

COLLECTIVE BARGAINING AGREEMENT



between the

State of
Oregon

and

SEIU

SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 503, OPEU

2008

-

2009

**Adult Foster & Relative
Care Providers**

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ARTICLE 1 – PARTIES TO THE AGREEMENT

This Agreement is between Service Employees International Union, Local 503, OPEU (Union) and the State of Oregon, acting through the Department of Administrative Services (DAS).

ARTICLE 2 – RECOGNITION

Section 1. The State recognizes the Union as the exclusive representative for a single strike-prohibited bargaining unit consisting of all eligible licensed or certified Adult Foster Care Home and Adult Relative Foster Care Home Providers as listed in Section 2 of this Article.

Section 2. The bargaining unit consists of all Adult Foster Care Home and Adult Relative Foster Care Home Providers as defined in this Section, excluding substitute caregivers, employees of the Provider and persons who do not fall under 2.A.II, and other employees excluded from the protection of the Public Employee Collective Bargaining Act.

A. For purposes of this Agreement, the term "Adult Foster Care Home Provider" means:

(I) any natural person who:

- (i) provides adult client services in and lives in his/her own home; and
- (ii) directly receives service payment from the State of Oregon under a Department of Human Services Adult Foster Home Program; or

(II) any natural person who:

- (i) provides adult client services in and lives in the Provider's own home; and
- (ii) owns a controlling interest in, or is an officer or partner of, an entity (e.g., corporation, Limited Liability Corporation (LLC) or partnership) that directly receives service payment from the State of Oregon under a Department of Human Services Adult Foster Home Program for services provided in such person's own home.

B. For purposes of this Section, the term "Adult Relative Foster Care Home Provider" means: any natural person who is a relative to an adult DHS client and who:

- (i) provides adult client services in and lives in the Provider's own home; and
- (ii) directly receives service payment from the State of Oregon Department of Human Services Adult Foster Home Program.

C. For purposes of this Article, the following definitions apply:

- "own home" means one's full-time domicile that is the licensed or certified Adult Foster Home or Adult Relative Foster Care Home and where the Provider customarily and regularly conducts his or her activities of daily living, e.g., sleeping, eating, bathing, and

recreating at that domicile. This language does not mean that the Provider is required to be present twenty-four (24) hours a day or seven (7) days a week, but rather is meant to clarify that a Provider resides on a full-time basis with a state-funded resident at that domicile.

- "partner" means an individual who, with one or more other persons, is co-owner of a business for profit (ORS 67.005(7)).
- "officer" means a corporation's president or secretary and other officers not to exceed a total of three (3) for the corporation.
- "controlling" means a majority interest in the provider entity.

Section 3. When there has been a determination of the Employment Relations Board to modify the bargaining unit listed in Section 2 of this Article or when the Parties reach mutual agreement to modify, negotiations will be entered into as needed or as required by law.

ARTICLE 3 – TERM OF AGREEMENT

Section 1.

- a) This Agreement shall become effective on the date of the last signature by representatives of the State and the Union on the complete agreement after full acceptance by the Parties, and expires on June 30, 2009.
- b) Either party may give written notice during the one hundred and eighty (180)-day period preceding the expiration of the Agreement.
- c) Negotiations shall commence at a mutually agreeable date after receipt of such notice.

Section 2. This Agreement shall not be opened during its term except by mutual agreement of the Parties, by proper use of *Article 5 – Separability*, or as otherwise specified in the Agreement.

ARTICLE 4 – COMPLETE AGREEMENT

Section 1. Pursuant to their statutory obligations to bargain in good faith, the State and the Union have met in full and free discussion concerning matters in "employment relations" as defined by ORS 243.650(7). This Agreement incorporates the sole and complete agreement between the State and the Union resulting from these negotiations.

Section 2. The Parties recognize the full right of the State to issue rules, regulations and procedures and that these rights are diminished only by the law and this Agreement, including interpretative decisions which may evolve pursuant to the proper exercise of authority given by the law of this Agreement.

Section 3. The State agrees to bargain over any change(s) it proposes to make to mandatory subjects of bargaining not covered by the Agreement pursuant to the Public Employee Collective Bargaining Act (PECBA). Changes to any of the terms and conditions contained in the Agreement may be made by mutual agreement or as otherwise allowed by ORS 243.702.

