

AN ACT TO IMPROVE QUALITY IN EARLY EDUCATION CARE CENTERS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately assure quality early education and care for children by authorizing negotiations between the Commissioner of early education and care and a providers organization selected by certain child care providers, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 15D of the General Laws is hereby amended by adding the following sections:

SECTION 17. DEFINITIONS

The following words, as used in this section and in sections seventeen to twenty-one, inclusive, shall have the following meanings:

“Administrative assessment” shall mean an amount paid by the Department to the Providers Organization for the costs of representing child care providers as provided in sections eighteen through twenty-one of this chapter.

“Child care center” shall mean a center as defined in Section 1A of Chapter 15D, which is licensed by the Commonwealth, and which holds a contract with the Department for the provision of subsidized child care services or receives a subsidy as provided by Section 2(b) of Chapter 15D.

“Child care providers” shall mean child care center directors and employees.

“Child Care Standards Agreement,” or “Agreement,” shall mean the agreement negotiated between the Department and the Providers Organization. The written agreement shall legally bind the Commissioner and the Providers Organization.

“Commissioner” shall mean the commissioner of early education and care.

“Department” shall mean the Department of Early Education and Care established by Section 2 of Chapter 15D.

“Providers Organization” shall mean the organization selected by child care providers to represent them in negotiating, executing and administering a Child Care Standards Agreement with the Department.

SECTION 18. The commissioner shall develop and enforce quality early education standards that will improve the delivery and quality of early learning and child care

services at child care centers defined in section 17 and sub-section (a) of section 19 of this chapter. Such standards will be developed through negotiations as set forth in section twenty-one of this chapter with an organization selected by child care providers. The process of developing and enforcing such standards will in no way limit or intrude upon the rights of child care providers under federal labor law.

SECTION 19. CHILD CARE PROVIDERS AUTHORIZED TO NEGOTIATE WITH THE COMMONWEALTH.

- (a) Sections seventeen to twenty-one, inclusive, shall apply to child care providers at child care centers that receive a subsidy for at least 10 % of children attending their centers, but shall not apply to child care providers at child care centers:
- i. Operated directly by another unit of government;
 - ii. Operated by an individual, partnership, profit or nonprofit corporation, or other entity that operates ten or more child care centers statewide;
 - iii. Operated by a local nonprofit organization whose primary mission is to provide social services, including serving children and families, and that pays membership' dues or assessments to either: (A) A national organization, exempt from income tax under section 501(c)(3) of the internal revenue code, with more than three million dollars in membership dues and assessments annually, as reported to the internal revenue service; or (B) a regional council that is affiliated with a national organization, exempt from income tax under section 501(c)(3) of the internal revenue code, with more than two hundred affiliates;

- iv. A private corporation or public agency designated as a community action agency by the Director of the Community Services Administration and established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds received from Federal, State, local, or private funding entities to assess, design, operate, finance, and oversee antipoverty programs; or
 - v. Funded by the Head Start program administered by the Department of Health and Human Services (HHS) pursuant to 42 USC 9801 et seq.
- (b) Child care providers who are employed at a child care center and are not covered by paragraph (a) of this Section may agree to be represented by the Providers Organization and bound by the Child Care Standards Agreement if they meet all of the following conditions:
- i. The child care center receives a subsidy for at least 10% of children attending that center;
 - ii. A majority of child care providers at that child care center authorize representation by the Providers Organization; and
 - iii. The owner, executive director, or chief executive officer of the child care center authorizes representation by the Providers Organization.

SECTION 20. CHILD CARE PROVIDERS' RIGHT TO SELECT AN ORGANIZATION TO NEGOTIATE WITH THE COMMISSIONER OVER SPECIFIED SUBJECTS.

- (a) Child care providers shall have the right to form, join and participate in the activities of an organization of their own choosing for the purpose of representation and negotiations with the Commissioner over those subjects specified in sub-section (a) of section twenty-one.
- (b) The Commissioner or his or her designee is authorized to engage on behalf of the Commonwealth in negotiations with the Providers Organization and agree to terms of a Child Care Standards Agreement pursuant to section twenty-one of this chapter.
- (c) Every child care center to which sections seventeen to twenty-one applies shall provide to the Commissioner a list of the names of all currently employed child care providers with additional information for each including home address, telephone numbers, workplace addresses and job titles. Such lists shall be provided in the manner requested by the Commissioner within thirty days of enactment, and annually thereafter by January 30. Except as provided in sub-section (d) of this section, the list shall not be a public record.
- (d) The Commissioner shall, upon request and written certification that the list and accompanying information shall be used solely for the purpose of seeking to represent or continuing representation of child care providers, provide to an organization a list of all current child care providers who are authorized to select a representative under section 19. Such list shall contain such information including name, home address, telephone numbers, workplace addresses and job titles for each child care provider.

- (e) The Commissioner shall recognize as a Providers Organization an organization designated by the child care providers in accordance with the following process:
- i. The Commissioner shall extend recognition to an organization identified by a showing of written majority support by the child care providers authorized to select a representative under this section. A showing of majority support shall be verified by a neutral third-party, agreed upon by the organization and the Commissioner, who shall conduct a confidential inspection of the showing of majority support to determine whether the organization has such support and shall report the results to the Commissioner, organization and child care providers; or
 - ii. The Commissioner, upon receipt of an organization's petition that thirty percent of child care providers in the Commonwealth wish to be represented by that organization, or upon receipt of a petition filed by or on behalf of forty-five percent of the child care providers in the Commonwealth alleging that the recognized Providers Organization no longer represents a majority of the child care providers, shall direct an election by secret ballot or shall use any other suitable method provided the opportunity for a private vote is preserved to determine whether, or by which organization, the child care providers desire to be represented for purposes of sections seventeen through twenty-one. Said election shall be conducted by an experienced, neutral third party selected by the Providers Organization from a list of five neutral third parties prepared by the Commissioner. The Commissioner shall certify the organization that

receives a majority of the votes cast in such election as the recognized Providers Organization. The decision and determinations of the neutral shall be final and binding.

