



MEMORANDUM OF AGREEMENT

BETWEEN

**THE OREGON EMPLOYMENT DEPARTMENT,
THE OREGON DEPARTMENT OF HUMAN SERVICES,
AND
SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 503, OREGON PUBLIC EMPLOYEES UNION**

**Governor's Executive Order No. 06-04 titled
Representation of Subsidized, License-Exempt Family Child Care Providers**



MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (Agreement) is between the Oregon Employment Department, the Oregon Department of Human Services, and Service Employees International Union Local 503, Oregon Public Employees Union. This Agreement is a result of the Governor's Executive Order No. 06-04 titled Representation of Subsidized, License-Exempt Family Child Care Providers.

As directed by the executive order, Agencies have met and conferred with the members of Service Employees International Union Local 503, Oregon Public Employees Union on behalf of license-exempt family child care providers participating in the subsidy program regarding issues of mutual concern.

PREAMBLE

As signatories to this document, Service Employees International Union Local 503, Oregon Public Employees Union (known hereafter as Union) and the Oregon Employment Department, Child Care Division (CCD) and Oregon Department of Human Services (DHS), (known hereafter as Agencies) agree to work together in partnership to build a child care system that respects providers, empowers working families, and promotes safe, healthy development of children. Agencies recognize and value the important contribution that license-exempt providers make in the lives of families who receive the DHS child care subsidy. In particular, Agencies recognize that license-exempt child care fills a need for flexibility that sometimes cannot be met in other settings.

TERMS OF MUTUAL AGREEMENT

SECTION I: RECOGNITION

Agencies recognize Union as the sole and exclusive representative for all license-exempt family child care providers participating in the subsidy program for purposes of this meet and confer process as set forth in Executive Order 06-04. Agencies will not take action with the intent of eroding Union's ability to represent this group of providers.

There is intended to be no overlap among this population of child care providers and the population of child care providers covered in Executive Order No. 05-10. Should a license-exempt family child care provider participating in the subsidy program become certified or registered, the American Federation of State, County and Municipal Employees (AFSCME) will be recognized as the representative for that provider and will not be included in this Agreement. Should a certified or registered provider participating in the subsidy program become license-exempt, Union will be recognized as the representative for that provider.

SECTION II: DUES

- A. DHS will deduct union dues from subsidy payments on a date mutually agreed upon with Union as soon as modifications can be made to the payment system, but no later than October 1, 2007.
- B. DHS agrees to deduct the monthly membership dues, monthly special assessment, plus any additional voluntary deductions including, but not limited to political contributions and union benefits such as life and legal insurance, from the subsidy payments(s) of those providers who individually request such deductions in writing. The amount to be deducted shall be certified to DHS by Union, and the aggregate deductions shall be deducted no less frequently than monthly. DHS will provide an itemized statement including all information outlined in Rules, Notices, and Lists of Provider Information which will be sent to Union headquarters. Such statement shall indicate any providers whose status has changed.
- C. If there should be a break in providing child care subsidized by DHS for six months or less, DHS shall use prior written authorization to reinstate all deductions and maintain union status.
- E. Union shall indemnify and hold the Agency harmless against any and all claims, damages, suits, or other forms of liability which may arise out of any action taken or not taken by the Agency for the purpose of complying with provisions of this section.
- F. Fair Share:
 - 1. In the event that statutory law changes permit the Agency to withhold fair share payments from license-exempt child care providers participating in the subsidy program, the following fair share section will apply:
 - 2. All license-exempt child care providers in the subsidy program who are not members of Union shall make fair share payments in-lieu of dues to Union.
 - 3. Fair share deductions shall be made in the first full month of provider service.
 - 4. Providers 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 Union and such payment shall be remitted to the 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 DHS and Union.

5. Upon return from any break in providing child care subsidized by DHS of not more than six months, reinstatement of fair share deduction shall occur for those workers who were having fair share deduction immediately prior said break in provision of child care.
6. The fair share subsidy deduction and summary shall be in accordance with the membership deduction language outlined above.

SECTION III: PROVIDER ORIENTATIONS

To ensure that providers understand how the DHS child care subsidy program operates and are aware of the roles and responsibilities of providers, DHS will hold orientations for providers. DHS will work with Union to develop other means and methods of providing orientation materials to providers in order to inform providers in effective and efficient ways.

The orientations shall include but not be limited to information on subsidy rates, hours, billing, paperwork, co-pays, and tax information resources. Union will be notified at least ten working days in advance of the orientation and provided an opportunity to make presentation and to distribute and collect union membership applications.

SECTION IV: TRAINING

Within available funds, Agencies and Union will work with the child care training system to make training accessible and affordable for license-exempt providers participating in the subsidy program.

Agencies will provide an on-line training calendar reflecting dates, times and locations of child care provider training.

The costs covered with the available funds will include:

1. Payment of class fees and required materials;
2. Transportation to and from the nearest training site;
3. Payment for substitute care of child care children occurring during approved child care hours.

Union will form a training committee to work on training issues. Recommendations approved by Union's training committee shall be presented to the Training Quality Committee and other training committees for response and/or action. Agencies will pay for up to two (2) Union represented providers to attend the Training Quality Committee (substitute care and mileage).