ARTICLE 5 – SEPARABILITY

In the event that any provision of this Agreement is at any time declared invalid by any court of competent jurisdiction, declared invalid by final Employment Relations Board (ERB) order, made illegal through enactment of federal or state law or through government regulations having the full force and effect of law, such action shall not invalidate the entire Agreement, it being the express intent of the Parties hereto that all other provisions not invalidated shall remain in full force and effect. The invalidated provision shall be subject to re-negotiation by the Parties within a reasonable period of time from either Party's request.

ARTICLE 6 – UNION RIGHTS

Section 1 - Bulletin Boards. The Union shall be allowed to provide and maintain a bulletin board or share space on an existing bulletin board in an area regularly accessible by the Provider where space is deemed available by the Adult Foster Care and Relative Adult Foster Care Providers and the local field representatives (DHS or Area Agencies on Aging (AAA), or Community Mental Health Program (CHMP), or the Community Developmental Disability Program (CDDP). Such space shall not be denied for arbitrary or capricious reasons.

Section 2 – Unique Identification Number. The State shall ensure that each contracted Adult Foster Care Provider in the bargaining unit is assigned a unique identification number based on their tax ID number. This number shall consistently be used to identify the Provider whenever the Provider is enrolled for payment within the Adult Foster Care bargaining unit as long as the Provider uses their same tax ID number. This number will be used for SEIU reporting regardless of the provider numbers in the state payment system.

Section 3 – List and Information. By the tenth (10th) calendar day of each month DHS shall transmit an electronic file of Adult Foster Care Home Providers in the bargaining unit that have a contract with and received payment from DHS. If applicable, the file shall include: Service Period Begin Date; Service Period End Date; Provider Unique Identification Number; Provider Name; Provider Street Address; Provider Telephone Number; Provider City; State; Zip; Medicaid payment made by DHS for each Adult Foster Care resident, to include separately the total service rate and the DHS-paid portion. The final data file shall be developed by SPD Business staff and SEIU information technology staff.

Section 4 – List of Representatives. The Union shall provide the State with a list of the names of authorized Union staff representatives and elected officers, and shall update those lists as necessary.

Section 5. The Union shall indemnify and hold the State or designee harmless against claims, demands, suits, or other forms of liability which may arise out of action taken by the State for the purpose of complying with the provisions of this Article.

ARTICLE 7 – GRIEVANCE PROCEDURE

Section 1. Grievances are defined as acts, omissions, applications, or interpretations alleged to be violations of the terms or conditions of this Collective Bargaining Agreement.

Section 2. The State encourages, whenever possible, an informal resolution approach between the Adult Foster Care and Adult Relative Foster Care Providers and local field representatives (DHS or Area Agencies on Aging (AAA), or Community Mental Health Program (CMHP), or the Community Developmental Disability Program (CDDP)) over the application of the terms and conditions of the Collective Bargaining Agreement that are within their authority to administer.

Section 3. Grievances shall be filed within thirty (30) calendar days of the date the grievant or the Union knows or, by reasonable diligence, should have known of the alleged grievance. Once filed, the Union shall not expand upon the original elements and substance of the written grievance.

Grievances shall be reduced to writing, stating the specific Article(s) alleged to have been violated, a clear explanation of the alleged violation, and the requested remedy. Grievances shall be processed in the following manner:

Step 1. The Union on the Grievant's behalf may submit the grievance in writing within thirty (30) calendar days to a DHS designee. The Grievant and Union representative (designated by the Union) or the Union representative will attempt to meet with the DHS designee within thirty (30) calendar days following the receipt of the grievance. Such meeting, if held, may be face-to-face or via teleconference. Failure to meet will not invalidate the grievance.

The designee shall respond to the grievance in writing within fifteen (15) calendar days following the Step 1 meeting or the date when the Parties agreed that such a meeting would not be necessary.

