



TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2007 – 23S

**Establishing Collective Bargaining for
Home Health Care Workers**

1. **The Role of Independent Home Care Providers.** Independent Home Care Providers (IHCPs), such as Nurses and Direct Care Professionals, offer an invaluable service to Ohio's elderly and to those with disabilities. By providing ongoing in-home personal and health care services, IHCPs allow these Ohioans to become a more integrated part of the communities in which they live by maximizing their independence, which is often less costly than institutional care.
2. **IHCPs Should Have An Opportunity For Bargaining Representation, Just As Those Who Provide Institutional Care Do.** In order to ensure that the quality of services provided to in-home health care recipients remains constant, IHCPs should have access to proper training and to effective representation when negotiating for work-related benefits.
3. **IHCPs Have No Adequate Method for Addressing Work-Related Concerns.** Currently, IHCPs have no standardized means of communicating their concerns about home care programs, their respective roles within those programs, or the reimbursement rates or benefits for IHCPs.
4. **Role of the State in Addressing the Needs of IHCPs.** The State has control over certain aspects of the work life of IHCPs, including the means for funding waiver programs administered by the Departments of Aging, Job and Family Services, Mental Retardation and Developmental Disabilities and any executive-level agencies that may be created that offer waiver programs, and the benefits and training available to IHCPs who participate in such programs.

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5. **Selection of a Bargaining Representative for IHCPs.** In order to assist the State in addressing the concerns and interests of IHCPs, the State shall recognize one representative as the exclusive collective bargaining representative for all IHCPs, designated in a manner as follows:
- a) **IHCPs Defined.** For the purposes of this Order, IHCPs are defined as those providers of ongoing Medicaid reimbursed direct care services that are paid for through a Medicaid waiver program in the State of Ohio and not employed by a private agency. In the event that ongoing, long-term personal care services are added as an option to the non-waiver portion of the Ohio Medicaid Program, the State will consider expanding the definition of IHCPs to include those who provide such services.
 - b) **Eligible Voter List.** Upon the request of a labor organization, the State shall create a list of eligible voters. The eligible voter list shall be composed of IHCPs who have submitted billings for Medicaid reimbursed services from the most recent three month period available from all relevant departments at the time the petitioner requests the representation election. The list shall include the names and addresses of all eligible voters and shall be provided to the election monitor and any petitioning or intervening labor organization. The eligible voter list shall be valid for ninety (90) days from the issuance of the list for use in determining whether a showing of interest justifying an election has been established and shall constitute the list of eligible voters in any such election.
 - c) **Showing Of Interest Justifying Election.** Should a labor organization be able to demonstrate to the satisfaction of an impartial election monitor, by either authorization cards or petition, that thirty (30) percent of IHCPs on the eligible voter list request an election to select that labor organization as their exclusive bargaining representative, the organization seeking representation shall provide a request to the Governor, or his designee, for a secret ballot election. The election monitor shall conduct a representation election if such monitor determines that that the petitioner has established a thirty (30) percent showing of interest. The election monitor shall be from the American Arbitration Association ("AAA") or other entity mutually agreed upon by the petitioner for the election and the Governor or his designee. The cost of the election process shall be borne equally by the organization seeking representation and any intervening labor organizations. The election may be conducted by mail and shall commence thirty (30) days from the date the election monitor determines a showing of interest.

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- d) **Election Interveners.** Subsequent to a valid election request, but not later than ten (10) days prior to an election, any non-petitioning labor organization can submit to the election monitor a request to participate in the representation election, provided that it can demonstrate to the satisfaction of the election monitor that at least ten (10) percent of eligible voters wish to be represented by such labor organization.
- e) **Majority Vote Required.** In order for any labor organization to be recognized as the exclusive bargaining representative of the IHCPs, the election monitor must certify that a majority of IHCPs voting in the election voted affirmatively for the representation of a specific labor organization. After such results are certified, the State must recognize the labor organization as the exclusive representative of all IHCPs working in the State.
- f) **Decertification of IHCP Representative.** Except as stated below, the IHCPs may not seek a decertification election during the term of any collective bargaining agreement or sooner than 12 months after a representation election has been conducted. Such petition may be filed no sooner than one hundred twenty days, or no later than ninety days, before the expiration of a collective bargaining agreement or after the expiration date until the parties enter into a new collective bargaining agreement. Upon the request of any IHCP, the State shall create a list of eligible decertification voters. The eligible decertification voter list shall be composed of IHCPs who have submitted billings for Medicaid reimbursed services for the most recent three month period available from all relevant departments at the time the petitioner requests the decertification election. The list shall include the names and addresses of all eligible decertification voters and shall be provided to the election monitor. The eligible decertification voter list shall be valid for ninety (90) days from the issuance of the list for use in determining whether a showing of interest justifying a decertification election has been established and shall constitute the list of eligible voters in any such election.
- g) **Showing Of Interest Justifying a Decertification Election.** Should any IHCP show by petition that fifty (50) percent of IHCPs on the eligible decertification voter list request a decertification, the petitioning individual shall provide such petition to the Governor, or his designee, for a secret ballot decertification election. The petition must contain a statement that the incumbent bargaining representative is no longer the representative of a majority of the eligible decertification voters. An impartial election monitor shall conduct a decertification election if