Upon request, Agencies will provide representatives when available to attend Union committee meetings to hear concerns and assist with recommendations for the Training Quality Committee or appropriate subcommittee.

Agencies and Union will work with the statewide resource and referral system to create a range of trainings specifically targeted to license-exempt providers receiving the DHS subsidy. In license-exempt specific trainings, Union will have an opportunity to make a presentation and obtain membership applications.

By March 1, 2007 Agencies and Union will work together to develop criteria and processes for implementation of this section.

SECTION V: SUBSIDY ISSUES

- A. DHS will propose for the 2007-2009 Agency Request Budget that the maximum standard subsidy rate paid to license-exempt child care providers be increased to 88 percent of the 75th percentile of the 2006 Oregon Child Care Market Rate Study and the enhanced rate be increased to 95 percent of the 75th percentile of the 2006 Oregon Child Care Market Rate Study. These rates will take effect October 1, 2007.

Group Area A

Portland, Eugene, Corvallis, Monmouth and Ashland areas

TYPE OF CARE	Current Standard	New Standard Rate	New Enhanced Rate	75th Percentile (2006 MRS)
Infant Hourly	\$2.44	\$2.64	\$2.85	\$3.00
Infant Monthly	\$402	\$493	\$532	\$560
Toddler Hourly	\$2.17	\$2.64	\$2.85	\$3.00
Toddler Monthly	\$369	\$466	\$504	\$530
Preschool Hourly	\$2.17	\$2.64	\$2.85	\$3.00
Preschool Monthly	\$348	\$440	\$475	\$500
School Age Hourly	\$2.00	\$2.64	\$2.85	\$3.00
School Age Monthly	\$348	\$436	\$470	\$495

Group Area B

Salem, Bend, Medford, Roseburg, Brookings and areas outside the metropolitan areas in Eugene and Portland

TYPE OF CARE	Current Standard	New Standard Rate	New Enhanced Rate	75th Percentile (2006 MRS)
Infant Hourly	\$1.89	\$2.20	\$2.38	\$2.50
Infant Monthly	\$354	\$400	\$432	\$455
Toddler Hourly	\$1.89	\$2.20	\$2.38	\$2.50
Toddler Monthly	\$325	\$396	\$428	\$450
Preschool Hourly	\$1.68	\$2.20	\$2.38	\$2.50
Preschool Monthly	\$304	\$374	\$404	\$425
School Age Hourly	\$1.68	\$2.20	\$2.38	\$2.50
School Age Monthly	\$304	\$352	\$380	\$400

Group Area C

Balance of State - (small towns and rural areas)

TYPE OF CARE	Current Standard	New Standard Rate	New Enhanced Rate	75th Percentile (2006 MRS)
Infant Hourly	\$1.89	\$2.20	\$2.38	\$2.50
Infant Monthly	\$353	\$374	\$404	\$425
Toddler Hourly	\$1.63	\$1.98	\$2.14	\$2.25
Toddler Monthly	\$325	\$352	\$380	\$400
Preschool Hourly	\$1.63	\$1.76	\$1.90	\$2.00
Preschool Monthly	\$260	\$348	\$375	\$395
School Age Hourly	\$1.63	\$1.76	\$1.90	\$2.00
School Age Monthly	\$260	\$348	\$375	\$395

SECTION VI: RULES, NOTICES, AND LISTS OF PROVIDER INFORMATION

DHS will provide updates to its manual. Union will receive notice of Agencies' proposed rulemaking as an interested party.

Union will receive copies from DHS of general information notices that are sent to all child care providers such as the "Notice of Cost of Living Increases".

DHS will provide Union on a monthly basis in a mutually acceptable electronic format, a listing of all license-exempt providers in active status in the provider payment system. The list will include the provider's name, gender, year of birth, address, phone number, DHS provider number, the provider's original listing date as noted in the provider payment system, number of hours paid per child, the amount of subsidy paid and all applicable deductions unless prohibited by law.

SECTION VII: LEGISLATIVE ACTION

- A. All provisions of this Agreement not requiring legislative funding or statutory changes shall be implemented on the effective date of this agreement or as otherwise specified herein.
- B. Any provisions requiring legislative funding or statutory changes shall not become effective until the appropriate legislative body has given approval.
- C. Upon the signing of this Agreement, Agencies will incorporate into the Agency Request Budget, any policy option packages necessary to implement this agreement.
- D. If the appropriate legislative body fails to adopt the submitted legislative package, Agencies shall immediately meet with Union to confer and agree on amending the affected portion(s) of this Agreement within thirty (30) calendar days from the knowledge of the legislative body's failure to adopt.

SECTION VIII: REOPENING PROVISIONS DISCUSSION

In the event any provision of this Agreement is declared invalid by any court of competent jurisdiction, then only such portion or portions shall become null and void and the balance of the Agreement will remain in effect. Agencies and Union agree to meet and confer within 30 days of the declaration to develop alternatives to amend the affected portion or portions of this Agreement.

