



THEODORE R. KULONGOSKI
Governor

August 4, 2009

The Honorable Kate Brown
Secretary of State
255 Capitol Street NE, Suite 180
Salem, OR 97310

Dear Secretary Brown:

I am returning Enrolled House Bill 3279 unsigned, but not disapproved, for the following reasons.

In 2007, the legislature enacted SB 858, which designated Adult Foster Home Providers as public employees for collective bargaining purposes only. Under that bill, the mandatory subjects of bargaining with Adult Foster Home Providers were those defined as mandatory by the Public Employees Collective Bargaining Act (PECBA). HB 3279 will add Adult Foster Home Provider rates as a subject of mandatory bargaining without directly amending PECBA. Prior to the enactment of HB 3279, PECBA alone established the subjects of mandatory bargaining. I am concerned that establishing rates as a mandatory topic of bargaining on a case-by-case basis could fragment our labor relations laws and set a precedent for other independent contractors seeking to add rates as mandatory subjects of bargaining separate from PECBA.

Finally, adding rates as a subject of mandatory bargaining could potentially create conflicts with federal or state law. Both federal and state laws require the state Medicaid Agency, Department of Human Services (DHS), to establish provider rates which assure access and quality of services for Medicaid clients. State law also specifically requires DHS to set provider rates tied to client acuity or complexity of need. These existing requirements must be followed, even as rates are bargained. In collective bargaining contract negotiations, DHS will have to work to ensure that when negotiating rates, the State continues to adhere to all rate setting requirements established by law.

Sincerely,

THEODORE R. KULONGOSKI
Governor

TRK:ah:mh