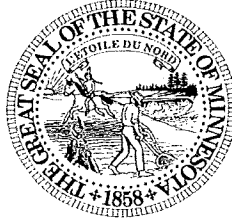


**STATE OF MINNESOTA**  
**EXECUTIVE DEPARTMENT**



**MARK DAYTON**  
**GOVERNOR**

**Executive Order 11-31**

**Representation of Licensed Registered  
Subsidized Family Child Care Providers**

**I, Mark Dayton, Governor of the State of Minnesota**, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

**Whereas**, it has been well documented that the first five years of a child's life is a time of phenomenal growth and development, and access to high-quality early childhood education services prepares children for later learning in life, and ensures that they enter kindergarten ready and able to succeed; and

**Whereas**, licensed family child care providers provide invaluable services to working parents and guardians by providing high quality learning environments for their children while they are engaged in work or education opportunities, or both, and are particularly well-suited to meet families' needs, by providing care during flexible hours and schedules, including evenings, overnight, and weekends in a comforting home environment; and

**Whereas**, the State is committed to improving the quality, accessibility, and affordability of early childhood education services; and

**Whereas**, despite their important services to Minnesota's families, there has been a troubling decline in the number of licensed family child care providers operating in the State of Minnesota; and

**Whereas**, under Minnesota Statutes, Chapters 119B and 245A, the Minnesota Department of Human Services is the lead child care agency and its Commissioner sets the rules by which child care services are administered through the State-supervised and county-administered system; and

**Whereas**, under Minnesota Statutes, Section 119A.03, subdivision 2, the Commissioner of Education must develop linkages with other state departments to ensure coordination and consistent state policies promoting healthy development of children and families; must facilitate inclusive processes when designing or implementing guidelines and strategies to achieve agency goals for children and families; and must facilitate intergovernmental and public-private partnership strategies necessary to implement Minnesota Statutes, Chapter 119A: and

**Whereas**, unions AFSCME and SEIU have claimed in writing that a majority of licensed family child care providers desire to be represented for the purposes of negotiating their relationship with the State; and

**Whereas**, in light of the foregoing, a labor dispute exists concerning the right of family child care providers to organize for the purpose of representation in their dealings with the State; and

**Whereas**, under Minnesota laws and Statutes, including but not limited to, Section 179.02, the Commissioner of the Bureau of Mediation Services has broad authority to make rules, appointments, and to provide technical support in the area of labor relations, including the conduct of elections and the resolution of labor disputes in the State, regardless of whether there is an employer or employee relationship; and

**Whereas**, it is essential that a fair and transparent election among licensed family child care providers proceed before the State shall certify or conduct meetings with any representatives of family child care providers.

**Now, Therefore**, I hereby order that:

1. Within 60 days after the issuance of this Order, the Commissioner of the Bureau of Mediation Services shall conduct two mail-ballot elections to determine whether AFSCME Council 5 and SEIU shall represent licensed registered subsidized family child care providers in the appropriate units, requested by AFSCME Council 5 and SEIU in their letter dated November 8, 2011. For the purposes of the election, the Bureau of Mediation Services shall utilize the most recent list of licensed registered subsidized family child care providers in the appropriate units. The Commissioner of the Bureau of Mediation Services may designate the American Arbitration Association, subject to his oversight, to conduct all proceedings related to the elections in the appropriate units, in a fair and transparent manner. Any costs incurred by the Bureau of Mediation Services or the American Arbitration Association in carrying out this section shall be borne entirely by

AFSCME Council 5 and SEIU.

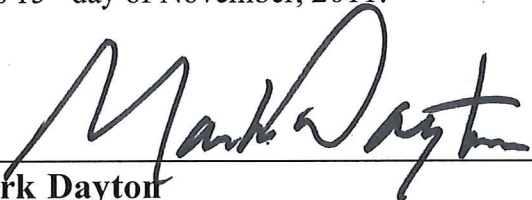
2. "Licensed registered subsidized family child care providers" shall include those family child care and group family child care providers subject to licensure under Minnesota Statutes, Chapter 245A; subject to various other requirements under Minnesota Statutes, Chapter 119B; governed by Minnesota Rules, Chapter 3400 and Chapter 9502; and who are registered as of September 30, 2011 to receive subsidies for providing subsidized child care services pursuant to the Minnesota Child Care Assistance Programs ("CCAP") under Chapter 119B.
3. If a majority of licensed registered subsidized family child care providers voting in the mail ballot election provided for herein, vote affirmatively for exclusive meet and confer representation, the Commissioner of the Bureau of Mediation Services shall certify the organization so designated.
4. If the Commissioner of the Bureau of Mediation Services certifies a majority exclusive representative in an appropriate unit, the Commissioners of Human Services and Education or their designees, shall meet and confer in good faith with the exclusive representatives of the licensed registered family child care provider units regarding issues of mutual concern, including quality standards and quality rating systems; the availability of training opportunities and funding; reimbursement rates; access to benefits; changes to the state system of providing early childhood education services; the monitoring and evaluating of family child care providers; and any other matters that the parties agree would improve recruitment and retention of qualified licensed registered family child care providers and the quality of the programs they provide.
5. All agreements on issues of mutual concern shall be memorialized in writing. If any provision of an agreement negotiated between the Commissioner of Human Services, the Commissioner of Education, and the exclusive representatives requires new legislation, the adoption or modification of administrative rules of any department or agency of State government to be effective, or the appropriation of money for their implementation, the parties will seek enactment of the legislation, adoption of the rules or both.
6. Nothing in this Order shall be construed to confer upon licensed family child care providers the right to strike.
7. In affording licensed registered subsidized family child care providers the right to engage in collective action, select a representative, and jointly engage in negotiations with the State under the terms of this Order, the State intends that the "State Action" exemption from federal antitrust laws be fully available to the State, based on the State's active supervision of licensed family child care providers to improve the quality,

accessibility, and affordability of early childhood education services in the State.

8. Nothing in this Order shall be construed to grant family child care providers status as employees for any purpose.
9. Nothing in this Order shall be construed to interfere with 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.
10. Nothing in this Order shall be construed to require participation, or the involuntary payment of dues by any family child care provider.
11. Nothing in this Order shall be construed to interfere with 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.
12. Shall any part of this Order be declared to be 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 Order shall remain in full force and effect.

Under Minnesota Statutes 2011 § 4.035, subdivision 2, this Executive Order is effective 15 days after publication in the State Register and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes 2011 § 4.035, subdivision 3.

**In Testimony Whereof**, I have set my hand this 15<sup>th</sup> day of November, 2011.

  
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**Mark Dayton**  
Governor

Filed According to Law:

  
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**Mark Ritchie**  
Secretary of State