Step 2. No grievance may be processed under this Step which has not first been filed and investigated in accordance with Step 1 above. When the response at Step 1 does not resolve the grievance or no response is received within the fifteen (15) calendar days, an Unfair Labor Practice Complaint (ULP) may be filed in writing to the Employment Relations Board (ERB) within sixty (60) calendar days. The Parties waive the right to have one hundred eighty (180) days to file a ULP and will consider any ULP filed after sixty (60) days from the date the Step 1 response was due or received to be untimely. The Parties also agree that the grievance and supporting documents will be submitted by the Union to ERB at the time of the filing. Briefs may be submitted but are not required. The Parties' representatives shall work with the ERB to schedule a mutually agreeable date, as appropriate, to hear the ULP grievance appeal. ERB shall have no authority to rule contrary to, to amend, add to, subtract from, change or eliminate any of the terms of this Agreement. ERB's decision shall be final and binding except for decisions made outside the scope of ERB's authority, as defined in this paragraph. Decisions made outside ERB's authority as defined in this paragraph are appealable. The Parties waive their right to appeal for any other reason.

The Parties may mutually agree to grievance mediation. When mediation is agreed to, the appeal to ERB will be tolled. If the grievance is unresolved in mediation, the above appeal timeline to ERB will resume.

Section 4 - Time Limits. The time limits specified in this Article shall be strictly observed, unless either Party requests a specific extension of time, which, if agreed to, must be stipulated in writing and shall become part of the grievance record. "Filed" for purposes of all steps shall mean date of receipt by mail, hand delivery, by facsimile (fax), or as otherwise agreed to by the DHS designee, and the Union. If the State or its designee fails to issue a response within the time limits, the Union may advance the grievance by written notice to the next step unless withdrawn by the Union. If the Union fails to meet the specified time limits, the grievance shall be considered withdrawn and cannot be resubmitted.

Section 5. The State is not responsible for any compensation of Providers or their representative for time spent investigating or processing grievances nor any travel or subsistence expenses incurred by a grievant or Union Steward in the investigation or processing of grievances.

Section 6. Each Party shall bear the cost of its own presentation at Step 2, including preparation and post-hearing briefs, if any.

Section 7. The Parties shall split the ERB filing fees. Neither party will request representation costs or civil penalties.

ARTICLE 8 – NO DISCRIMINATION

Section 1. The Union and the State agree not to engage in unlawful discrimination against any Provider because of religion, sex, race, creed, color, national origin, sexual orientation, age, physical or mental disability or Union activities.

Section 2. This Article does not apply to the resident's sole and undisputed rights provided in the law, including the selection and termination of placement with a Provider.

Section 3. This Article does not affect the State's (or its designee's) authority, as provided in law, to license and regulate the Provider.

ARTICLE 9 – SERVICE FEES

Section 1. Effective July 1, 2008, the DHS rates paid to Adult Foster Care Home Providers who provide services for APD, AMH and DD adult residents shall be increased by two and one-tenth percent (2.1%) as approved by the 2007 Legislative Assembly.

Section 2. Effective July 1, 2008, following the implementation of Section 1, the DHS-paid rates shall include an additional two hundred sixty dollars (\$260.00) for APD and DD Adult Foster Care Home residents as approved by the February 2008 Legislative Session.

Section 3. Effective July 1, 2008, following the implementation of Section 1, the DHS-paid rates shall include an additional two hundred sixty dollars (\$260.00) for AMH Adult Foster Care Home residents subject to concurrence by the Emergency Board.

Section 4. A schedule showing the revised rates and add-ons for APD will be appended to this contract as Appendix A.

ARTICLE 10 - PRE-PLACEMENT PLANNING

Section 1. Prior to any admission to a non-relative, Adult Foster Care Home the Provider and the local Medicaid case manager should work cooperatively to ensure that an appropriate placement occurs.

Section 2. Placement in an APD, AMH and DD Adult Foster Care Home. Prior to approving the placement of a Medicaid resident for admission to an Adult Foster Care Home the local case manager shall provide the following information to the Adult Foster Care Home Provider when such information is known to the case manager or contained in the case file: any history of prior placements and any recent care plan, a medical history including medical diagnoses and current medications, a summary of support needs for activities of daily living, and any known behavioral and/or risk factors.

