

# Collective Bargaining Agreement

between

**SEIU 775**

and

**Home Care Services, LLC**

**Effective November 1, ~~2019~~ 2021 to October 31,**  
~~2020~~

SEIU 775/Home Care Services, LLC ~~2019-2021~~2021-2023

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## **PREAMBLE**

The purpose of this Agreement is to achieve and maintain harmonious relations between Home Care Services, LLC (“the Employer”) and SEIU 775 (“the Union” or “SEIU”), (collectively: “the Parties”) to provide for equitable and peaceful adjustment of differences which may arise, and to set forth the understanding reached between the Parties with respect to wages, hours of work, and terms and conditions of employment.

Home Care Services, LLC and SEIU 775 share a common goal of maintaining and promoting the quality of in-home care in Montana. Both organizations are committed to developing a stable and well-trained workforce, promoting the financial viability of Home Care Services, LLC’s home care business, expanding home care services in the state of Montana, and building public respect for the long-term care profession. We intend to develop a productive working relationship focused on problem solving for mutual benefit. With this mutual interest understood, the Parties commit to further developing and modifying the Alliance Agreement to Improve Home Care in Montana to reflect on-going legislative efforts. The Parties recognize that the appropriate setting for these discussions may be the Home and Community-Based Industry-wide Communications Committee covered in Article 11.1.4 of this Agreement.

We also share a vision that SEIU 775 and Home Care Services, LLC (COI) will grow together through working in a cooperative manner and unite all long-term care workers to become a powerful voice for the long-term care industry, in order to achieve economic justice for all workers in our industry.

The Employer and the Union will work to build a relationship that, acknowledging limitations imposed by state and program funding, will strive to maintain competitive compensation for home care workers to provide a high quality work environment and enhance an ongoing relationship of trust and respect. The Parties recognize our obligation to serve clients with the highest quality of care. The Parties further recognize the importance of raising standards throughout the home care industry and agree to work together to achieve this goal.

## **ARTICLE 1: RECOGNITION**

The Employer, Home Care Services, LLC (d.b.a. HomeCare Montana and its successors and assigns) recognizes SEIU 775 (and their successors and assigns) as the sole and exclusive bargaining agent for all employees who are employed by the Employer in the State of Montana, any other State, Province or Country in the position of home care worker, who perform home care and personal care services, or work in any position related to delivery of such in-home services, including but not limited to: home care workers, caregivers, homemakers, personal care assistants, Certified Nursing Assistants (CNA or NAC), Nurse Aide Registered (NAR), and any other similar job title or classification; excluding all employees not employed in the in-home services or programs delivered by the Employer, managers, confidential employees, office clerical employees, professional employees, and supervisors as defined in the National Labor Relations Act.

## ARTICLE 2: UNION MEMBERSHIP AND UNION SECURITY

### SECTION 2.1: UNION MEMBERSHIP

All employees covered by this Agreement shall comply with the requirements of this section, as a condition of employment, on or before the thirtieth (30th) day following the signing of this Agreement, or no later than thirty (30) days following the first day of employment for employees hired after the effective date of this Agreement. Requirements are either: 1) commence payment of regular monthly dues uniformly required of members or 2) pay a fair share representation fee.

The Employer agrees to distribute membership forms for the Union with basic employment paperwork, which shall be forwarded to the Union within fifteen (15) days of employment.

#### SECTION 2.1.1 CAUSE FOR DISMISSAL

Failure by an employee to satisfy Section 2.1 above shall constitute cause for dismissal provided the Union makes a written request for discharge, verifying that the employee received written notification by certified mail of the delinquency and notification that nonpayment within fourteen (14) days will result in discharge by the Employer. The Employer ~~shall~~ shall provide written notice to the Union of such discharge within thirty (30) days.

~~1) No later than thirty (30) days following the effective date of this Agreement, all present employees must, as a condition of continued employment, be or become members of the Union; all employees hired after the effective date of this Agreement shall be or become and remain members of the Union no later than thirty (30) days following the first day of their Employment in accordance with the provisions of Section 8 of the National Labor Relations Act, as amended. Failure of any employee to comply with the provisions of this subsection shall, upon request of the Union, result in immediate termination of such employee, provided that the Union has given the employee fourteen (14) days' notice that the employee's obligation to make payment has not been met and that the delinquency renders the employee liable to termination under this section. The Employer shall provide written notice to the Union of such discharge within thirty (30) days. The Employer shall not be obligated to dismiss an employee for non-membership in the Union: (a) If the employer has reasonable grounds for believing that such membership was not available on the same terms and conditions generally applicable to other members; or (b) If the employer has reasonable grounds for believing that such membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.~~

### SECTION 2.2: ELECTRONIC SIGNATURE

The parties acknowledge and agree that, consistent with the Electronic Signatures in Global and National Commerce Act (Pub. L. 106-229, 114 Stat. 464, enacted June 30, 2000, 15 U.S.C. ch. 96) the terms "authorize," "authorized", "authorization form" and "written authorization," as used in this Agreement, include without limitation authorizations created and maintained by

use of electronic records and electronic signatures consistent with state and federal law. The Union, therefore, may use electronic records to verify Union membership, authorization for voluntary deduction of Union dues and fees from wages or payments for remittance to the Union, authorization for voluntary deductions from wages or payments for remittance to the Political Accountability Fund (COPE), and authorization for other voluntary deductions from wages or payments for remittance to the Union, subject to the requirements of state and federal law. In addition to electronic scanned copies of paper authorizations from the Union, the Employer shall accept copies of electronic signatures and digital files containing voice authorizations and give full force and effect to such authorizations as “written authorization” for purposes of this Agreement.

### **SECTION 2.3: BARGAINING UNIT INFORMATION**

Employees covered by this Agreement are required to maintain up-to-date personal phone number(s), and a home address on file with the Employer. The Employer shall provide a roster of all bargaining unit employees to the Union ~~on a monthly basis~~ within five (5) business days after the end of the month. If the report is delayed the Employer will notify the Union when the report will be delivered. The report shall be delivered ~~and~~ in a secure manner. This information shall be transmitted in a mutually agreeable format. ~~To the best of the Employer’s available information, the roster shall include each employee’s name, social security number, home address, mailing address, email address, home phone number, cell phone number, office or unit where the employee is assigned, job classification(s), rate(s) of pay, gross pay, hours worked in the month (or month to date in the event of twice monthly pay), amount and rate of any special differential pay, date of hire, date of birth, amount paid in dues, amount paid in COPE (if applicable), amount paid in any other voluntary deduction(s) if applicable, and date of termination.~~

#### **SECTION 2.3.1 DUES REPORT AND EMPLOYEE ROSTER**

To the best of the Employer’s available information, the Employer shall provide the Union with a list of all employees covered by this Agreement within five (5) business days after the end of the month. If the report is delayed the Employer will notify the Union when the report will be delivered. The list shall be complete and include:

- First Name
- Middle Name
- Last Name
- Social Security Number
- Phone Number ( all phone numbers shall confirm to the ‘(xxx) xxx-xxxx’ format)
- Mobile Number( all phone numbers shall confirm to the ‘(xxx) xxx-xxxx’ format)
- Address Type (Mailing, Physical)
- Address 1
- Address 2
- City
- State
- Zip

- [Birthdate](#)
- [Gender](#)
- [FTE status](#)
- [Hire Date](#)
- [Termination Date](#)
- [“Last” or “Most Recent” Rehire Date \(if applicable\)](#)
- [Wage Rate](#)
- [Differential Rate \(if applicable\)](#)
- [Paid Time Off Hours Used](#)
- [Paid Time Off Hours Available](#)
- [Pay Period Start Date](#)
- [Pay Period End Date](#)
- [Pay Period Hours](#)
- [Dues Deduction Amount](#)
- [Voluntary Deduction 1 Type](#)
- [Voluntary Deduction 1 Amount](#)
- [Voluntary Deduction 2Type](#)
- [Voluntary Deduction 2 Amount](#)
- [Voluntary Deduction 3 Type](#)
- [Voluntary Deduction 3 Amount](#)
- [Voluntary Deduction 4 Type](#)
- [Voluntary Deduction 4 Amount](#)
- [Voluntary Deduction 5 Type](#)
- [Voluntary Deduction 5 Amount](#)
- [Gross Pay](#)
- [Work Location](#)

If the Employee or Employer submits changes to any of the above roster items, the Employer will provide that information in the next roster submission. The Union will indemnify the Employer and hold it harmless from any claims demands, damages or liabilities that may result from the provision by the Employer of any of the requested information to the Union, including the cost of defending against such claim or obligation.

The Employer shall facilitate reconciliation of these employment records, dues and other voluntary deductions with the Union, including clarifying whether workers are inactive because of paid or unpaid leave or other reason. Both Parties agree to work together to ensure that all records are as accurate as possible. If data or other reconiliation is determined to be needed, the parties shall agree to a mutual and reasonable time frame to complete the reconciliation. All information required to be transmitted under this Agreement shall be transmitted in a common electronic format agreed upon by the Employer and the Union.

If the Dues Report and the Employee Roster are submitted as seperate reports, both reports must have a corresponding record, cover the same time period and must contain the following idential information:



- 1) [First Name](#)
- 2) [Middle Name](#)
- 3) [Last Name](#)
- 1)4) [Social Security Number](#)

## **SECTION 2.4: DUES DEDUCTIONS**

The Employer agrees to deduct from each bargaining unit employees' pay all authorized dues, fees, and assessments as determined or required by the Union. The Employer shall make such deductions from the employees' paycheck following receipt of written authorization, and periodically thereafter as specified on the written authorization, so long as such authorization is in effect, and shall remit the same to the local Union within ~~thirty (30)~~five (5) business days after the end of the ~~last full pay period in each month. If the deduction/s are delayed the Employer will notify the Union when the deduction/s will be delivered.~~ The Union will furnish all the membership forms necessary to be used for this written authorization and will notify the Employer in writing of dues, fees, or assessments to be assessed within five (5) days of execution of this Agreement, and thirty (30) days before the effective date of any change. The Union reserves the right to enforce the terms and conditions of each employee's signed membership card with regard to when the authorization of dues deductions may be revoked. The Employer shall honor the terms and conditions of each employee's signed membership card. The Employer reserves the right to ensure that the authorization of payroll deductions complies with applicable Federal and State laws regarding deductions from wages. The Employer may require an additional authorization form as per its policies and procedures, to confirm the specific authorization for continued paycheck deduction.

The Union will hold harmless the Employer against any claim or obligation which may be made by any employee by reason of the deduction of Union membership fees, including the cost of defending against such claim or obligation.

## **SECTION 2.5: UNION MEMBERSHIP MATERIALS**

For new employees, union membership materials shall be distributed with the basic employment paperwork required by the Employer. All membership forms for the Union completed by a new employee of the Employer will be forwarded to the Union no later than the thirtieth (30th) day of the new employee's employment with the Employer.

