

IHSS PUBLIC AUTHORITY ORDINANCE

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE ADDING ARTICLE \_\_\_\_\_ TO CHAPTER \_\_ OF  
THE SANTA BARBARA COUNTY CODE  
ESTABLISHING THE SANTA BARBARA COUNTY  
IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY**

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

**SECTION 1.**

Article \_\_\_\_\_ is added to Chapter \_ of the Santa Barbara County Code to read as follows:

**1. FINDINGS AND PURPOSE.**

As required by Welfare and Institutions Code section 12302.25, the Board of Supervisors of Santa Barbara County determines that the establishment of a public authority whose powers are derived from and consistent with the provisions of Welfare and Institutions Code section 12301.6 is necessary for the public health and welfare. The public authority shall serve as the employer of providers of in-home supportive services for purposes of the Meyers-Milias-Brown Act.

**2. DEFINITIONS.**

For purposes of this Article, the following definitions apply:

- (a) "Authority" means the Santa Barbara County In-Home Supportive Services Public Authority.
- (b) "Provider" means a person who provides authorized in-home supportive services.
- (c) "Recipient" means a person eligible for and authorized to receive in-home supportive services.
- (d) "IHSS" means the Santa Barbara County In-Home Supportive Services Program.
- (e) "County" means Santa Barbara County.
- (f) "Directors" means the governing body of the Public Authority.

**3. PUBLIC AUTHORITY CREATED.**

The Board of Supervisors establishes a public authority whose powers and authority are derived from and consistent with the provisions of Welfare and Institutions Code sections °12300 et seq. The public authority shall be known as the Santa Barbara County In-Home Supportive Services Public Authority and shall be referred to as the "Authority."

**4. GOVERNING BODY.**

The governing body of the Authority shall be the Santa Barbara County Board of Supervisors and shall be referred to as the "Directors".

**5. ADVISORY COMMITTEE.**

The County's In-Home Supportive Services (IHSS) Advisory Committee was established by the Santa Barbara County Board of Supervisors by Resolution No. 00-242 in accordance with the requirements of Welfare and Institutions Code section 12301.6(b)(C), (D). The existing IHSS Advisory Committee shall serve as the advisory committee to the Authority and shall fulfill the roles and responsibilities required by Welfare and Institutions Code section 12301.6.

The IHSS Advisory Committee shall assume all responsibility for functions and responsibilities previously delegated to the Advisory Committee by the Board of Supervisors.

**6. AUTHORITY DUTIES.**

The duties and responsibilities of the Authority shall be as follows:

- (a) To implement the goals and objectives of Welfare and Institutions Code section 12301.6, including, but not limited to:
  - (1) the provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry;
  - (2) investigation of the qualifications and background of potential in-home supportive services personnel;
  - (3) the establishment of a referral system under which in-home supportive services personnel shall be referred to recipients;
  - (4) to provide access to training for providers and recipients;
  - (5) the performance of any other functions related to the delivery of in-home supportive services; and
  - (6) the assurance that the requirements of the personal care option pursuant to Subchapter 19 (commencing with section 1396) of Chapter 7 of Title 42 of the United States Code are met.
- (b) To exercise all powers, duties and functions as are prescribed by statute, Ordinance of the Board of Supervisors and the Authority.

- (c) Notwithstanding subdivision (a)(4), the Authority shall not be obligated to provide training directly, to pay for training provided privately or in the community, to pay for the providers' time spent in training, to accompany recipients to training, to pay for transportation to training or to pay for any materials required by the training. The Authority shall not be obligated to ensure that any provider or recipient attend or complete any training.
- (d) The Authority shall not be responsible for
  - (1) authorizing services for an IHSS recipient;
  - (2) determining a recipient's need for IHSS, the level and quality of services required, and the eligibility of individuals to be served;
  - (3) conducting the initial or any subsequent assessment of need for services; or
  - (4) terminating the recipient's participation in the IHSS program. The above-referenced services and functions shall be the exclusive responsibility of the County of Santa Barbara.

## **7. POWERS.**

- (a) The Authority shall be an entity separate from the County of Santa Barbara and shall file the Statement of Fact for the Roster of Public Agencies required by Government Code section 53051.
- (b) The Authority shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the powers conferred upon it by Welfare and Institutions Code sections 12300 *et seq.* and this Chapter, including the power to contract for services pursuant to Welfare and Institutions Code sections 12302 and 12302.1, subject to any limitations set forth in this Article.
- (c) The Authority shall have the power in its own name to do any of the following:
  - (1) to contract for the services of planners, financial consultants, and other experts and, separate and apart therefrom, to employ such other persons as it deems necessary.
  - (2) to sue and be sued in its own name.
  - (3) to incur debts, liabilities or obligations subject to any limitations herein set forth.
  - (4) to apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, or of the State of California necessary for the Authority's full exercise of its powers.
  - (5) to perform all acts necessary and proper to carry out fully the purpose of this Article and not inconsistent with Welfare and Institutions Code sections 12300 *et seq.* or this Article.