SECTION IX: DISPUTE RESOLUTION

If disputes between the parties regarding the application or interpretation of this Agreement are not resolved through informal communication, the disputes may be resolved in the following manner at the request of either party.

- A. Either party may make a written request to the other party within thirty (30) calendar days of the agency or union having knowledge of the issue. The statement will include: a) a description of the issue and relevant facts, b) the specific provision or provisions of the agreement at issue, and c) the resolution sought.
- B. The process will include the following steps:
 - 1. The ERDC program manager (or designee) or union designee will review the dispute and within fifteen (15) calendar days of receipt, attempt to resolve it to the satisfaction of the parties. A good faith attempt will be made to convene a phone call so that parties can discuss the issues before a decision is rendered.

2. If the dispute is not resolved at step 1 of the process, the initiating party may submit the dispute to a neutral third party who has been mutually accepted by both parties. The neutral third party will conduct a meeting at which the parties will discuss the dispute. To the extent possible, the goal of the meeting is to reach a mutually acceptable resolution to the dispute. If that is not possible, the neutral third party shall issue a written decision not exceeding two (2) pages in length within 15 calendar days of the meeting. No briefs shall be submitted. The parties shall endeavor to schedule one day each month during which all pending disputes shall be discussed. The discussion shall last no longer than 60 minutes per dispute unless there is mutual agreement to extend the time, and parties may participate by phone. The decision of the neutral third party will be implemented unless it is in violation of statute or rule. Any costs related to the neutral third party shall be split equally between Union and the agency.

Agencies and Union will meet within sixty (60) days of the signing of this agreement to discuss and settle upon a process by which to select a neutral third party.

In the event of an overpayment dispute in, which a contested case process already applies, step 2 of this dispute resolution process is not applicable. Agencies will work with Union to improve understanding and accessibility to the contested case process.

SECTION X: PAYMENT TIMELINES, ACCURACY AND OVERPAYMENTS

A. Timely Payments

1. DHS will maintain a procedure that provides for the issuance of subsidy checks within four (4) working days of the proper submission of a completed voucher by the provider.
2. DHS will explore the feasibility of updating the IVR system to provide a more comprehensive status report for billing forms submitted by the provider.

B. Direct Deposit

1. DHS will implement direct deposit for subsidy payments effective upon completion of necessary modifications to the payment system. DHS will attempt to complete necessary system modifications to the payment system within six to eight months of the signing of this agreement.
2. DHS will implement a procedure for direct deposit of subsidy checks by October 1, 2007. The provider shall submit a written request and proper bank information to receive direct deposit within sixty (60) calendar days from the receipt of the provider's request.

C. Accurate Payments

1. The Agency will work with Union to increase the accuracy of payments made to providers including but not limited to the following.
 - i. DHS will provide materials and information to providers in order to increase the submission of accurate billing forms on the part of providers.
 - ii. DHS will review its processes and make necessary changes in order to minimize errors caused by the agency.

D. Overpayments

1. If an overpayment is made to a provider due to an error on the part of the agency, that overpayment will be collected or recouped at no more than five percent (5%) of the provider's subsidy payment until paid in full.
 2. For overpayments not caused by agency error, payment may be collected or recouped in full immediately where possible. A repayment arrangement may be made if all of the following criteria is met:
 - i. The overpayment is determined to be caused by provider error.
 - ii. The provider has been providing care subsidized by DHS for 12 months.
 - iii. The provider must have a reasonable financial hardship which impacts the provider's ability to continue to provide child care.
 - iv. The provider must have infrequent occurrences of overpayment.
- E. It shall not be considered a provider error if a provider cares for a child whose care has been authorized by the state even if the child's parent is later found not to be eligible for subsidy. In this event, the over payment shall not be recouped from the provider.
- F. If all of the above criteria are met, monthly payments would be set at \$50 minimum or 10 percent (10%) of the overpayment amount, whichever is highest, and deducted from future subsidy payments. Payment is negotiated in full so payment is made within the shortest amount of time but no longer than 10 months.
- G. Exceptions may be made on a case by case basis based upon demonstrated hardship.

SECTION XI: NEUTRAL ENVIRONMENT AND NO DISCRIMINATION

Agencies will remain neutral on the subject of union representation.

Agencies agree that child care providers have the right to be given the same consideration and treatment as all other providers and will not be discriminated against due to race, color, religion, gender, sexual orientation, national origin, political affiliation, disability, marital status, age or union affiliation.

SECTION XII: CO-PAY AND INCOME LIMIT

DHS will propose, in its 2007-09 agency request budget, that parent co-pays be reduced by an average of 20 percent.

DHS will propose, in its 2007-09 agency request budget, that the maximum income limit be increased to 185 percent of the Federal Poverty Level (FPL).

TERMS OF AGREEMENT

This Agreement shall be in effect upon its execution and except as amended or modified, shall remain in full force and effect until June 30, 2009. The parties will meet and confer starting at least 90 days before the end date of this Agreement, or a mutually agreed upon date, to discuss any necessary modifications or additions in order to reach a new Agreement.

Signed this 1st day of February, 2007 in Salem, Oregon.

FOR AGENCIES

FOR UNION