## **SECTION 2.6: POLITICAL ACCOUNTABILITY FUND/COMMITTEE ON POLITICAL EDUCATION (COPE) DEDUCTION**

The Employer shall deduct the sum specified from the pay of each member of the Union who voluntarily signs and executes a written Political Accountability Fund (COPE) wage assignment authorization form. When filed with the Employer, the written authorization form will be honored in accordance with its terms. The authorization form will remain in effect until or unless revoked in writing by the employee.

The amount deducted and a roster of all employees using payroll deduction for Political Accountability Fund (COPE) contributions will be promptly transmitted to the Union by separate

check payable to the Union and identified as Political Accountability Fund (COPE) deductions, at the same time as the ~~monthly~~ remittance of dues.

Upon issuance and transmission of a check to the Union, the Employer's responsibility will cease with respect to such deductions. The Union and each employee authorizing the written assignment of wages for the payment of Political Accountability Fund (COPE) contributions hereby undertake to indemnify and hold the Employer harmless from all claims, demands, suits or other forms of liability that may arise against the Employer for, or on account of, any deduction made from wages of an employee.

### **SECTION 2.7: VOLUNTARY DEDUCTIONS**

Upon receipt of proper authorization for such deductions from the employee or the Union, the Employer shall deduct and transmit voluntary contributions from each employee for services, to one (1) or more funds designated by the Union or to the Union itself. Each Employer shall deduct the sum specified from the pay of each member of the Union who voluntarily executes a voluntary wage assignment authorization. When filed with the Employer, the authorization will be honored in accordance with its terms. The authorization will remain in effect until or unless revoked in writing by the employee. The amount deducted and a roster of all employees using payroll deduction for voluntary deductions will be promptly transmitted to the Union by separate check payable to the Union and identified as Voluntary Deduction, at the same time as the ~~monthly~~ remittance of dues. Upon issuance and transmission of a check to the Union, the Employer's responsibility will cease with respect to such deductions.

In addition to one deduction for Dues and one deduction for COPE, a third deduction will be made by the Employer for Voluntary Deductions, on the same schedule.

### **SECTION 2.8: DATA SECURITY**

In accordance with state and federal law, both the Union and the Employer shall utilize industry standards and procedures for the protection of sensitive and personally identifiable information of each of its employees. The Employer agrees that it will not release any of the following information about the employees unless required to do so due to on-going litigation, pre-litigation, vendor requests made as part of benefits enrollment, government/agency requests, to comply with a court order or other judicial/arbitral demand, or other similar situation: The names, addresses, telephone numbers, Wireless telephone numbers, electronic mail addresses, social security numbers, and dates of birth of all employees covered by this Agreement. The Employer agrees to notify the Union within ten (10) calendar days if a third party has requested information about the entire bargaining unit, classification or Branch. In no case will the Employer release information prior to notifying the Union.

The Employer agrees that the following information is confidential, and shall not be released by the Employer or its agents to any third party, including any contractor or vendor, except as necessary to comply with the provisions of this agreement, for the provision of other employment benefits or by a regulatory agency or court of competent jurisdiction as required by law: the names, addresses, telephone numbers, wireless telephone numbers, electronic mail

addresses, social security numbers, and dates of birth of all employees covered by this agreement.

## **ARTICLE 3: UNION RIGHTS**

### **SECTION 3.1: ADVOCATES OR WORKER REPRESENTATIVES**

For purposes of representation, communication and mutual administration of the contract, the Union will designate advocates or worker representatives from among its members employed by the Employer. The advocate position is the worker representative position responsible for handling grievance and disciplinary issues with the Employer. The Union will notify the Employer when an advocate or worker representative has been designated.

### **SECTION 3.2: ADVOCATE OR WORKER REPRESENTATIVE RECOGNITION**

Subject to the availability of reimbursement from the Employer's state funding sources, the Employer agrees to compensate designated advocates or worker representatives at their regular rate of pay for their involvement in certain limited labor relations activities. These activities are defined as participation on the Labor-Management Committee while during regular working time; actual time spent in grievance meetings provided that the advocate or worker representative notifies the immediate supervisor(s) in advance and the supervisor(s) approve; and other approved and regularly scheduled committees and work groups that benefit both the Union and the Employer by prior mutual agreement. Advocates or worker representative shall have the obligation to inform their supervisors in advance when they will be utilizing time as an Advocate, and shall follow all usual scheduling procedures to ensure client care coverage.

Both Parties will endeavor to advocate for state or other sources of funding for advocate or worker representative activities.

### **SECTION 3.3: BULLETIN BOARDS AND KIOSKS**

The Employer shall provide a bulletin board, in an area accessible to employees in each office for union postings. The Employer shall provide, where feasible, a computer terminal and printer or kiosk with internet access for the use of employees during non-work times.

### **SECTION 3.4: NEW EMPLOYEE ORIENTATION/IN--SERVICE MEETINGS**

Worker representatives shall have a maximum of thirty (30) minutes before or after each worker in-service meeting to make a presentation about the Union and answer questions. The Union shall have the right to include written information on any orientation video tape or other basic written employment materials produced by the Employer Management or supervisory personnel may not be present during Union presentations unless mutually agreed to by the Union and the Employer. Such meetings shall not disrupt the in-service schedule. The Employer agrees to inform the Union of in-service training dates, times and locations one (1) month in advance, if possible. The Union must inform the Employer of its desire to address the bargaining unit members before a scheduled in-service training such notice must be at least

two (2) days in advance. In the event the Union is unable to attend, the Employer will provide a list to the union of all new hires which includes the employee names, complete mailing address, and cell phone number, in a secured manner monthly.

The Employer will also give all newly hired employees the contact number for their Union Representative.

### **SECTION 3.5: ACCESS TO EMPLOYER PROPERTY: OFFICE**

The Employer welcomes the authorized representative(s) of the Union to use its local office meeting rooms with advance notice. The Union may use designated meeting rooms of the Employer for meetings, conducting Union business and adjusting grievances, provided that space is available.

### **SECTION 3.6: ACCESS TO EMPLOYER PROPERTY: PERSONNEL FILES**

The employee and/or his/her union representative shall have the right to examine the employee's permanent personnel files, upon the employee's written request. or as a result of an ongoing grievance step.

### **SECTION 3.7: WEBSITES**

Websites maintained by the Employer that bargaining unit members may access to seek employment related information shall contain a link to the Union's website.

## **ARTICLE 4: EMPLOYER RIGHTS**

### **SECTION 4.1: RETENTION OF GENERAL RIGHTS**

The Employer retains all the general and traditional rights to manage its business as well as any rights under the law or agreed to by the Parties. These rights rest exclusively in the Employer who is the sole decision-maker regarding the operation of the business. The following list of Employer's rights is not intended to be all-inclusive, but simply sets forth some of those rights considered to be the general rights of management. The fact that a particular right is not set forth here does not mean that the right does not exist.

### **SECTION 4.2: WORKFORCE ISSUES**

The Employer retains the right to determine the number of employees required at any place from time to time for any of its operations. Employer retains the right to determine the jobs, content of jobs, and to modify, combine or end any job, department or operation; to hire, classify, transfer, promote, demote and lay off employees; to determine employee qualifications, evaluate performance and assign and direct the workforce; to maintain order and discipline; and to reprimand, suspend, discharge and otherwise discipline for just cause.

### **SECTION 4.3: WORK POLICIES AND PROCEDURES**

The Employer has the right to create and administer rules, policies and procedures. This includes the right to establish or revise attendance, work, substance abuse, drug and/or alcohol testing and safety rules. The Employer has the right to establish or revise a disciplinary policy to

address violations of these rules. The Employer shall notify the Union of policy changes which impact bargaining unit Employees at least one (1) month before implementation.

#### **SECTION 4.4 WORK HOURS**

The Employer retains the right to determine work schedules, including but not limited to the number of hours and shifts to be worked, to determine when overtime work is necessary and to assign overtime; to choose clients; to utilize part-time and temporary employees; to choose where or when training on a particular task or job is required and the right to move or retrain employees.

#### **SECTION 4.5: NON-WAIVER OF EMPLOYER RIGHTS**

Employer's failure to exercise any right reserved to it, shall not result in a waiver of the right or prevent the Employer from exercising its rights in the future or in some other way not in conflict with the express provisions of this agreement.

#### **SECTION 4.6: CONFLICTING PROVISIONS**

The exercise of these rights alleged to be in conflict with any other provision of this agreement shall be subject to the grievance and arbitration procedures set out in this agreement.

#### **SECTION 4.7: JOINT POLICY DEVELOPMENT**

The Employer and the Union have a mutual commitment to jointly developing policies, procedures and other relevant workplace solutions in the Labor Management Committee as referenced in Article 11.

This does not abridge the Employer's rights set forth in this Article.

### **ARTICLE 5: NO DISCRIMINATION AND EQUAL OPPORTUNITY**

The Employer and the Union have a mutual commitment to social justice in our society, therefore the Parties agree that qualified applicants for employment will be considered without regard to:

- Race,
- Ethnicity,
- Physical and/or mental disability,
- marital status,
- National or tribal origin,
- Creed
- Citizenship status,
- Ancestry,
- Gender or sex, or perceived gender identity

- Sexual orientation, perceived sexual orientation,
- Gender expression,
- Age,
- Religion,
- Veteran status,
- Service in the Armed Forces of the United States
- Political affiliation,
- Union membership and protected activities,
- Or other characteristics or considerations made unlawful by federal, state or local law or by the Department of Public Health and Human Services (DPPHS) agency regulations.

The Employer further agrees that it shall not discriminate in terms or conditions of employment on the basis of the aforementioned characteristics (except for bona fide occupational qualifications or client preference). All employees share the responsibility of maintaining a work environment that is supportive of equal employment opportunity. Employees shall be treated fairly and with dignity and respect.

#### **ARTICLE 6: CLIENT RIGHTS**

The Employer and the Union are committed to quality care of clients and ensuring the comfort and individualized care needed by clients. It is the right of clients, in the privacy of their home, to choose the caregiver with whom they feel the most comfortable.

The Employer will uphold and support client rights. If a client wishes to change caregivers, for any reason, the Employer will respect the right of the client to do so. If a client chooses to change caregivers, the caregiver who is being unscheduled shall be eligible for another client(s) or equivalent hours as available. The Employer will make a good faith effort to provide support for a successful caregiving relationship, if in the sole judgment of the Employer the regularly scheduled caregiver might succeed with the client if either or both the client and/or caregiver is guided with some coaching. At the discretion of the parties, the Employer and the Union may explore through the Labor Management Committee methods of coaching, counseling or mediation to assist generally in the resolution of client/worker conflicts to help ensure consistent service delivery with minimal worker reassignment.

