

ORDINANCE NO.

ORDINANCE ADDING CHAPTER 2.121 TO THE SANTA CRUZ COUNTY CODE RELATING TO THE IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF THE COUNTY OF SANTA CRUZ

The Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

Title 2 of the Santa Cruz County Code is hereby amended by adding Chapter 2.121 thereto, said new Chapter to read:

Chapter 2.121

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF THE COUNTY OF SANTA CRUZ

Sections:

- 2.121.010 FINDINGS AND PURPOSE
- 2.121.020 DEFINITIONS
- 2.121.030 PUBLIC AUTHORITY CREATED
- 2.121.040 PUBLIC AUTHORITY POWERS
- 2.121.050 PUBLIC AUTHORITY FUNCTION
- 2.121.060 RECIPIENT SELECTION
- 2.121.070 STATE RESPONSIBILITIES
- 2.121.080 STAFFING
- 2.121.090 LABOR RELATIONS
- 2.121.100 COUNTY COSTS
- 2.121.110 FISCAL PROVISIONS
- 2.121.120 LIABILITY
- 2.121.130 TERMINATION

2.121.010 FINDINGS AND PURPOSE. The Board of Supervisors of the County of Santa Cruz determines that the establishment of a public authority whose powers are derived from and consistent with the provisions of Welfare and Institutions Code sections 12301.6 and 12302.25 is appropriate for the provision of in-home supportive services in Santa Cruz County. As more fully described below, the public authority shall serve as the employer of record of providers of in-home supportive services for purposes of the Meyers-Milias-Brown Act in accordance with the requirements of State law set forth in Government Code sections 3500 et seq.

2.121.020 . DEFINITIONS. The following definitions apply for purposes of this Chapter:

(a) “IHSS” means in-home supportive services as described in Welfare and Institutions Code sections 12300 et seq.

(b) “Contract mode” means the State-sanctioned service delivery system for IHSS whereby the County contracts with a home care vendor to provide **MSS** authorized services. Under this mode, authorized **MSS** services are provided by employees of the contractor.

(c) “Independent provider mode” means the State-sanctioned provider mode whereby the IHSS consumer selects, hires, schedules, trains and supervises a home care provider of his or her own choosing.

(d) “Provider” means a person who provides in-home supportive services to a recipient using the independent provider mode. For purposes of this chapter, “Provider” does not mean a person who provides in-home supportive services under the IHSS contract mode.

(e) “Recipient” means a person eligible and authorized to receive in-home supportive services under Welfare and Institutions Code sections 12300 et seq.

(f) “County” means the County of Santa Cruz.

(g) “Public Authority” means the In-Home Supportive Services Public Authority of the County of Santa Cruz which is created by this ordinance.

(h) “Registry” means the system developed and maintained to provide IHSS recipients with names of available providers according to their stated preferences.

(i) “Employer of Record” means the Public Authority in its capacity of employer of IHSS Independent providers, within the meaning of Government Code sections 3500, et. Seq. Of Chapter 10, Division 4, Title 1 (Meyers-Milias-Brown Act).

2.121.030 PUBLIC AUTHORITY CREATED.

(a) Authority and Purpose. Pursuant to Welfare and Institutions Code sections 12301.6 and 12302.25, the Santa Cruz County Board of Supervisors establishes a public authority to provide for the delivery of in-home supportive services.

(b). Name. The name of the public authority shall be the In-Home Supportive Services Public Authority of the County of Santa Cruz.

(c). Governing Body. The governing body of the In-Home Supportive

Services Public Authority of the County of Santa Cruz is the Santa Cruz County Board of Supervisors.

(d). Separate Entity. The In-Home Supportive Services Public Authority of the County of Santa Cruz shall be a public entity separate from the County of Santa Cruz and shall file the statements required by Government Code section 53051.