Section 3. Adult Foster Care Home Provider Responsibilities. Notwithstanding information listed in Section 2 of this Article, the Adult Foster Care Provider continues to be responsible for the following prior to any private or public placement into the home: conducting and documenting their own screening and assessment of the resident's needs in accordance with the rules to determine the Provider's capability to support the individual; obtaining the approval of the individual's case manager or CDDP prior to any admission; and to not accept any placement until all necessary information is available to provide care.

Section 4. Placements made privately by families, through private placement agencies, directly by hospitals or any other agency without the involvement of a case manager, or by brokerages for respite services do not apply to this Article.

LETTER OF AGREEMENT ON DUES DEDUCTION AND FAIR SHARE

1. By 9/1/08, the State will submit to the regional CMS office amendments to Oregon's waiver programs that provide for Adult Foster Care and Relative Foster Care services, stating that it is implementing dues and fair share-deductions for Adult Foster Care and Relative Foster Care Providers. Before submitting such amendments, the State will provide them for review by the Union. The State will respond promptly to any request from CMS for additional information with respect to such amendments and will consult with the Union with regard to such requests and responses in an effort to ensure that there is no basis upon which the amendments would be rejected.
2. Notwithstanding this side letter, the State will not be obligated to implement dues deduction or fair share until the ninety (90) day period for CMS review of the amendments, (or any CMS extension of that period) has expired and the amendment request is approved.
3. Provided that CMS approval has been received, the State agrees to begin dues deduction and fair share for Adult Foster Care and Relative Foster Care Providers on 1/1/10 unless the Union requests a later date, in which case the date shall be as specified by the Union. The State will complete all steps necessary to implement dues deduction and fair share (including but not limited to administrative and information technology changes) in advance of 1/1/10. Implementation may occur before 1/1/10 by mutual agreement.
4. If the State encounters major obstacles in implementing the MMIS system, the State may, during the month of April, 2009, request a postponement of the 1/1/10 implementation date. If the Parties mutually agree, the implementation date will be postponed to a date certain. If the Parties mutually agree to postpone the date, they may also discuss and mutually agree to a reduction in the Union's share of the IT costs (see Section 6 below) in recognition of the impact of delayed implementation of dues deduction and fair share on the Union. The State will not request a postponement unless it can document that (a) It encountered obstacles resulting in a significant delay beyond 2/1/09 in implementing an operational MMIS; and (b) It encountered obstacles requiring all or nearly all qualified agency and contract IT staff who would otherwise have worked on dues /fair share implementation to be deployed to address those obstacles for an extended period of time; and (c) The combined impact of (a) and (b) make implementation by 1/1/10 impossible irrespective of the priority assigned to the project by the Agency.
5. By 10/1/08, the State will begin the process of making necessary computer changes in order to implement dues deduction and fair share. The State will provide monthly progress reports to the Union regarding the status of the programming project.
6. The DHS will consider available options to finance the system changes. The Union agrees to share the cost of system modifications not to exceed twenty percent (20%) of the General Fund share of the cost or \$200,000, whichever is less. The Union's share of the system modification costs shall be due when the first dues/fair share payment(s) are made to the Union and shall be paid in monthly installments no greater than the aggregate amount of dues/fair share remitted to the Union for that month.

7. Once implemented, dues and fair share deductions will be governed by the language in Attachment A to this Letter of Agreement.
8. The Parties agree to work together toward a goal of implementing a system for deducting voluntary contributions to the Union's political action fund. The Parties acknowledge that it is technically feasible to implement political action fund voluntary contributions after dues/fair share deduction is implemented. The Parties further acknowledge a shared intention of implementing political action dues deduction but recognize that further discussions will be needed in order to determine an implementation timeline that takes into account the costs of systems changes, the amount of work necessary to implement those changes, and the potential need for CMS approval.
9. This Letter of Agreement is part of the Collective Bargaining Agreement between SEIU and the State of Oregon covering Adult Foster Care and Relative Foster Care Providers. It shall take effect upon ratification of that contract, but it shall not terminate when that contract expires and will continue in effect until dues and fair share are implemented, at which point Attachment A will be incorporated into the then-current Collective Bargaining Agreement.