#### **ARTICLE 7: PROBATION**

The first three (3) months of employment shall be the probationary period for all new and returning employees (for those who have been absent for longer than one year) . The employer may waive the probation period for returning employees if absent for less than one (1) year. During this period the Employer shall provide specific orientation to the job performance expectations, to the Employer and to the Employer’s services and programs, and to the

people/clients served by the Employer. Supervisors shall monitor performance during this time and will provide appropriate feedback to the employee, to help the employee successfully complete the probationary period. Such feedback shall be documented. If requirements of the job are not being met, the Employer may seek to counsel the employee to correct the defined deficiencies. If satisfactory improvement does not result, the probationary employee may be disciplined or terminated in the sole discretion of the Employer without further notice or recourse to the grievance procedure. The discipline or discharge of an employee who is in probationary status shall not be in violation of this Agreement.

Probationary employees are covered by the terms and conditions of this Agreement except as specifically noted and retain the same legal rights as other employees under the National Labor Relations Act and applicable local, state and Federal laws.

## **ARTICLE 8: DISCIPLINE AND DISCHARGE**

### **SECTION 8.1: JUST CAUSE AND RIGHT TO REPRESENTATION**

**Just Cause and Progressive Discipline:**

The Employer shall have the right to discipline and/or to discharge non-probationary employees for Just Cause only. Just Cause shall be defined to include the concept of Progressive Discipline. Progressive Discipline shall be corrective (i.e. verbal counseling, written warning(s), unpaid or paid suspension and termination/discharge) upon repeat occurrences of the same kind. The Employer will endeavor to use this form of discipline to correct the behavior rather than to punish the Employee. Communications between supervisors and employees about disciplinary matters shall be respectful and discipline shall be, in general, directed at correcting performance problems. Progressive discipline will not be applied when the nature of the offense is just cause for immediate suspension or discharge.

Employees who are discharged will be issued a final paycheck by direct deposit or mail within five (5) days of the date of the termination of their employment. This final paycheck will include payment for all hours worked and not paid, as well as payment for any accrued personal leave.

#### **Serious Misconduct:**

In the case of serious misconduct, the Employer may in its sole discretion, for just cause, bypass any one or all of the steps of progressive discipline. Examples of serious misconduct include, but are not limited to, misrepresentation on employment applications, misrepresenting time and tasks, patient abuse, violence, theft, and “no call, and no show.”

In the case of any form of discipline less than termination, the employee’s disciplinary action shall include a description of the conduct that is the basis for the

disciplinary action(s). The Employer will strive to identify specific corrective action(s) that the employee is expected to take to improve his/her performance.

**Fact-finding:**

Prior to issuing any form of disciplinary action to an employee, the Employer shall attempt to meet with the employee to investigate and gather facts. The Employer shall advise the employee of the purpose of the investigatory meeting and that the meeting could lead to disciplinary action, and shall advise the employee of his/her right to request the presence of an advocate or Union representative in the meeting. If an employee requests the presence of an advocate or Union representative, the Employer will make a reasonable attempt to schedule a meeting when the participating advocate or Union representative and employee are available to meet.

The unavailability of an advocate or Union representative for a meeting date shall not unreasonably delay or impede the Employer's investigation or decision to take disciplinary action.

**SECTION 8.2: NOTIFICATION OF FORMAL DISCIPLINARY ACTION**

In the case of any written reprimand, the Employer shall give a copy of the disciplinary action to the employee, stating the reasons for the discipline in no longer than fourteen (14) calendar days from the day of the infraction or from the date the Employer became aware of the infraction, but as soon as possible. The document shall include a line for the signature of the employee and the immediate supervisor or manager responsible for the decision to issue discipline, including the following notice: "Signing this document indicates that you have received a copy of the document but does not indicate that you agree or disagree with its contents. You may have the right to contest this action through filing a grievance, if you believe this action violates the Union contract. You may contact your advocate, worker representative or the SEIU 775 office at 1-866-371-3200."

The lack of the employee's signature on the notice shall not be grounds for nullifying or challenging the notice or any ensuing disciplinary action where reasonable evidence shows that the Employer attempted to inform the employee of the investigation, pending or actual discipline.

**SECTION 8.3: SUSPENSION OR DISCHARGE**

Within seven (7) calendar days after any suspension or discharge for cause, the Employer shall notify the Union in writing (by fax or email) of the infraction and the reason for this action and shall attach a copy of the disciplinary notice signed by the employee or provided to the employee.

Employees who are suspended may use any accrued, paid leave during their period of suspension. If, upon the conclusion of an investigation during an unpaid suspension, the employee is exonerated, the Employer will pay the lost time due to the suspension within



the following two payroll days from the date of reinstatement. If the employee uses accrued PTO, fully or partially, to be paid during an unpaid suspension and is exonerated, the Employer shall restore the PTO used (forthe lost time) into the employee's PTO bank.

#### **SECTION 8.4: INVESTIGATION OF JUST CAUSE BY UNION**

An advocate or Union representative shall have the right to interview employees and management personnel and gather information concerning specific and identifiable disciplinary matters. Such interviews shall not interfere in any way with the Employer's business activity. Should a client complaint be involved, the Employer will attempt to provide a copy of the clients' written complaint, if any, with all identifiers removed, so long as the removal of identifiers adequately protects the confidentiality rights of the client and the provision of the complaint does not violate federal, state, local laws or regulations.

#### **SECTION 8.5: EMPLOYER RULES**

The Employer may establish work rules necessary to regulate employees' conduct at work. Work rules shall be reviewed with new employees who will sign a form provided by the Employer to confirm their understanding of the Employer's rules, and made available to all employees and the Union. The Employer will advise the Union of any proposed changes to the work rules thirty (30) days in advance.

#### **SECTION 8.6: PERSONNEL FILES**

Any information about the employee may be included in the personnel file, including without limitation information regarding disciplinary action, such as client complaints, warnings, placements on probation status, and formal evaluation reports prepared by the Employer. This employee personnel file, or a copy of the same, shall be made available to the employee upon the employee's written request. The Employer shall allow an employee to examine his/her personnel file maintained in an office of the Employer, upon the employee's request. Employees who have a reasonable dispute with information in their personnel file may submit written comments, replying to any material in their file, which comments shall also be maintained in their personnel file. Employees may not submit additional written comments regarding disputes which have been resolved through the grievance process. Issued discipline shall not be used for progressive discipline if it has been in the employee's file for longer than a year or if the next infraction is different in nature, however, the Employer may be required to retain all disciplines in the employee's file by state law or regulation.

#### **SECTION 8.7: REGULATORY INVESTIGATIONS**

Should a regulatory agency initiate an investigation of a home care worker that requires suspension or removal of that home care worker from any client, but does not require suspension or removal from all home care work, the Employer will attempt to assign the employee other suitable home care work until the investigation is complete if permitted by state law or regulation.

If, following the conclusion of a regulatory investigation, it is determined by the Employer, or the regulatory agency that the employee is to be disciplined, up to and including termination, the notification provisions of section 8.2 will apply.

If the investigation indicates that disciplinary action is unnecessary, the Employer will make reasonable efforts to reinstate the employee to the same hours/position with the original client. If the client should decline to be served by the employee, the Employer will make reasonable efforts to assign suitable and available client hours to the employee until employed at the same number of hours as before the investigation.

## **ARTICLE 9: GRIEVANCE PROCEDURE**

### **SECTION 9.1: DEFINITION OF A GRIEVANCE**

A grievance shall be defined as an alleged violation of the provisions of this Agreement or specific past practices applicable to members of the bargaining unit, as specifically contained in the Employer's written policies and procedures or in the Employer's handbook which are or is in effect upon the date of ratification of this Agreement, and which have not been altered or amended by this Agreement or the Employer. The Union and the Employer are mutually committed to resolving disputes at the lowest level possible, where practicable, and in an expedient manner.

### **SECTION 9.2: TIME LIMITS**

The purpose of time limits within the Grievance Procedure is to encourage the swift resolution of disputes. Time limits may be extended or waived at any step in the grievance procedure by mutual agreement of the Employer and the Union. The Union may withdraw a grievance at any step in the grievance process. The Parties agree the grievance may be resolved at any stage of the grievance process provided that all appeals are timely.

### **SECTION 9.3: GRIEVANCE STEPS**

Grievances shall be handled in the following manner:

**Step One:** The grievant and/or advocate or Union staff representative shall present a grievance in writing to the Employer's representative within fourteen (14) calendar days after the employee should have reasonably learned of the event giving rise to the grievance or within fourteen (14) calendar days from the event giving rise to the grievance, whichever is later.

The written grievance must contain the following information:

- a. the exact nature of the grievance;
- b. the act or acts alleged to be violations of the Agreement, an Employer policy or the Employer's past practice that is not specifically addressed in this Agreement;

- c. when the alleged act(s) occurred;
- d. the identity of the grievant or grievants;
- e. the specific article or provision of this Agreement or the past practice applicable to members of the bargaining unit, as specifically contained in the Employer's written policies and procedures that are in effect upon the date of ratification of this Agreement, and which have not been altered or amended by this Agreement alleged to have been violated;
- f. the remedy proposed to attempt to resolve the grievance.

The written grievance need not be on the Union's grievance form, as long as it contains the information above. The written grievance must be signed by the grievant or the authorized Union representative.

The supervisor shall respond in writing to the grievance within fourteen (14) calendar days of the presentation to agree to solve the grievance with the remedy specified by the Union or an alternative remedy or to deny the grievance. The supervisor's response shall be addressed to both the grievant and the Union. Should the supervisor fail to respond within this timeframe, the Union shall have the right to forward the grievance to the next step.

**Step Two:** If no resolution or settlement is reached between the grievant and the supervisor, the grievant or the Union may file a written appeal of the supervisor's decision rendered in Step One to the Personnel Officer or his/her designated representative. The Union staff representative shall file this written grievance within fourteen (14) days after his/her receipt of the supervisor's decision from Step One. A meeting, in person or via phone call, with the Personnel Officer or his or her representative, the grievant, and the Union representative shall be held no later than fourteen (14) calendar days after receipt of the written appeal. The Personnel Officer's response shall be addressed to the grievant and the Union and shall be copied to the Chief Executive Officer. If a Step 2 response does not solve the grievance satisfactorily for the grieving party, it may be advanced to the next step in the process.

**Grievances initiating at Step Two:**

Grievances concerning discharge or discrimination shall be filed initially at Step Two (2). Group grievances claiming the same alleged violations involving employees who work under more than one supervisor may be filed initially at Step Two, also known as a Class Action.

**Mediation (optional):**

Should the parties fail to resolve the Grievance at the Step 2 meeting, either party may request that the Grievance(s) be submitted to mediation no later than fourteen (14) days following the date on which the Employer submits its written Step 2 Grievance Response to the Union. Upon a timely request, both parties shall enter into good faith mediation including using the services of Federal Mediation and Conciliation Services (“FMCS”) or another mutually agreed upon Mediation Service offered locally. Each party shall bear their own costs associated with preparing for the mediation. The mediation costs, if any, shall be split equally between the parties. The mediation shall be conducted within thirty (30) days unless the parties are unable for good reason to schedule the mediation in that time-period. In no event shall a mediation be conducted later than sixty (60) days after a timely request for mediation unless the parties agree in writing.