- (d) The Authority shall be deemed to be the employer of IHSS providers within the meaning of Chapter 10 (commencing with section 3500) of Division 4 of Title 1 of the Government Code, commonly known as the Meyers-Milias-Brown Act. Nothing in these enumerated powers shall be construed to limit or interfere with the rights of IHSS recipients to hire, fire and supervise the work of any worker providing services to them.
- (e) In order to assure the preservation of the individual provider mode and limit the liability of the Authority, the Authority shall have no authority or jurisdiction to regulate, control, or limit the rights and responsibilities of recipients of in-home supportive services to hire, fire or supervise providers. The right to supervise includes, but is not limited to, the right to determine matters such as work schedules, tasks and duties, assignment and direction of work, methods and standards of care and conduct, discipline, provisions for safety and security, control of premises, any in-home living or other accommodations, and final resolution of concerns, problems and complaints relating to such supervision. Recipients retain such rights and responsibilities independent of the Authority, just as they held such rights and responsibilities independent of the county prior to the formation of the Authority.
- (f) Nothing in these enumerated powers shall be construed to alter, require the alteration of, or interfere with the State's payroll system and other provisions of Welfare and Institutions Code section 12302.2 for independent providers of IHSS, or to affect the State's responsibilities with respect to unemployment insurance, or workers' compensation for providers of IHSS. Nor shall the creation and operation of the Authority alter, require the alteration of, or interfere with existing County responsibilities to perform eligibility functions and needs assessments as required by the Welfare & Institutions Code.
- (g) Recipients of in-home supportive services may select in-home supportive services personnel who are not referred to them by the County of Santa Barbara In-Home Supportive Service Public Authority. Those personnel shall nevertheless be referred to the Authority for the purposes of wages, benefits, and other terms and conditions of employment.

## **8. LIABILITY OF AUTHORITY.**

- (a) Any obligation or legal liability of the Authority, whether statutory, contractual or otherwise, shall be the obligation or liability solely of the Authority and shall not be the obligation or liability of the County of Santa Barbara.
- (b) All contracts, leases, or other agreements of any nature, including collective bargaining agreements, between the Authority and any party, except those with the County, shall contain the following statement: "The Authority is an independent legal entity, separate and apart from the County of Santa Barbara. The Authority has no power to bind the County to any contractual or legal obligations. Nor may the obligees of the Authority seek recourse against the County of Santa Barbara for any financial or legal obligation of the Authority."

- (c) The Authority shall not be deemed to be the employer of IHSS providers for purposes of liability because of the negligence or intentional torts of the IHSS providers. Employees of the Authority shall not be employees of the County for any purpose.
- (d) The County shall be immune from any liability resulting from its implementation of Welfare and Institutions Code sections 12301.6 et seq. in the administration of the In-Home Supportive Services program. Any obligation of the Authority, whether statutory, contractual, or otherwise, shall be the obligation solely of the Authority, and shall not be the obligation of the County.
- (e) The Authority shall maintain all insurance coverage necessary in an amount to be determined adequate by the Directors. If the Authority purchases its own insurance, the limits of liability shall be in an amount acceptable to the Directors and shall name the County as an additional insured.
- (f) The Authority shall indemnify, defend and hold harmless the County, its elected and appointed officers, employees and agents from and against any and, all liability, including defense costs and legal fees, resulting from claims for damages of any nature whatsoever, including but not limited to personal injury or property damages arising from or connected with any actor omission of any officer, employee or agent of the Authority.
- (g) The Authority shall require all third parties with whom it contracts, other than the County of Santa Barbara, to indemnify the Authority, to provide the Authority with written acknowledgment of such indemnification and to maintain adequate levels of insurance naming the Authority as an additional insured.
- (h) The Authority shall be immune from liability for any action or omission of any provider whom the Authority did not list on a registry or otherwise refer to a recipient.

**9. STAFFING.**

Pursuant to a recommendation from the County Administrator of the County or his/her designee, the Board of Directors of the Authority shall appoint and/or contract for an Executive Director. The Board of Directors of the Authority may authorize the County Administrator of the County or his/her designee to provide broad general supervision and policy direction to the Executive Director. The Executive Director shall appoint and/or contract for subordinate staff necessary for the administration and operation of the Authority, within parameters set forth by the Public Authority Board of Directors.