**ATTACHMENT A TO LETTER OF AGREEMENT ON DUES DEDUCTION
AND FAIR SHARE**

Once implemented pursuant to the terms of the Letter of Agreement, dues deduction and fair share payments shall be governed by the following language:

Section 1. Unique Identification Number. The State shall ensure that each contracted Adult Foster Care and Relative Foster Care Provider in the bargaining unit is assigned a unique identification number based on their tax ID number. This number shall consistently be used to identify the Provider whenever the Provider is enrolled for payment within the Adult Foster Care and Relative Foster Care Bargaining Unit as long as the Provider uses their same tax ID number. This number will be used for SEIU reporting regardless of the Provider numbers used in the State payment system.

Section 2. List and Information. By the tenth (10th) calendar day of each month, DHS shall transmit an electronic file of Adult Foster Care and Relative Foster Care Providers in the bargaining unit that have a contract with and received payment from DHS. The file shall include: Time Period Begin Date; Time Period End Date; Provider Unique Identification Number; Provider Name; Provider Street Address; Provider Telephone Number; Provider City; State; Zip; Medicaid payment made by DHS for each Adult Foster Care and Relative Foster Care resident, to include separately the DHS-paid portion and the client-contribution portion. The final data system shall be developed by SPD payment unit staff and SEIU information technology staff.

Section 3. Indemnification Provision. The Union shall indemnify and hold the State or designee harmless against claims, demands, suits, or other forms of liability which may arise out of action taken by the State for the purpose of complying with the provisions of this Article.

Section 4. Dues Deduction. Upon written request from the Provider, monthly Union dues including one permanent assessment amount* shall be deducted from the Provider's service fee and remitted to the Union. Additionally, upon written notice from the Union, authorized increases in dues shall be deducted from the Provider's service fee and remitted to the Union according to this Section. Monthly Union dues will cease upon written notice from the Provider. All applications for Union membership or dues cancellation which the State receives shall be promptly forwarded to the Union. Provider applications for Union membership or dues cancellation which the Union receives shall be promptly forwarded to the State.

Dues deduction shall continue until such time that the Provider requests cancellation of the dues deduction in writing.

Upon return from any break in service of not more than twelve (12) months, reinstatement of the dues deduction shall occur for those Providers who were having dues deducted immediately prior to said break in service.

Dues deduction shall only occur after all mandatory and priority deductions are made in any pay period.

Section 5. Fair Share. All Providers in the bargaining unit who are not members of the Union shall make fair share payments in-lieu-of dues to the Union.

Monthly fair share shall be deducted from the Provider's service payment and remitted to the Union.

Bargaining unit members who exercise their right of non-association, for example, when based on a bona fide religious tenet or teaching of a church or religious body of which such Provider is a member, shall pay an amount of money equivalent to regular monthly Union fair share dues to a non-religious charity or to another charitable organization mutually agreed upon by the Provider and the Union and such payment shall be remitted to that charity by the Provider in accordance with ORS 243.666. At time of payment, the Provider shall simultaneously send verifiable notice of such payment to the State (DHS) and the Union.

Upon return from any break in service of not more than twelve (12) months, reinstatement of fair share deduction shall occur for those workers who were having fair share deduction immediately prior to said break in service.

Fair share deductions shall only occur after all mandatory and legal deductions are made in any pay period.

Section 6. Dues and Fair Share Adjustment Summaries for SEIU Local 503, OPEU Adult Foster Care/Relative Foster Care Members. The format for payroll summaries shall be jointly developed by SPD staff and SEIU staff. Such summaries shall contain the Provider name, unique identification number, prior month deduction, current month deduction, and any other mutually agreed upon information and shall be forwarded electronically by the State to the Union by the tenth (10th) calendar day of the following month.

* The additional permanent assessment amount is currently \$2.75.

STATEMENT OF INTENT: TRAINING

Section 1. Training Initiative.