#### **SECTION 9.4: REQUEST FOR ARBITRATION**

Prior to invoking Arbitration, the party seeking Arbitration must have participated in mediation in good faith unless both parties agree in writing to skip mediation and proceed directly to Arbitration. If the Grievance is not resolved in mediation, or the parties have mutually agreed in writing to forgo mediation, a party may submit a written demand for Arbitration no later than 14 days following the conclusion of the unsuccessful mediation or written agreement to forgo mediation.

In the event that a grievance proceeds to arbitration, the Parties shall make a good faith effort to agree on an arbitrator. In the event the Parties are unable to agree, and not later than five (5) days from receipt of the request by the Union for arbitration, the Parties shall select an arbitrator as follows:

- a. The Montana Department of Labor and Industries (MDLI) shall provide a list of five (5) arbitrators to the Union and to the Employer.
- b. Within five (5) working days after receipt of the list of arbitrators, the parties shall select an arbitrator through the process of elimination by alternately striking names. The party to strike first shall be selected by a toss of the coin.

OR

- c. The Parties may mutually agree to a list of arbitrators to be used during the term of this Agreement and shall select any arbitrator whose schedule permits timely hearing of the grievance.

#### **SECTION 9.5: ARBITRATION**

The jurisdiction of the impartial arbitrator is limited to:

- a. Adjudication of the grievance setting forth the issue or issues to be arbitrated;
- b. Interpretation of the specific terms of this Agreement or past practices applicable to members of the bargaining unit, as specifically contained in the Employer’s written policies and procedures that are in effect upon the date of the ratification of this Agreement, and which have not been altered or amended by this Agreement of the Employer which are applicable to the particular issue presented to the arbitrator;

- c. The rendering of a decision or award that in no way modifies, adds to, subtracts from, changes or amends any term or condition of this Agreement or that is in conflict with any of the provisions of this Agreement;
- d. The rendering of a decision or award based solely on the evidence and arguments presented to the arbitrator by the respective parties;
- e. The rendering of a decision involving the administration or interpretation of insurance plans or contracts. The arbitrator shall not have jurisdiction over internal rules of the insurance plan itself which are outside the Employer's or the Union's control.

## **SECTION 9.6: ARBITRATION DECISION AND COSTS**

The arbitrator will render a decision within thirty (30) calendar days after the conclusion of the hearing or within thirty (30) calendar days following any period allowed for the filing of post-hearing briefs. The decision shall be final and binding upon the Employer, the Union and the employee(s) affected. The costs of the arbitration including professional services for preparation of transcripts (if agreed by the parties) shall be divided equally between the Union and the Employer. Any fees for witnesses shall be borne by the party calling such witness.

## **ARTICLE 10: VACANCIES**

### **SECTION 10.1: OPEN POSITIONS**

The Employer policy is to prefer promotion from within, and the employer shall consider all PCA's in it's in-house job application process. In order to ensure that all interested employees are advised of employment opportunities, the Employer shall post open positions on its bulletin boards and on its general websites.

All regular full and part time vacancies will be posted and filled in accordance with the nondiscrimination provisions of this Agreement. Postings will include position requirements, minimum qualifications, substitute and preferred qualifications (if any), base rate of pay, possible schedule and work location.

### **SECTION 10.2: NOTIFICATION OF AVAILABLE HOURS**

A caregiver seeking to work additional hours will notify his/her supervisor(s) via the monthly sign in sheet located in each office of his or her desire to work additional hours, and schedule availability. Workers who are seeking to qualify for health care coverage shall indicate that they are seeking additional hours in order to qualify for health care coverage. Such notification will be made at least once a month. It is the responsibility of the employee to notify her/his immediate supervisor when his/her schedule changes.

The Employer will publish information, by office, regarding available hours via designated bulletin boards and other means which will assist employees in obtaining more hours. The means used to notify employees of available hours may also be referred to the Labor-Management Committee for development following the ratification of this Agreement.

The principle of client choice shall be the determinative factor for assignment of worker(s). All other factors and qualifications being equal, the Employer shall offer additional hours first to

those workers seeking enough hours to qualify for health care coverage and thereafter the Employer shall use seniority from the sign-up sheet for available hours as the factor in assigning additional hours, up to a maximum of forty (40) hours per week.

## **ARTICLE 11: LABOR MANAGEMENT COMMITTEE**

### **SECTION 11.1: PURPOSE**

The Employer and the Union shall establish a Labor-Management Committee (LMC). The purpose of the Committee shall be to consider matters affecting the relations between the Employer, the Union, and the employees, and to recommend measures to improve client care in specific at Home Care Services and in the industry in general; provided, however, the Committee shall not engage in negotiations, nor shall the Committee consider matters properly the subject of a grievance.

#### **11.1.1 Educational Assistance Advisory Committee**

The LMC will serve as an advisory committee for educational assistance activities provided to up to three (3) Personal Care Attendants at any time. The Committee will recommend eligibility criteria, participate in the selection of PCAs receiving educational assistance and recommend those educational curricula which represent career ladder opportunities to PCAs.

#### **11.1.2 Mentorship Advisory Committee**

The LMC will serve as an advisory committee to assist in the development of mentoring activities and a mentoring program for Personal Care Attendants.

#### **11.1.3 Health Advisory Committee**

The LMC will serve as an advisory committee regarding the Healthcare for Healthcare Workers Initiative. The LMC will participate with the Employer, the Trust and the carriers participating in the Trust to provide benefit plan design and enrollment information to eligible employees.

#### **11.1.4 Legislative Agenda Advisory Committee**

The LMC will serve as an advisory committee to assist in the development of legislative agenda items. The Committee shall make recommendations for the purpose of public action and advocacy to improve the quality of long term care.

#### **11.1.5 Communication Advisory Committee**

The LMC will serve as an advisory committee to assist in improving communications between offices and Personal Care Attendants in addition to exploring ways to create efficient ways to disseminate information throughout the HomeCare Services offices.

#### **11.1.6 Personal Care Attendant Recognition Committee**

The LMC will serve as a committee to develop ways or activities in which Personal Care Attendants receive recognition with a goal to create a culture of mutual respect and reward.

### **SECTION 11.2: COMPOSITION, SCHEDULE AND PROCESS**

The Committee shall be composed of up to five Union representatives and a similar number of representatives of the Employer. In addition, the President or Executives of the organizations, or their designees may attend the meetings.

Other provisions for this Committee are as follows:

- a. The Committee shall be co-chaired by one of the Union representatives and one of the Employer representatives. The Committee may also decide to rotate facilitation of meetings.
- b. The Committee shall meet at least two times per year but not more than quarterly, at a time and location mutually convenient to the Union and the Employer.
- c. The Union and the Employer co-chairs will prepare an agenda to be presented to the Committee at least three (3) working days prior to the scheduled meeting.
- d. Employee Committee members will be released for participation for any scheduled hours of work that the worker foregoes by service on the Committee and may access any Paid Bank Time available as referenced in Article 11.3. The Union and the Employer shall pay any travel expenses for the participation of their respective representatives.

### **SECTION 11.3: PAID BANK TIME**

The Employer agrees to provide eight hundred (800) hours of paid bank time to be used for partnership related activities or other mutually agreeable activities. Hours of paid bank time will be the hourly rate of the employee participating in the partnership activities. Examples of these activities include, but are not limited to: Labor Management Committee work referenced in Article 11 and Home Care Advocacy Day referenced in Article 28.

### **SECTION 11.4: EMPLOYEE HANDBOOK**

Should the Employer seek to create an Employee Handbook or modify an existing Handbook (separate from this Agreement), the Employer shall allow their Labor Management Committee an opportunity to review such creation or modification prior to its implementation. The Union shall have the right to demand to bargain over any mandatory subjects of bargaining included or proposed in such a Handbook. If the LMC is unable to review a modification to the handbook prior to its implementation, the Employer shall give the Union at least thirty (30) days to do so and shall negotiate with the Union.

The Labor Management Committee shall review and recommend possible changes to job descriptions annually. The Labor Management Committee shall propose recommended changes when necessary.

### **SECTION 11.5: HOME AND COMMUNITY BASED CARE INDUSTRY-WIDE COMMUNICATIONS**

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The Parties share an equal stake in advocating for improvements in the quality of care with the regulators, the State, the Legislature, and the Congress, in building workforce development programs which prepare caregivers and Employers to meet the challenges of providing service to our rapidly aging population. Recognizing our common interests, the Parties will meet and confer over Legislative priorities, public policy goals and other matters of mutual interest in the home and community-based care industry. The Committee shall meet at least once in a reasonable time period prior to the opening of any Montana Legislative session. The Parties may mutually agree to invite other parties to participate in Communications Committee meetings. These other parties could include, but are not limited to, other unionized Employers in the home and community-based industry or long term care policy advocacy groups.

## **ARTICLE 12: HEALTH AND SAFETY**

### **SECTION 12.1: RIGHT TO SAFE WORKING CONDITIONS**

The Employer and the Union agree to comply with all federal, state, and local laws to provide working conditions that are safe. The Employer may, in its discretion, establish safety and health rules.

The Employer and the Union recognize the importance of working conditions that will not threaten or endanger the health or safety of employees or clients. No employee shall be required to work in any situation that would threaten or endanger his/her health or safety and each Employer shall make a good faith effort to notify employees of any health or safety risks prior to a client assignment. Such situations include but are not limited to: bodily harm to the employee; threatening behavior of the client to the employee; sexual harassment of the employee by the client or by persons in the household; or any other situation that would be a threat to the employee's health or safety. Employees will immediately report to the Employer any working condition that the employee believes threatens or endangers the health or safety of the employee or client.

### **SECTION 12.2: SAFETY EQUIPMENT AND PERSONAL PROTECTIVE EQUIPMENT SUPPLIES**

No employee shall be required to provide at his/her own expense safety equipment, supplies, or protective garments, including, but not limited to gloves and/or masks, protective eyewear, and aprons to perform any task for a client. The Employer or client as appropriate shall provide both latex-free and powder-free options for gloves, and shall dispense the gloves in such a manner as to safeguard the sterile conditions. If such a situation arises where there are insufficient supplies or materials, the employee will report the situation immediately to his/her supervisor.

### **SECTION 12.3: CLEANING EQUIPMENT AND SUPPLIES**

No employee shall be required to provide at his/her own expense cleaning equipment, supplies, or protective garments to perform any task for a client. If such a situation arises where there are insufficient supplies or cleaning materials, the employee will report the situation immediately to his/her supervisor.



#### **SECTION 12.4: VACCINATIONS**

The Employer shall provide free of charge Hepatitis A and B vaccinations (if requested), and TB Tine (if needed) for regular employees. The Employer shall endeavor to provide pneumonia and influenza (flu) vaccinations to all home care workers who request them, at little or no cost to the employee.

#### **SECTION 12.5: SAFETY COMMITTEE**

The Employer shall maintain its Safety Committee, consistent with applicable state and/or federal laws. The Union may designate up to three (3) members of the bargaining unit to serve on the Safety Committee.