**10. LABOR RELATIONS PROGRAM.**

- (a) The Authority shall adopt rules and regulations for administration of employer-employee relations, pursuant to sections 3500 through 3511 of the Government Code.
- (b) Due to the special and critical health-care services provided through the IHSS program, the Board of Supervisors finds that any interruption of such services would pose an imminent threat to the health and safety of the recipients of IHSS services and to the community. In order to minimize the likelihood of such interruption and thereby protect the health and safety of recipients and to promote harmony and productive labor relations between the Authority and any labor organization that seeks to represent or represents the providers of services to recipients of IHSS services:

- (1) The Authority shall have a non-strike clause in any and all collective bargaining agreements with providers and personnel of the Authority. The non-strike clause shall continue at least one (1) year beyond the other provisions of any and all collective bargaining agreements; and
- (2) The Authority shall take action necessary to bar any strike or other concerted interruption of services to IHSS recipients.
- (c) The Authority shall establish rules and regulations respecting the labor relations responsibilities of the Authority, and such rules shall provide that a showing of interest of at least thirty percent (30%) of the eligible providers, shall be a sufficient showing of interest for any labor organization to initiate any election or representation procedures established by the Authority for the purposes of certifying an exclusive representative for purposes of collective bargaining. In the alternative, if a labor organization provides a showing of interest of less than thirty percent (30%) but of at least twenty percent (20%), then an election shall be initiated but said election shall be valid only if at least thirty percent (30%) of the eligible providers vote affirmatively to certify a labor organization as the exclusive representative for purposes of collective bargaining.

## **11. BUDGET.**

The Authority shall adopt its budget under the same laws, rules and policies that control the County budget process. The Authority will be maintained as a separate budget entity. The budget will be submitted to and adopted through the Santa Barbara County Department of Social Services.

## **12. FISCAL PROVISIONS.**

- (a) In adopting this Article, the Board of Supervisors recognizes that the funding of IHSS is the product of a complex relationship of federal, state and County financing and that the ability of the authority to operate and to negotiate the wages and benefits of the IHSS providers is contingent upon the availability of adequate funding from all sources. Nothing in this Article is intended to require the County to appropriate any funds for the operation of the Authority or for the payment of wages or benefits to IHSS providers.
- (b) The establishment and operation of the Authority or application of Government Code Section 3500, et seq. shall not result in payments from the County's general fund beyond the County's annual appropriation, as amended from time to time, for the Authority, if any, which shall be an absolute limit on County cost,
- (c) The total of all operating costs, wages, and benefits proposed or established by the Authority shall be consistent with the provisions of the County budget, as amended from time to time. The Authority shall not establish a payment rate, including costs of wages, benefits and operation, until the Authority determines that the funds necessary for the payment rate are legally available. The annual appropriation for the Authority, if any, contained in the County's fiscal budget, as amended, for any fiscal year shall be an absolute limit on County cost for that fiscal year.

- (d) The Authority shall not have the authority to agree to or approve any collective bargaining or other agreement that requires an increase in wages or benefits unless there are sufficient state or federal funds to pay for such increases. The hours of service for any recipient shall not be reduced below the amount determined to be necessary under Welfare and Institutions Code Section 12302.25(f), in order to fund the Authority or implement Government Code Sections 3500 et. seq.
- (e) The maximum amount of County funds available in any given budget year for the wage and benefit negotiations, if any, shall be set by the Board of Supervisors as part of the County's annual budget. While the establishment of this figure shall not obligate the County, it shall serve as the absolute limit to County costs for any increases negotiated in collective bargaining taking place that fiscal year. The absolute cap on annual County spending on wage or benefits increases shall not be affected by any potential changes in state or federal reimbursement rates.
- (f) The Authority shall provide the County with the expenditure information necessary for the County to report to the California Department of Social Services in order to receive reimbursement for the State and Federal share of the Authority costs.
- (g) The Authority shall assist the County in developing and submitting the information and documentation necessary to obtain approval from the California Department of Social Services and the California Department of Health Services for the Authority's reimbursement rate and any rate adjustment.
- (h) Payment for all services provided pursuant to this Article is contingent upon the appropriation of county, state and federal funds for the purpose of providing IHSS.

**13. RECORDS.**

The Authority shall develop a records retention policy consistent with county, state, and federal laws and policies. The Authority shall make any of the retained records available to all authorized County, state and federal representatives.

**14. TERMINATION.**

By repeal of this Chapter, the Board of Supervisors may abolish the Authority.

**15. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 2.**

This ordinance shall take effect and be in force thirty (30) days from the date of its passage; and before the expiration of fifteen (15) days after its passage it, or a summary of it, shall be published once, with the names of the members of the Board of Supervisors voting for and against the same in the \_\_\_\_\_, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2002, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Chair, Board of Supervisors

ATTEST:

MICHAEL BROWN  
CLERK OF THE BOARD

By \_\_\_\_\_  
Deputy

[DO NOT PUBLISH APPROVAL]

CHARLENE CHASE  
DIRECTOR  
SOCIAL SERVICES

ANDREA SMUTZ  
RISK MANAGER

By \_\_\_\_\_

By \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO ACCOUNTING FORM:

STEPHEN SHANE STARK  
COUNTY COUNSEL

ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

By \_\_\_\_\_  
Deputy

By \_\_\_\_\_