A. It is the intent of the Parties to the Collective Bargaining Agreement to convene an Adult Foster Home (AFH) Training Committee with goals and responsibilities outlined below. The AFH Training Committee shall consist of the following members:

1. Six (6) representatives from Department of Human Services (DHS), Area Agencies of Aging (AAA), Community Development Disability Program (CDDP), and Community Addictions and Mental Health Program (CAMHP) who bring specific program knowledge and expertise related to the services provided by Foster Care Providers covered under this Collective Bargaining Agreement (CBA).
2. Six (6) representatives from SEIU/AFH.
3. Two (2) representatives from other community-based care provider groups, e.g. ALF's, RCF's, group homes, homecare, residential treatment facilities, or private pay adult foster homes, not already represented by SEIU/AFH.

B. Based on a shared understanding that quality training enhances skills and improves services provided to residents, the committee shall have the following broad training goals:

1. Inventory current initial and ongoing AFH training and/or continuing education unit requirements.
2. Identify and prioritize foster care training needs by program area, for example: foster care for seniors and people with disabilities, including relative foster care, foster care for developmental disabilities and mental health populations.
3. Explore opportunities to work with agencies and community partners to provide more comprehensive training to AFH Providers.
4. Explore alternative methods to deliver training.
5. Explore methods to make training opportunities to AFH Providers more accessible, such as on line course study, CD/video/audio curriculum and in classroom settings.
6. Explore dissemination of training opportunities.
7. Invite other appropriate partners, as necessary or as requested by the committee members, to attend the meeting(s) to provide their expertise on training-related topics/issues.

C. The results of the committee's work, including recommendations, shall be sent to the Department of Human Services Assistant Directors of SPD and AMH. If the Department

decides to implement any of or portion(s) of the committee's recommendations, it will strive to give prior notice to the committee members.

D. The Department intends to do the following:

1. Use the DHS WEB site to post DHS-developed AFH training;
2. Standardize continuing education requirements;
3. Develop criteria and implement a form for Providers to record training that does not need prior approval;
4. Develop a process to get prior approval for training that does not meet criteria in number 3;
5. Develop a DHS Policy Option Package to include in its 2009-2011 budget request to develop and provide an array of training opportunities to Adult Foster Home Providers;
6. Keep the committee informed of the DHS Policy Option Package.

Appendix A

RATE SCHEDULE (Effective July 1, 2008)

Rates apply to Home and Community-Based Care and Nursing Facility Services provided by Seniors and People with Disabilities.

Aged and Physically Disabled and Developmental Disabilities/ Mental Health		
Room and Board	SSI Only PIF	SSI/ SSB PIF
AB \$494.70	\$169.00*	\$181.00
AD/OAA \$494.70	\$144.00	\$162.30

- Includes \$25.00 for transportation

Community-Based Care Rates

	RCF and Non-Relative Adult Foster Homes	Relative Adult Foster Homes	Assisted Living Facilities	
Base	\$1,249/ Month	\$1,016/ Month	Level 1	\$1,002/Month
Base plus 1 add-on	\$1,491	\$1,258	Level 2	\$1,242
Base plus 2 add-ons	\$1,733	\$1,500	Level 3	\$1,558
Base plus 3 add-ons	\$1,975	\$1,742	Level 4	\$1,957
Level 5			Level 5	\$2,355
Approved additional hours of service	\$10.20/per hour	\$10.20/per hour		

Nursing Facility Daily Rate	
Basic Rate	\$198.17
Complex Medical Rate	\$277.44
Pediatric Rate	\$347.14

Homecare Workers	Hourly	Live-in
24-Hour Availability	N/A	\$4.55
Self-Management Tasks	\$10.20	\$4.55
Activities of Daily Living Assistance Tasks	\$10.20	\$10.20
Mileage, Non-Medical	\$.485/ mile	
24-Hour Relief Wage for Live-in Homecare Workers w/ Leave	\$175/ day	

Comparable Nursing Facility Rate	
Basic Rate	\$5,533.04/ Month
Complex Rate	\$7,944.19/ Month

Providence ElderPlace (PACE) Capitated Rate \$2,772.50/ Month
Home Delivered Meals \$7.05/ meal
Prof Services Contract RN \$45.00/ hour
HK Shelter \$59.09/ month \$1.94/ day
Adult Day Services: Refer to Contracted Rates

Local Office Approval Limit In-Home Service Plans
Hourly Plan: 230 hours
Live-in Plan: 389 hours