#### **SECTION 12.6: IMMINENT DANGER TO HOME CARE WORKER**

Any employee who believes in good faith that his/her health and/or safety is in imminent danger at an assigned work location shall leave that location immediately and contact a supervisor also immediately after leaving the work location. If the employee believes the client may be in danger, the employee should call 9-1-1 or other emergency services as well.

The employee shall be paid for his/her entire scheduled assignment, including portal to portal (except tasks that required travel that were not performed) he/she would have been paid had the assignment been completed as scheduled.

If the Employer continues to serve the client, any future and current PCAs shall be given Client Specific Training that will include information regarding the Client's incidents, actions, idiosyncrasies, environmental issues, etc.

The Employer will also review its policy which is- if the employee perceives in any way to be threatened or in danger they are to 'leave and report' immediately.

Nothing in this section shall be interpreted to limit in any way an employee's right to refuse unsafe work under the National Labor Relations Act, the Occupational Safety and Health Act, or other applicable laws.

#### **SECTION 12.7: ON CALL SUPPORT**

The Employer shall endeavor to maintain at least one (1) employee per office to provide on---call support by carrying a cell phone during non-business hours for employees to contact in the case of an emergency.

#### **SECTION 12.8: COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT**

Notwithstanding any other provision of this Agreement to the contrary, the Employer may take any action that it, in its discretion, deems necessary to comply with the Americans with Disabilities Act.

## **ARTICLE 13: PAY RECORDS AND PAY PERIODS**

### **SECTION 13.1: CHECK STUB**

Employees shall be furnished with a copy of their itemized deductions each pay period, which shall include the current hours worked, accrued time off for eligible employees, current wages earned, current wage rate, cumulative wages to date, and any regular itemized deductions, including any duly authorized dues and COPE deduction, in accordance with the Employer's payroll procedures.

### **SECTION 13.2: PAY PERIOD**

Payment of wages shall be biweekly unless such pay schedule is altered by agreement between the Parties. The Employer shall make the pay schedule available to all employees, published as a yearly calendar with pay days and mandatory due dates for submission of time sheets. Should an employee fail to turn in the time sheet on or by the date required, the employee may not be paid until the next pay period except in the case of an emergency beyond the control of the employee.

Direct deposit will be submitted on the Thursday following the end of the pay period. Manual checks will be distributed one (1) week from the Monday following the end of the pay period.

### **SECTION 13.3: CHECK CORRECTION**

In the event an employee does not receive his/her paycheck on payday or is underpaid due to administrative error, a new check shall be issued within three (3) business days from the pay date as long as the Employer is made aware of the problem on the pay date or the first business day following the pay date. If the underpayment is for a small amount, the Employer may ask the employee if the corrected amount may be paid on the next subsequent paycheck.

### **SECTION 13.4: DIRECT DEPOSIT**

The Employer may offer direct deposit of paychecks. Such direct deposit shall be voluntary, and will require authorization by each participating employee. In the event that SEIU 775 establishes a credit union or other financial institution during the term of this Agreement, the Employer agrees to facilitate institution of direct deposit of all paychecks through the Union's designated credit union upon authorization from the employee(s).

## **ARTICLE 14: SENIORITY**

Employees completing the three (3) month probationary period shall be credited with seniority retroactive to date of hire. Seniority shall be defined as the length of service within the bargaining unit from the date of hire with the Employer. Seniority shall be used for purposes of promotion, or in its reverse order, for the purposes of layoffs. Employees who transfer from one office to another, or work in more than one office, shall keep his or her place in seniority.

## **ARTICLE 15: LAYOFF & RECALL**

### **SECTION 15.1: LAYOFF**

A layoff is defined as a reduction in the number of employees employed by an Employer. In the event of a need for a reduction in workforce, an Employer will meet with the Union as far in advance as possible to identify the reasons requiring the reduction and the number of employees affected.

If layoffs are required, the least senior employee(s) in a branch office shall be laid off first provided that it does not interfere with client preference and that those employees remaining on the job in that branch office are qualified, in the Employer's judgment and by established objective criteria, to perform the work remaining. An employee subject to layoff or reassignment may decline the new assignment(s) if the employee feels unqualified to provide the care required. The Employer agrees to provide thirty (30) days' notice of layoff to affected employees and the Union, except in cases of emergency beyond the Employer's control.

### **SECTION 15.2: RECALL**

Employees shall be recalled in the reverse order of the layoff provided that those recalled are qualified, in the Employer's judgment and by established objective criteria, to perform the work assigned. To be eligible for recall, a laid off employee must keep their Employer informed of his/her current address and phone number. The Employer shall notify laid off workers of recall by certified letter. When offered re-employment from layoff, the employee must indicate acceptance and availability for work within seven (7) days of receipt of letter unless unusual circumstances prohibit return within that time period.

## **ARTICLE 16: JOB DESCRIPTIONS**

In order to help assure the best quality of care, and continuity of care, upon receiving assignment to a client, the home care worker will review with his/her supervisor or mentor a detailed care plan (service plan) designating what specific care is required for each particular assigned client. Home care workers are not authorized to make any changes to the care plan. If problems arise with a client's or employee's understanding of the care plan, the Employer will take all reasonable steps to assist the client and/or employee to understand the care plan. Any changes to client care plans will be reviewed with the assigned employee(s) and the appropriate supervisor, who shall identify and offer any further training needed by the employee(s) to meet the changed client need(s).

## **ARTICLE 17: UNPAID LEAVE**

### **SECTION 17.1: UNION LEAVE**

Any employee elected or appointed to an office or position in the Union shall be granted a leave of absence for a period of continuous service with the Union not to exceed two (2) years, except in cases where the term of office exceeds this period. Thirty (30) days written notice must be given the Employer before the employee takes leave to accept such office or position, or before such employee returns to work. Such leave of absence shall be without pay.

A leave of absence without pay shall also be granted to no more than ten (10) employees per year and no more than five (5) employees at the same time to temporarily work with the Union for up to ninety (90) days, provided the Union has made the request to the Employer on behalf of the member(s) in writing and with no less than fifteen (15) business days from the first expected day of absence. The Employer and the Union shall cooperate in the scheduling of substitutes, so that employees on leave can return to their job positions upon ending their leave. If this leave lasts more than twenty one (21) days, the Employer may not be able to guarantee the employee a return to work with the same clients. If the Employer determines it will harm client services, the Employer may delay a leave request to the employee serving the affected client, until the Employer can find a suitable substitute.

An employee on an approved union leave shall continue to accrue seniority at the same rate of their accrual immediately preceding the leave. The Union and the Employer shall arrange for reimbursement of the health care provider (as legally permitted) to continue benefits for employees on extended union leave not to exceed three months.

#### **SECTION 17.2: BEREAVEMENT LEAVE**

Employees are eligible for up to five (5) days of paid bereavement leave for members of the employee's immediate family and two (2) days of ~~unpaid~~ paid funeral or bereavement leave for close relatives, and long-term clients. The definition of "long-term" clients shall include any PCA who has served a client for more than twelve (12) months on a regular basis. ~~and one (1) day of unpaid leave for funeral or bereavement of clients.~~ For purposes of this bereavement leave policy, "immediate family" includes the employee's children, adoptive children, step-children or other children living in the household, parents, step-parents or adoptive parents, parents-in-law, spouse or partner, grandparents and siblings or step-siblings. "Close relatives" includes the employee's aunts, uncles, cousins, nieces, nephews, and siblings-in-law.

At the sole discretion of the Employer, requests for unpaid bereavement leave may be granted in other circumstances. At the sole discretion of the Employer, additional unpaid bereavement leave of up to two weeks may be granted for travel out-of-state or out of the country. The employee requesting such extended bereavement leave shall be allowed to utilize any Paid Time Off that s/he has accrued and earned.

#### **SECTION 17.3: ELECTION LEAVE**

The Employer shall grant all employees up to two hours of unpaid leave to participate in election activities.

#### **SECTION 17.4: OTHER LEAVES OF ABSENCE**

Eligible employees shall be entitled but not limited to all rights and privileges provided in the Family and Medical Leave Act of 1993; and other federal and state laws regulating pregnancy and/or medical leave.

#### **TYPES AND DEFINITIONS OF LEAVES OF ABSENCE**

Employees may request a leave of absence without pay by presenting a written request to their immediate supervisor along with any supporting documentation. The decision to grant a leave of absence for military service, jury duty, family medical leave (FML) and parental leave shall be as provided by state or federal law and according to the policies of the Employer. Any other unpaid leave will be at the discretion of the Employer.

If an employee is eligible for FML, a leave of absence without pay shall be granted for a period of up to twelve (12) weeks in the following circumstances, for the following reasons during any calendar year:

1. The birth of a child and to care for the newborn child within one year of birth;
2. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
3. To care for the employee's spouse, domestic partner, child, or parent or grandparent who has a serious health condition;
4. A serious health condition that makes the employee unable to perform the essential functions of his or her job;
5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or
6. Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Leaves of absence shall not be construed as a break in service. Employees on leave shall retain their seniority. An intermittent leave or reduced leave schedule may be granted if the leave is due to the Employee's own illness or the illness of a child, spouse or parent of the employee.

When an intermittent leave is requested, dates on which treatment is expected to be given and the duration of the treatment must be submitted to the Employee's supervisor. The Employer may temporarily transfer the employee to another available position with equivalent pay and benefits that better accommodate the Employee's scheduling needs.

Information about the Family Medical Leave Act can be found at: <http://www.dol.gov/whd/fmla/>

#### **SECTION 17.5: RETURN FROM LEAVE OF ABSENCE**

The Employer will make a good faith effort to reinstate employees returning from an authorized leave of absence to their previous or similar assignment and schedule, subject to client preference. An employee who fails to return to work within three (3) days of the expiration of a

leave or has not obtained an extension of the leave prior to its expiration will be considered to have voluntarily terminated employment.

#### **SECTION 17.6: RETURN TO WORK PROGRAM**

The Employer will comply with all federal and state laws regarding workplace injuries. The Employer may request certification from the employee's physician to determine if and when the employee can return to duty, and what assignments and/or activity level restrictions may be appropriate.

The Employer and the Union are committed to protecting workers who are or may become victims of domestic violence/stalking and/or sexual assault. The parties agree to discuss provisions for these protections and draft policies to be implemented during the life of the Agreement.

### **ARTICLE 18: HOLIDAYS**

#### **SECTION 18.1: HOLIDAYS QUALIFYING FOR PREMIUM PAY**

The following days qualify as a holiday for the purposes of applying the holiday premium pay provisions of this article, as noted below. No employees shall be unreasonably denied holiday leave requests to work on holidays in the following list.

Holidays Qualifying for Premium Pay if Assigned and Worked:

New Year's Day\*

Memorial Day

July 4th (Independence Day) \*

Labor Day

Thanksgiving Day

Christmas Day \*

The Employer shall publish an annual list of the actual dates of observance of the holidays listed above.

#### **Holiday Premium Pay**

Employees who are assigned to work on one of the qualifying holidays shall be paid one and one-half times (1.5X) their regular rate of pay for all hours worked on the qualifying holidays.