- iii. In any election conducted pursuant to subsection ii, the commissioner and the department shall not seek to influence the vote of any child care providers. Recognition pursuant to this section shall remain in effect until a majority of child care providers chooses another Providers Organization or no Providers Organization in accordance with subsection ii. Only one organization at any time may be recognized as the representative of child care providers for the purposes of sections seventeen through twenty-one. .

- (g) No election shall be conducted when a valid election has been held in the preceding twelve months or a Child Care Standards Agreement is in effect.

SECTION 21. NEGOTIATION OF A CHILD CARE STANDARDS AGREEMENT

- (a) Negotiations between the Commissioner and the Providers Organization shall be limited to matters related to the Commonwealth's role in workforce development as described in Sections 2 and 5 of Chapter 15D, including: (i) professional development and training; (ii) conditions affecting recruitment and retention; (iii) quality ratings by the Department; (iv) career development payments made by the Commonwealth to compensate professionals for increases in educational attainment and incentives for advancement; (v) improving access for child care providers to retirement, health and

welfare benefits; (vi) the manner and rate of subsidy and reimbursement by the Department; (vii); an administrative assessment; and (viii) dispute resolution procedures related to (i) through (vii).

- (b) The parties shall seek to reach a Child Care Standards Agreement through good faith negotiations based on the interests of both parties. If after a reasonable period of negotiations the parties are unable to reach an Agreement, the parties shall engage, and share the costs of, a third party facilitator or mediator to assist them in further interest-based negotiations. The parties may engage such a facilitator or mediator at any earlier stage of negotiations. A facilitator or mediator shall be empowered to order the parties to exchange information that is reasonably necessary and relevant to negotiations and to require specific representatives authorized to enter into a Child Care Standards Agreement to be present during negotiations. If after a reasonable period of facilitated or mediated negotiations the parties are unable to reach an Agreement, the facilitator or mediator shall issue a written report indicating the subjects upon which Agreement was reached and recommendations for a complete Agreement with a rationale. If the full report is not mutually agreeable to the parties, the mediator or facilitator shall determine a schedule for resumed negotiations, provided that the parties may mutually agree at any time to adopt such recommendations as to which there is Agreement and limit further negotiation to the issues remaining in dispute. The mediator or facilitator shall have the authority to request information from the parties regarding their respective positions on any matter in dispute.

- (c) The funds required to finance the costs of the Child Care Standards Agreement shall not be diverted from funding for child care assistance, including line items for Temporary Assistance for Needy Families (TANF)-Related Child Care, Supportive Child Care, and Low-Income Child Care.
- (d) A Child Care Standards Agreement reached between the Commissioner and the Providers Organization shall not exceed a term of three years, provided however that the parties may mutually agree to modify or extend an Agreement or any portion(s) thereof for a period of time in excess of the Agreement's duration. The Agreement shall be reduced to writing and executed by the parties.
- (e) The Commissioner shall submit to the General Court within thirty days after the date on which the Agreement is executed by the parties, a request for an appropriation necessary to fund the items associated with matters identified in subsection (a) above contained therein; provided, that if the General Court is not in session at that time, such request shall be submitted at the next session thereof. If the General Court rejects the request for an appropriation necessary to fund the cost items, such cost items shall be returned to the parties for further negotiations.
- (f) The Commissioner shall take all necessary steps to fund, implement, and enforce the terms of the Agreement. If an Agreement contains a conflict between matters which are within the scope of negotiations pursuant this section and any rules, regulations or policies of the department, the terms of the Child Care Standards Agreement shall prevail.
- (g) This section does not create or modify:

- (i) The parents' or legal guardians' right to choose and terminate the services of any child care center that provides care for their child or children;
 - (ii) The child care center's right to choose, direct, and terminate the services of a caregiver that it employs;
 - (ii) The rights of employers and employees under the National Labor Relations Act, 29 U.S.C. §§ 151, et seq.;
 - (iv) The Secretary of the Executive Office of Health and Human Services and the Commissioner's right to adopt requirements pursuant to chapter 15D except that such requirements shall not diminish the minimum standards established under a Child Care Standards Agreement;
 - (v) The General Court's right to make programmatic modifications to the delivery of Commonwealth services through child care subsidy programs, including standards of eligibility of parents, legal guardians, and child care centers participating in child care subsidy programs, and the nature of services provided.
- (g) In enacting this section, the General Court intends to provide state action immunity under federal and state antitrust laws for the joint activities of child care providers and the organization they select to represent them for purposes of this chapter.

SECTION 2. This act applies only to the relationship, as defined above in Sections 20 and 21, between the Department of Early Education and Care and child care providers. If any part

of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and any such finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Standards adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the Commonwealth.

SECTION 3. If any part of this Act is found to be unlawful, that part shall be severed and the remaining provisions given full force and effect.

SECTION 4. This act may be known and cited as the Access to Quality Early Education and Care Act.