The commissioner shall cooperate in the implementation of section 179A.54 with the commissioner of management and budget in the same manner as would be required of an appointing authority under section 179A.22 with respect to any negotiations between the executive branch of the state and the exclusive representative of individual providers, as authorized under sections 179A.22 and 179A.54. Any entity providing relevant services within covered programs, including providers of fiscal support, fiscal intermediary, financial management, or similar services to provide support to participants and participants' representatives with regard to employing individual providers shall assist and cooperate with the commissioner of human services in the operations of this section, including with respect to the commissioner's obligations under paragraphs (b) and (f).

(f) The commissioner shall, no later than September 1, 2013, and then monthly thereafter, compile and maintain a list of the names and addresses of all individual providers who have been paid for providing direct support services to participants within the previous six months. The list shall not include the name of any participant, or indicate that an individual provider is a relative of a participant or has the same address as a participant. The commissioner shall share the lists with others as needed for the state to meet its obligations under chapter 179A as modified and made applicable to individual providers under section 179A.54, and to facilitate the representational processes under section 179A.54, subdivisions 9 and 10. In order to effectuate this section and section 179A.54, questions of employee organization access to other relevant data on individual providers relating to their employment or prospective employment within covered programs shall be governed by chapter 179A and section 13.43, and shall be treated the same as labor organization access to personnel data under section 13.43, subdivision 6. This shall not include access to private data on participants or participants' representatives. Nothing in this section or section 179A.54 shall alter the access rights of other private parties to data on individual providers.

(g) The commissioner shall immediately commence all necessary steps to ensure that services offered under all covered programs are offered in conformity with this section, to gather all information that may be needed for promptly compiling lists required under this section, including information from current vendors within covered programs, and to complete any required modifications to currently operating covered programs by September 1, 2013.

(h) Beginning January 1, 2014, the commissioner of human services shall specifically require that any fiscal support, fiscal intermediary, financial management, or similar entities providing payroll assistance services with respect to individual providers shall make all needed deductions on behalf of the state of dues check off amounts or fair-share fees for the exclusive representative, as provided in section 179A.06, subdivisions 3 and 6. All contracts with entities for the provision of payroll-related services shall include this requirement.

Sec. 3. SEVERABILITY.

Should any part of this act be declared invalid or unenforceable, or the enforcement or compliance with it is suspended, restrained, or barred, either by the state or by the final judgment of a court of competent jurisdiction, the remainder of this act shall remain in full force and effect.

Sec. 4. EXPIRATION.

Provided the commissioner of human services fulfills the department's obligations under Minnesota Statutes, section 256B.0711, subdivision 4, paragraphs (f) and (g), by September 1, 2013, sections 1 and 2 expire June 30, 2017, if an exclusive representative has not been certified under Minnesota Statutes, section 179A.54, subdivision 10, by that date; provided further that the commissioner of the Bureau of Mediation Services shall process any petition under Minnesota Statutes, section 179A.54, subdivision 10, pending as of June 30, 2017, and any certification of an exclusive representative resulting from a petition pending as of June 30, 2017, shall, for the purposes of this section, be treated as having occurred on the date the petition was initially filed. The revisor of statutes shall publish this expiration date with the codification of sections 1 and 2.

Sec. 5. EFFECTIVE DATE.

This article is effective the day following final enactment.

ARTICLE 3**APPROPRIATIONS**Section 1. **APPROPRIATIONS.**

(a) \$1,010,000 in fiscal year 2014 and \$890,000 in fiscal year 2015 are appropriated from the general fund to the commissioner of human services for the purposes of this act. The funding base for this appropriation is \$2,504,000 for fiscal year 2016 and \$1,426,000 for fiscal year 2017 and later.

(b) \$59,000 in fiscal year 2014 is appropriated from the general fund to the commissioner of the Bureau of Mediation Services for the purposes of this act.

(c) \$235,000 in fiscal year 2014 and \$235,000 in fiscal year 2015 are appropriated from the general fund to the commissioner of management and budget for the purposes of this act. The funding base for this appropriation for fiscal year 2016 and later is \$118,000.

Presented to the governor May 22, 2013

Signed by the governor May 24, 2013, 1:58 p.m.