\*Holidays marked with an asterisk shall be paid at two times (2x) their regular rate of pay for all hours worked on the qualifying holiday. The Employer may limit homemaking and social supervision hours on all holidays qualifying for premium pay as determined by the client's needs for that day. If an employee is not assigned to work and does not work on the holiday, s/he shall not be paid the holiday premium pay. Employees who do not work on one of the

qualifying holidays above shall be allowed to use any accrued leave up to eight (8) hours upon request.

### **Limited Client Services**

The Employer reserves the right to designate which clients will receive client services on the qualifying holidays for which the Employer pays holiday premium pay. The Employer shall advise regularly assigned workers that service to their client will not be required on one or more of the premium pay holidays listed above at least two (2) weeks in advance of the holiday.

### **Open Holiday Premium Pay Shifts**

Should a regularly assigned employee be requested to work on one of the premium pay holidays listed above, and decline that assignment, the Employer shall offer the hours to the most senior qualified employee who volunteers for the hours.

## **ARTICLE 19: TRAVEL PROVISIONS**

### **SECTION 19.1: TRAVEL PAY AND MILEAGE**

#### **Portal-To-Portal Time**

Employees shall be paid one hour of regular pay for every thirty-five (35) miles driven while traveling between work locations or clients during the workday, but at a prorated amount if under or over 35 miles driven. Employees will not be paid for time spent traveling to the first assigned workplace, nor for traveling from the last assigned work location of the workday. Employees who work an additional fill shift after the last scheduled shift of the workday, may claim portal-to-portal from home to Client. This will only apply if the employee goes and comes directly from home to the work location.

Employees may request that the Nurse Supervisor review their schedules for the purposes of minimizing the amount of portal-to-portal time. Such considerations will include revising client service schedule(s) so that employees have minimum wait times between shifts and also that employees may consider, if possible, other client assignments which serve to minimize the amount of portal-to-portal time.

#### **Mileage Reimbursement**

Mileage reimbursement will be compensated and administered according to the current policies and procedures of the Department of Public Health and Human Services (Senior and Long Term Care, Med Transportation). The Department of Public Health and Human Services (Senior and Long Term Care, Med Transportation) retains the right to determine the most efficient drive routes.

### **SECTION 19.2: INSURANCE AND DRIVER'S LICENSE**

Employees on duty shall maintain a current valid driver's license if required to drive to assignments or while on assignments.

Employees on duty shall only utilize vehicles that are covered by liability insurance, consistent with laws and regulations of the state of Montana. The Employer shall require proof of sufficient liability insurance.

### **SECTION 19.3: DOCUMENTATION OF EXPENSES**

Employees must present written documentation of any expenses reimbursed pursuant to this Article, if requested by the Employer, and must conform specifically to all schedules, rules and travel routes as set by the Employer.

### **SECTION 19.4: SPEEDING TICKETS**

The Employer shall not be liable for any moving violation or parking tickets related to the employee's operation of a vehicle even if this occurs during working hours for the Employer.

## **ARTICLE 20: COMPREHENSIVE HEALTH AND WELFARE BENEFITS**

### **SECTION 20.1: BENEFITS PROVIDED THROUGH THE TRUST**

The SEIU 775 Multi-Employer Health Benefits Trust ("Trust") provides medical, dental, prescription drug and vision coverage for eligible workers as a unified and comprehensive benefit program. Subject to the continued availability of reimbursement from the Employer's state funding sources, the Employer shall provide comprehensive employee health care, dental, prescription drug and vision benefits through the Trust to the extent available. The bargaining parties acknowledge that the Trust has the sole discretion to determine the benefit plans offered and their terms provided that such coverage meets the requirements for multiemployer plan interim relief set forth in *Shared Responsibility for Employers Regarding Health Coverage*, 26 CFR Parts 1, 54, and 301, 78 Fed. Reg, 217, and any successor guidance. The Trust shall coordinate with the Employer in regards to providing Plan information to eligible employees and dependents (where applicable).

### **SECTION 20.2: ELIGIBILITY**

Pursuant to any eligibility requirements set forth in this Agreement, or established by the Trust, employees shall qualify for health and welfare benefits through the Trust as outlined in DPHHS rules and regulations regarding the reimbursement of health care costs to the Employer. Should the DPHHS rules and regulations on health care reimbursement change substantially, the Union and the Employer agree to bargain over the impact of such changes. Employees who do not qualify for these benefits as outlined in DPHHS rules and regulations may participate at their own expense.

Should a participant fail to meet the eligibility requirements, the Employer shall notify them that they have not worked enough hours to maintain eligibility. The Trust shall be responsible for administering the COBRA continuation provisions for the Employer's employees and their dependents participating in the Trust in accordance with the requirements of COBRA.

### **SECTION 20.3: EMPLOYER CONTRIBUTIONS**



Subject to the availability of reimbursement from the Employer's state funding sources, the Employer shall pay to the Trust the employee premium for health care coverage up to the maximum dollar amount allowed for reimbursement of benefit costs by the DPHHS (and less the employee deductible referenced below) for all employees who are eligible for coverage. The bargaining parties recognize the provision of benefits by the Trust is conditioned upon the receipt of the required employer contributions.

#### **SECTION 20.4: EMPLOYEE CONTRIBUTIONS**

Employees enrolled in a Trust plan shall pay a premium co-share of forty dollars (\$40) per month for health care coverage. Employees wishing to enroll their spouse or eligible dependents in an available Trust plan(s) may do so at their own cost if such dependent coverage is available. Employees shall pay their employee deductible and dependent premium charges (if applicable) via payroll deduction if they so authorize in writing.

#### **SECTION 20.5: SAVINGS**

If mandated requirements for the DPHHS reimbursements change substantially, the Employer and Union shall meet to negotiate changes. The Trust shall be the policy holder of any insurance plan or health care coverage plan offered by and through the Trust. As the policy holder, and fiduciary agent, the Trust shall indemnify and hold harmless from liability the Employer from any claims by beneficiaries, health care providers, vendors, insurance carriers, or employees covered under this Agreement to the extent such liability is related to the Trust's performance (or lack of performance) of its responsibilities hereunder and under applicable law, provided that the Trust will not indemnify and hold harmless the Employer to the extent the liability results from the Employer's gross negligence or willful misconduct.

It is recognized that the Employer's role in regards to the Trust are limited to those established by this Agreement and the proper payment of employer contributions, the collection of employee contributions and the reporting of eligibility and other information as required by the Trust and applicable law. It is acknowledged that the Board of Trustees of the Trust are the Plan Sponsor, Plan Administrator and Named Fiduciary of the Trust as those terms are defined in ERISA and that the Trust has assumed the legal responsibilities consistent with these designations and applicable law.

#### **SECTION 20.6: ENROLLMENT INFORMATION AND COORDINATION**

The Employer, the Union, and the Trust shall coordinate to provide information about the health care coverage options to employees and shall arrange for translation or interpretation to facilitate employee understanding of the plans if necessary. Open enrollment meetings and materials shall be made available to all employees at least annually.

#### **SECTION 20.7: CONTROLLING AGREEMENT**

This Agreement controls in the event there is a dispute as to the terms or provisions appearing in this Agreement and any Trust documents.

## **ARTICLE 21: ADVANCED PCA TRAINING AND EDUCATION ASSISTANCE**

### **SECTION 21.1: PCA ADVANCED TRAINING**

The Employer shall ~~offer~~ require all new hires to complete advanced training. ~~to employees with a minimum of sixteen (16) employees per life of this agreement.~~ Current employees may also request to participate. The curriculum will be certified for the SEIU Advanced Training. Employees participating in this curriculum shall be paid their regular rate of pay for hours spent in the training.

Training shall consist of approximately ~~one hundred (100)~~ seventy (70) hours over a twelve (12) month period. Classes will be scheduled in one (1) or two (2) sessions per month.

#### **21.1.1 WAGE INCREASE**

Upon successful completion of the SEIU Advanced Training curriculum employees shall receive a twenty five cent (\$0.25) per hour wage increase to their base pay.

#### **21.1.2 AUTHORIZATION OF SUPPORTIVE SERVICES**

On a case by case basis, a limited amount of supportive services may be provided to Training Participants, by the Employer, to facilitate the participant's ability to participate in the training. Supportive Services to include, but are not limited to, child care, transportation, etc.

### **SECTION 21.2 EDUCATION ASSISTANCE AND MEDICAL CAREERS**

The Employer shall offer Educational Assistance to a maximum of three (3) PCA's at any one time. These Personal Care Attendants will meet requirements set forth by this agreement and the Advisory Committee (Section 11.1.1).

Requirements for eligibility to participate in this Educational Assistance Plan shall include that the PCA has been employed with the Employer for two (2) years, and has worked a minimum of 1040 hours during the past twelve (12) months preceding their application to participate in this plan.

#### **Section 21.3 Mentorship**

The Employer and the Advisory Committee (11.1.2) will work to develop a Mentoring Program for PCAs. The program will generally use experienced PCAs to shadow and support other PCAs as determined by the Advisory Committee.

## **ARTICLE 22: PAID TIME OFF**

### **SECTION 22.1: ACCRUAL**

Employees are eligible to accrue and use paid time off, except those that elect to receive pay-in-lieu of benefits (PIB). Paid time off is available to those employees that do not elect the pay-

--in-lieu of benefits option. Employees shall accrue one (1) hour of paid time off for every thirty (30) hours worked.

Employees shall accrue, but not be able to use, paid time off during their initial probationary period. Each employee's personal leave balance will be shown on their pay stubs.

#### **SECTION 22.2: USE OF PAID TIME OFF AND SCHEDULING**

Employees shall be eligible to take paid time off ~~in one hour increments~~ after their initial probationary period. Employees may use any accrued paid time off for sick leave ~~(subject to Section 19.4)~~ caring for others, in shift increments, single days— off, or consecutive days of vacation. Employees must submit paid time off requests for vacation time off in writing at least two (2) weeks prior to the date of time off requested and the Employer will respond in writing within five (5) business days. In the event that too many employees request paid time off for the same time period, and the Employer cannot ensure safe client coverage, paid time off approvals shall be granted by seniority within the office to which the employee is primarily assigned.

#### **SECTION 22.3: CASH-OUT**

Employees may elect to cash out their accrued, unused paid time off. Employees may exercise this cash-out option up to twice per year, however, the Employer will not unreasonably deny additional requests. If the employee does not exercise the cash-out option, then the full remaining unused paid time off shall continue to be carried forward.

The Employer shall notify employees of the cash-out option under this Agreement and shall provide a form for employees who wish to exercise their cash-out option.

Employees who terminate their employment shall be paid for all unused, accrued paid time off. Such cash out shall be made by the Employer at the time of the employee's final pay period and paycheck.