the monitor determines that that petitioner has established a fifty (50) percent showing of interest. The election monitor shall be from the American Arbitration Association ("AAA") or other entity mutually agreed upon by the petitioner for the election and the Governor or his designee. The cost of the election process shall be borne by the State. The election may be conducted by mail and shall commence thirty (30) days from the date the election monitor determines a required showing of interest.

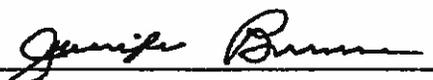
- h) **Majority Decertification Vote Required.** In order for any labor organization to be decertified as the exclusive bargaining representative of the IHCPs, the election monitor must certify that a majority of IHCPs voting in the election voted affirmatively to decertify the incumbent exclusive bargaining representative for the IHCPs. After such results are certified, the State will no longer recognize the incumbent exclusive bargaining representative.
6. **Bargaining with IHCPs.** Although IHCPs are not State employees, the State, acting through the Office of the Governor or his designee, shall engage in collective bargaining with the elected representative of the IHCPs regarding reimbursement rates, benefits, and other terms. Bargaining shall begin within ninety (90) calendar days after the certification of an exclusive representative of the IHCPs.
7. **The Parties Will Work Jointly to Obtain Necessary Legislative Changes.** In the event that an agreement is reached, it shall be embodied in writing and shall be binding on the State of Ohio, except the terms contingent upon the successful completion of such state and federal regulatory or legislative action as may be required to implement the terms of the agreement. If any provisions of the agreement require legislative action, rule-making, or the appropriation of funds, the parties will jointly seek the enactment of such legislative action. Bargaining about items that require the appropriation of funds must reach some resolution prior to July 1st of any even-numbered year so that they may be included in the proposed Executive budget.
8. **The Relationship Between Provider and Consumer Will Not Change.** This Order in no way alters the unique relationship between IHCPs and in-home health care recipients. The recipient retains the absolute right to choose IHCPs and to control the hiring, termination, and in-home supervision of IHCPs. However, the State retains its responsibilities under Ohio law and administrative regulations to take appropriate action when an IHCP fails to behave in a manner consistent with his or her provider agreement.

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9. Procedure if the Parties Reach Impasse During Negotiations. Nothing in this Order shall permit IHCPs to engage in any strike or collective cessation of the delivery of services. If the parties reach impasse during negotiations, they shall employ the services of a third-party neutral who will make a non-binding recommendation as to contract provisions. If the services of a third-party neutral are necessary, any costs shall be borne equally by the parties.
10. The State Action Exemption Applies for the Purpose of Antitrust Laws. In according the IHCPs the right to act through an exclusive representative and to seek an agreement with the State according to the terms of this Order, the State intends that the "State action exemption" to application of the federal and state antitrust laws be fully available to the State, IHCPs, and their elected representative to the extent that their activities are authorized pursuant to this Executive Order.
11. The Order is Non-Severable. Should any part of this Order be declared to be invalid or unenforceable, or should the enforcement of or compliance with any part of this Order be suspended, restrained or barred, by the final judgment of a court of competent jurisdiction, the remainder of this Order shall be void.
12. I signed this Executive Order on July 17, 2007 in Columbus, Ohio and it will not expire unless it is rescinded.




Ted Strickland, Governor

ATTEST:


Jennifer Brunner, Secretary of State