#### **~~SECTION 22.4: UTILIZATION OF PAID TIME OFF AS SICK LEAVE~~**

~~Employees who have accrued paid time off time shall be eligible for paid time off for any period of absence from employment which includes but is not limited to the employee's illness; injury; temporary disability; medical or dental care; or to attend to members of the employee's or the employee's spouse's immediate family or domestic partner or domestic partner's immediate family, where the employee's presence is required because of illness or as otherwise required by the state or federal Family Medical Leave Act or other State law.~~

~~The Employer may, in its sole discretion, require reasonable proof of illness or disability and/or certification of the necessity of the employee's absence if longer than three (3) days. Eligible employees will be required to use available paid time off as part of any period of FMLA leave.~~

#### **SECTION ~~22.5~~22.4: NOTICE AND PROOF OF ILLNESS**

The Employer reserves the right to require reasonable proof of an employee's illness, if the absence from work last beyond three (3) consecutive scheduled work days. The Employer also

may require a doctor’s release in the event that the absence from work exceeds three (3) consecutive scheduled work days.

Employees who are sick shall make a good faith effort to provide as much advance notice as possible to the Employer. However, Employees shall personally notify their supervisor(s) of illness no less than three (3) hours prior to their first assignment of the day, unless there is a verifiable emergency preventing an employee from fulfilling this requirement.

The Employer will maintain a twenty-four (24) hour call or paging service for employees seeking to reach supervisors.

**SECTION 22.65: COMBINATION WITH OTHER BENEFITS**

Payment of accrued paid time off shall supplement any disability or workers’ compensation benefits. The combination of paid time off payments and disability or workers’ compensation benefits shall not exceed the amount the employee would have earned had the employee worked her/his normal schedule.

**SECTION 22.76: PTO DONATION PROGRAM**

Employees may request to donate any of their accrued and available paid time off to other employees in writing granted that the leave request without pay has been granted to the employee receiving such donation. The request to donate PTO hours shall not be unreasonably denied by the Employer.

**ARTICLE 23: WAGES AND PREMIUMS**

**SECTION 23.1: AVAILABLE FUNDING**

The Union and the Employer agree that all future ‘collective bargaining’ shall only include those increased Medicaid and State fund reimbursements which exceed current funding levels, specifically for Personal Care Attendant wages which the Union is able to secure through its lobbying and public policy activities.

**SECTION 23.2: STARTING WAGES**

Employees covered by this Agreement shall be compensated as follows:

Personal Care Attendant (Probationary Wage for Regular): ~~\$10.54~~11.09

Waived for those new hires that have certification or experience that meet DPHHS (SLT) standards.

Personal Care Attendant ( Hourly Regular Wage):

<u>CBA</u>	<u>2017</u>	<u>2019</u>	<u>2021</u>
<u>HomeCare Montana</u>	<u>\$10.50</u>	<u>\$10.80</u>	<u>\$11.35</u>

<u>DCWI</u>	<u>\$00.65</u>	<u>\$00.70</u>	<u>\$00.80</u>
<u>HB 638</u>	<u>\$1.35</u>	<u>\$1.50</u>	<u>\$1.60</u>
<u>Total PCA Wage</u>	<u>\$12.50</u>	<u>\$13.00</u>	<u>\$13.75</u>

<u>CBA</u>	<u>2017</u>	<u>2019</u>
<u>HomeCare Wage</u>	<u>\$10.50</u>	<u>\$10.80/hr; *</u>
<u>DCWI</u>	<u>\$00.65</u>	<u>\$00.70/hr</u>
<u>HB 638</u>	<u>\$01.35</u>	<u>\$01.50/hr</u>
<u>Total</u>	<u>\$12.50</u>	<u>\$13.00/hr*</u>

\*Upon successful completion of Advanced HomeCare Training a \$0.25 increase is extended to current wages =\$14.00.

Personal Care Attendant (Regular Hourly wage with for PIB):

<u>CBA</u>	<u>2017</u>	<u>2019</u>	<u>2021</u>
<u>HomeCare Montana</u>	<u>\$10.63</u>	<u>\$10.93</u>	<u>\$11.48</u>
<u>DCWI</u>	<u>\$00.65</u>	<u>\$00.70</u>	<u>\$00.80</u>
<u>HB 638</u>	<u>\$1.35</u>	<u>\$1.50</u>	<u>\$1.60</u>
<u>Total PIB PCA Wage</u>	<u>\$12.63</u>	<u>\$13.13</u>	<u>\$13.88</u>

<u>2017</u>	<u>2019</u>
<u>HomeCare Wage</u>	<u>\$10.63</u> — <u>\$10.93/hr</u>
<u>DCWI</u>	<u>\$00.65</u> — <u>\$00.70/hr</u>
<u>HB638</u>	<u>\$01.35</u> — <u>\$01.50/hr</u>
<u>Total PCA Wage</u>	<u>\$12.63</u> — <u>\$13.13/hr</u>

Employees receiving PIB (“Pay-in-Lieu of Benefits) shall only be eligible to participate in the Healthcare for Healthcare Workers’ Initiative for health care benefits. Employees receiving PIB shall only include those employees who provide self-directed personal care services as defined by the Montana DPHHS.

**SECTION 23.3: WAGE INCREASE/DIRECT CARE WORKER BONUS**

The Employer and the Union have established a mutually agreeable process for the distribution of funds specifically appropriated by the State of Montana for Direct Care Worker wages and bonuses. These funds are referred to as the Direct Care Wage Initiative (DCWI).

The process for distribution of these funds which are received by the employer in lump sum payments shall be as follows:

The employer, upon receipt of DCWI lump sum funding, and with approval of the Union, will establish a per hour wage amount to be paid equally to all employees covered by this Agreement.

The DCWI hourly wage will be paid in addition to the regular wages referenced in Article 23: Wages & Premiums, Section 23.2 Starting wages.

The DCWI hourly wage will be disbursed through a specific payroll item (wage rate) called the DCWI Wage Differential. This DCWI Wage Differential amount will appear on all employee paychecks.

Any DCWI funds remaining at the end of each State Fiscal Year (SFY), June 30, will be disbursed in the form of an employee bonus based on the number of hours worked in a previous six (6) month period, and be based on the employee’s seniority.

~~As such, the Memorandum of Understanding (MOU) that follows was fully and thoroughly bargained, discussed and executed by the parties effective July 29, 2019:~~

**Memorandum of Understanding**

**Between**

**~~Home Care Services, LLC (Employer) and SEIU 775 NW (Union)~~**

**~~Effective July 21, 2019~~**

**~~Direct Care Workers’ Initiative (DCWI) Funding, and HB 638 Funding for State Fiscal Year 2020 (July, 21, 2019 – June, 2018)~~**

~~Whereas the Direct Care Workers’ Initiative (DCWI) funding, and HB 638 funding for this current State Fiscal Year (SFY). July 2019 – June 2020, has been made available from the DPHHS and is about the same total amount of funding as was available for SFY 2019; and~~

~~Whereas the parties are scheduled to formally bargain a new Agreement at the beginning of September; and~~

~~Whereas SFY 2019 funding for the DCWI and HB 638 was sufficient to meet projected payroll amounts with year end bonuses and retroactive wage adjustments; and~~

~~Whereas the year end disbursements were sufficient to permit an increase in the total PCA wage of \$0.20/hour while at the same time maintaining a sufficient amount of year end funding to provide some assurance that future fluctuations in this funding do not result in a decrease of the PCA wage;~~

~~Therefore the parties agree that prior to formally bargaining these funds in September, 2019, HomeCare Montana will increase PCA wages by \$0.20/hour. The parties agree that this \$0.20/hour will include an increase in the DCWI of \$0.05/hour, and an increase in the HB 638 of \$.15/hour. The increase in HB 638 Differential to \$1.50/hour is the maximum wage allowed by the DPHHS. HCS will also retro the HB 638 funds to July 1, 2019, and all DCWI funds will be expended in a DCWI Bonus at the end of the SFY.~~

~~The parties recognize that the limitation on wages with HB 638 funds will result in returning funds to the DPHHS unless there is an increase in services provided. The parties also continue to recognize that future funding from both the DCWI and HB 638 state appropriations for Direct Caregiver wages is subject to change, that HomeCare Montana's commitment to these funds is spending 100% of what is allocated, and that these funds could fluctuate in future years resulting in a decrease in PCA wages.~~

#### **SECTION 23.4: DIRECT CARE WORKER BONUS PAYMENTS**

Current and active employees at the time of the DCWI bonus disbursement shall be entitled to receive this bonus.

##### **Hours Worked During Eligibility Period**

The Employer may determine the exact six-month time period to be utilized, but will endeavor to use as recent a time period as possible.

The amount of bonus paid to each employee shall be determined using the following criteria:

- The number of hours worked in the six-month eligibility period prior to the distribution of DCWI bonus payments
- Seniority

##### **Date of Hire Bonus Formula**

Prior to 12/31/~~2007~~2008: \$0.~~60~~50 X total hours worked in 6 month eligibility period.

1/1/~~2008~~2009 through 12/31/~~2011~~2012: \$0.~~58~~43 X total hours worked in 6 month eligibility period. 1/1/~~2012~~2013 through 12/31/~~2015~~2017: \$0.~~55~~38 X total hours worked in 6 month eligibility period.

1/1/~~2016-2018~~ to current eligibility period: \$0.~~50-31~~ X total hours worked in 6 month eligibility period.

In the event that that these calculations produce a total bonus amount that is higher than available DCWI funding, the employer shall reduce individual bonuses by an even amount for each worker to match available funding. The Employer shall attempt to ensure to keep any reduction separated by seven cents (\$0.07) between each of the seniority dates listed above. In the event that the seven cents (\$0.07) separation results in an over or under amount of available funding, the change to the separation cents will be kept as de minimis as possible. The Employer will notify the Union of any adjustments made to the disbursement process as far in advance as possible. The Employer and the Union may also agree to establish a minimum amount to bonus for each employee.

#### **SECTION 23.4.1 RATIFICATION BONUS**

Upon successful ratification of this agreement the following one time bonuses to employees eligible for benefits shall be made based on the hire dates as outlined below:

<u>Hire Date</u>	<u>Payment Per Person</u>
<u>1995-2008</u>	<u>\$460</u>
<u>2009-2012</u>	<u>\$340</u>
<u>2013-2017</u>	<u>\$300</u>
<u>2018-2021</u>	<u>\$100</u>

#### **SECTION 23.5: MENTORING DIFFERENTIAL**

Mentoring was established to provide real time training and colleague insight into the profession by Mentor's one on one time with Mentee and client.

Any employee that is assigned to a Mentorship position shall be compensated as follows: Mentors shall be paid four dollars (\$4.00) per hour in addition to their regular rate of pay for all paid care time spent with Mentees.

HomeCare Montana and SEIU agree to continue to monitor and make improvements to Mentorship through the Labor Management Committee.

#### **SECTION 23.56: ON-CALL SCHEDULERS**

Any Employees who are assigned to the On-Call Schedulers position shall be compensated as follows:

Weekday Rate: \$18.00 per day

Weekend Rate: \$32.00 per day



### **23.56.1 MILEAGE**

On-Call Schedulers shall be eligible for the IRS mileage reimbursement rate, to be updated in an annual basis per mile for any miles driven directly related to the duties of the on-call scheduler (including but not limited to: driving to the office to pick up scheduling materials, fill-in shifts, etc.).

### **SECTION 23.67: CLIENT/SERVICE INACCESSIBLE PAY**

If an employee is unable to provide service to a client due to the client's failure to answer the door, or if the client is not home, or if the client has cancelled service and the employee is not notified, the employee shall notify the Employer by telephone promptly. If the Employer is unable to provide a substitute assignment, the employee shall be paid at the straight time hourly wage rate for up to two (2) hours show-up/no access pay.

### **SECTION 23.78: OVERTIME**

Employees required to work in excess of forty (40) hours in a week shall be paid overtime for such additional hours at the rate of one and one-half (1 ½) times their regular hourly rate of pay. Paid time off or union leave time or any other time that is not actual hours worked shall not be considered time worked for the purposes of this section.

## **ARTICLE 24: NO STRIKE OR LOCKOUT**

There shall be no strike by the Union and no lock out by the Employer over the issues covered in this Agreement during the term of the Agreement. Should the Employer reasonably believe that the Union and/or its member employees are in violation of this Article, the Employer shall contact the President or Secretary-Treasurer of SEIU 775 or appropriate designee(s) to advise him/her of the situation. The officer shall advise employees and/or the Union representatives engaged in the objectionable activity immediately that the activity is unsanctioned. In the event of an alleged violation of this Article, the Employer may commence expedited arbitration proceedings to seek a cease and desist order or other relief by contacting the Federal Mediation and Conciliation Service and requesting the immediate appointment of an arbitrator to hear the matter. A hearing of the matter shall be held within twenty-four (24) hours after the arbitrator's appointment. The sole issue at the hearing will be whether a breach of this Article has occurred.

## **ARTICLE 25: MODIFICATION AND PAST PRACTICE**

No provision or term of this Agreement may be amended, modified, changed, altered or waived except by written agreement between the Parties hereto.

Subject to the other provisions of the Agreement, all conditions relating to wages, hours of work, and other terms, conditions and benefits of employment shall be maintained as in effect at the signing of this Agreement. For the purposes of this Agreement, past practice will be considered those past practices applicable to members of the bargaining unit, as specifically

contained in the Employer's written policies and procedures that are in effect upon the date of ratification of this Agreement, and which have not been altered or amended by this Agreement.

The Parties agree that all negotiable items have been discussed during the negotiations leading to this Agreement, and, therefore, agree that negotiations will not be reopened on any items. However, by mutual agreement of the parties, negotiations of this collective bargaining agreement may be re-opened as a result of new regulatory, legislative, or funding issues.

## **ARTICLE 26: SEVERABILITY**

This Agreement shall be subject to all present and future applicable federal, state, and local laws and rules and regulations of governmental authority. Should any provision of this Agreement, or the application of such provision to any person or circumstance, be invalidated, rules contrary to law, or enjoined by a Federal or State court, or duly authorized agency, the remainder of this Agreement or the application of such provision to other persons or circumstances shall not be affected thereby. In the event of such invalidation or injunction, the parties shall promptly meet to negotiate a substitute provision. Any changes or amendments to this Agreement shall be in writing and duly executed by the parties and their representatives.

## **ARTICLE 27: SUCCESSORSHIP AND SUBCONTRACTING**

### **SECTION 27.1: SUCCESSORSHIP**

The Employer agrees to notify SEIU 775 in the event any transaction is contemplated which may affect the interests of SEIU 775 members.

Home Care Services agrees to notify any potential purchaser of its collective bargaining agreements with SEIU and will make acceptance of such Agreements a condition of any sale, purchase, or any other form of transfer of its business, in whole or in part, to any other person or entity.

### **SECTION 27.2: SUBCONTRACTING**

The Employer will not subcontract any bargaining unit work. In the event the Employer enters into any business relationship which may impact SEIU members, the Employer will notify SEIU promptly.

## **ARTICLE 28: HOME CARE ADVOCACY DAY UNION LEAVE**

The Employer agrees to grant up to fifteen percent (15%) of its bargaining unit employees, by the selection of the Union, at least two paid leave days each calendar year for the general purpose of public action and advocacy to improve the quality of long term care. One of these days will be reserved for use as decided by the policy agenda created by Capital Opportunities, Inc. The other paid day will be designated by the Union. Employees participating in either day will access the use of Paid Bank Time referenced in Article 11.3. The Union shall designate in

writing to the Employer the employees who are requesting such leave at least fourteen (14) calendar days in advance. Leave requests shall take client needs into consideration, but shall not be unreasonably denied by the Employer. The Employer shall communicate promptly with the Union concerning any difficulties in granting leave requests. Employees on paid leave for advocacy activities shall receive their regular rate of pay for the number of scheduled hours normally worked on that day. Such paid leave time shall not be counted for the purpose of overtime computation.

The Union shall submit a list of those employees who attend the designated advocacy days, to verify attendance for the Employer's purpose of paying leave. The Union shall provide this information no later than the date that timesheets are due for the payroll period following the designated advocacy day.

Employees who requested leave, but whose attendance is not verified by the records provided to the Employer and who did not report to work shall be denied paid leave.

## **ARTICLE 29: NO HARASSMENT, DIGNITY AND RESPECT**

The Employer and employees shall treat each other and clients with dignity, respect, and fairness.

No employees shall suffer from any type of harassment, sexual or otherwise, and must report to an Employer's Human Resources representative any incidents of harassment as soon as possible. The employer, in turn, must notify the union no later than in three (3) business days of the allegation of harassment made by the employee covered by this Agreement and of their findings investigating the complaint.

### **Harassment**

Harassment is conduct relating to an individual's race, color, religion, sex (including pregnancy or pregnancy related conditions), national origin, citizenship, age, protected disability, veteran status, or any other protected status in accordance with applicable federal, state or local laws which has the purpose or effect of:

- Creating an intimidating, hostile, or offensive work environment;
- Unreasonably interfering with an individual's work performance; or
- Adversely affecting an individual's employment opportunities.

By way of illustration only, and not limitation, such prohibited harassment includes:

- Verbal conduct: degrading jokes, comments or innuendos relating to a person’s identity, slurs, sexual innuendos, suggestive comments, sexually graphic comments, unwanted sexual propositions, threats, intimidation or other menacing behavior.
- Non-verbal conduct: degrading, demeaning or sexually suggestive objects, pictures, cartoons, drawing, graffiti, cards, posters, text messages, videos, or social media posts; suggestive sounds or obscene gestures.
- Physical conduct: unnecessary and unwanted touching, impeding or blocking movements, physical interference with normal work or movement, or assault.

This policy prohibits managers, supervisors, and employees from harassing coworkers, clients, residents, vendors, suppliers, independent contractors and other doing business with the company. It likewise prohibits its clients, residents, vendors, suppliers, independent contractors and others doing business with the company from harassing employees.

### **Sexual Harassment**

Sexual harassment is a form of prohibited harassment that occurs when the types of verbal and physical conduct described above are sexual in nature or directed at a person because of gender when a) submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or b) such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

Examples of prohibited sexual harassment include, but are not limited to:

- Unwanted sexual advances, flirtations, or repeated requests for dates;
- Verbal sexual advances, propositions, requests, or comments;
- Verbal abuse of a sexual nature, graphic verbal comments about an individual’s body, sexually degrading words used to describe an individual, and suggestive or obscene letters, notes, invitations, or sexually-oriented kidding or teasing;
- Visual conduct, such as leering, making sexual gestures, and displaying or posting sexually suggestive objects or pictures, cartoons or posters;
- Sending or posting sexually-related messages, videos or messages via text, instant messaging, or social media;

- Offering an employment benefit (such as a raise, promotion or career advancement) conditioned on an employee granting sexual favors to, or having a romantic relationship with, a supervisor or coworker, or threatening an employment detriment (such as termination or demotion) for an employee's failure to engage in sexual activity; or
- Physical conduct, such as touching, groping, assault, or blocking movement.

This policy prohibits managers, supervisors, and employees from harassing coworkers, clients, residents, vendors, suppliers, independent contractors and other doing business with the company. It likewise prohibits its clients, residents, vendors, suppliers, independent contractors and others doing business with the company from harassing employees.

### **Violence in the workplace**

Threats, threatening behavior, or acts of violence by or against employees, visitors, clients, residents, vendors, independent contractors, or others doing business with the company will not be tolerated. Such actions include but are not limited to: verbal or physical harassment or abuse, attempts at intimidation, sabotage, destruction of property, menacing gestures, possession of weapons, stalking, coercion, pushing or shoving, horseplay, or other hostile, aggressive, harmful and destructive actions.

Some employees are known to be at risk because they are subject to violence, threats, or harassment from a current or former client, spouse, partner, or other non-employee. Human Resource and Security personnel work with at-risk employees and their supervisors to develop safety plans that address the specific risks the employee faces while at work.

Victims of violent incidents in the workplace might have to contend with a variety of medical, psychological, and legal consequences. The Employer shall work with victims of workplace violence by:

- Referring victims to an Employee Assistance Program (EAP), appropriate community resources, such as medical centers, counseling services, victim advocacy groups, legal aid, and domestic violence shelters;
- Providing flexible work hours or short-term or extended leave as required by leave policies;
- Cooperating with law enforcement personnel in the investigation of the crime and the prosecution of the offender; and
- Providing a debriefing for employees where appropriate 24 to 48 hours after a serious violent occurrence to explain what happened and what steps are being taken by the company to support affected employees.

## **No Retaliation**

The Employer and the union agree to take all complaints of unlawful discrimination and harassment seriously and will not retaliate, or allow retaliation, against employees for complaining of discrimination or harassment, assisting in an investigation related to harassment or discrimination, or filing an administrative charge or lawsuit alleging discrimination or harassment. Employees and applicants shall not be subject to harassment, threats, coercion or discrimination because they filed a complaint, participated in an investigation, or exercised any other right protected by federal, state, or local law.

## **Confidentiality**

All complaints of harassment or discrimination reported to management or Human Resources will be treated as confidentially as possible, except as needed to conduct a fair investigation. The investigation will include a private interview with the person filing the complaint and with witnesses, to the extent deemed necessary.

The Employer and the Union will work through the Labor Management Committee on the further development and implementation of this article.

## **ARTICLE 30: TERM OF AGREEMENT**

This Agreement shall become effective on November 1, ~~2021~~<sup>2019</sup> and shall remain in effect through midnight (12 am) October 31, ~~2021-2023~~. All terms and conditions in this Agreement shall become effective upon the date the Employer is notified in writing of the conclusion of the union's ratification process, unless a specific date for implementation is referenced within the Agreement.

In the event that during the term of this Agreement, the State of Montana substantially changes the anticipated funding for contracted services provided by the Employer and/or there is any other change that lowers or increases the level of reimbursement established at the time of the signing of this Agreement, the Parties agree to reopen this Agreement immediately for negotiations on all economically impacted sections.