(e) Advisory Committee. Pursuant to Welfare and Institutions Code sections 12301.3 and 12301.6, the Board of Supervisors shall appoint an advisory committee. Such advisory committee shall consist of eleven individuals, however no fewer than fifty percent of the members of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under Article 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

2.121.040 PUBLIC AUTHORITY POWERS.

(a) Character of Authority. The Public Authority shall be a corporate public body, exercising public and essential governmental functions, that has all the powers necessary or convenient to carry out the delivery of IHSS in Santa Cruz County, and all powers and functions ascribed to a public authority for MSS at Welfare and Institutions Code § § 12300 et seq.

(b) Public Authority Functions. The Public Authority shall carry out the following functions:

1. The provision of assistance to recipients in finding **MSS** Providers through the establishment of a registry pursuant to operational policies approved by its governing body..
2. Investigation of the qualifications and background of potential IHSS Providers on registry.
3. Establishment of a referral system under which **IHSS** Recipients are assisted in identifying and selecting Providers.
4. Provide for training for providers and recipients or inform providers and recipients of other available training. However, the Public Authority is not obligated to provide training directly, to pay for training provided privately or in the community, to pay providers for the 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 Public Authority is not obligated to screen or be responsible for the content of any training it informs providers or recipients is available in the community. The Public Authority is not obligated to ensure that any provider or recipient attend or complete any training.

5. Performing other functions related to the delivery of **MSS** as directed by the Board of Supervisors, or as required by governing law.

6. Ensuring 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.

(c) **Eligibility Determination for IHSS Recipients.** The Public Authority powers do not include responsibility for: authorizing services for an IHSS recipient; determining a recipient's need for IHSS; the level and quality of services required and the eligibility of individuals to be served; conducting the initial or any subsequent assessment of the need for services; or 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 Cruz.

2.121.050 PUBLIC AUTHORITY EMPLOYMENT FUNCTIONS.

(a) The Public Authority shall be deemed to be the employer of record 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 **MSS** recipients to hire, fire with or without cause, and supervise the work of any person providing services to them.

(b) The Public Authority shall have no authority or jurisdiction to regulate, control, or limit the rights and responsibilities of recipients of IHSS 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, assignments 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 Public Authority.

2.121.060 RECIPIENT SELECTION. Recipients may select IHSS Providers who are not on the Registry. Those Providers shall nevertheless be referred to the Public Authority for the purposes of wages, benefits, and other terms and conditions of employment.

2.121.070 STATE RESPONSIBILITIES. The creation and operation of the Public Authority shall not alter, require the alteration of, or interfere with the state payroll system and other provisions of Welfare and Institutions Code section 12302.2 for individual providers of IHSS, or affect the State's responsibility with respect to unemployment insurance or workers' compensation for providers of IHSS.

2.121.080 STAFFING. The Human Resources Agency Administrator is delegated the authority by the governing body of the Authority to appoint and/or contract for a Public Authority Director and shall provide general supervision and policy direction to that individual. The Public Authority Director shall appoint and/or contract for subordinate staff necessary for the administration and operation of the Authority, within parameters set forth by the governing body.

2.121.090 LABORRELATIONS.

(a) The Board of Supervisors shall adopt rules and regulations for administration of employer-employee relations. The Board of Supervisors shall adopt an employer-employee relations policy relating to **MSS** Providers.

(b) The County Administrative Officer or designee is authorized to act as manager of labor relations for the Public Authority.

(c) The Public Authority shall establish rules and regulations respecting the labor relations responsibilities of the Authority.

2.121.100 COUNTY COSTS. The costs and expenses of County to provide administrative, legal, labor relations, and other services to the Public Authority, and to make payments to or provide benefits for **MSS** providers, shall be charged against the funds of the Public Authority. The County is not required to make contributions to the IHSS program in excess of those required by law.

2.121.110 FISCAL PROVISIONS.

(a) The establishment and operation of the Public Authority or application of Government Code sections 3500 et seq. shall not result in payments from County's general fund beyond the County's annual appropriation for the Public Authority, if any, which shall be **an** absolute limit on County cost.

(b) The total of all operating costs, wages, and benefits proposed or established by the Public Authority shall be consistent with the provisions of the County budget. The Public Authority shall not establish a payment rate, including costs of wages, benefits and operation, until the Public Authority determines that the funds necessary for the payment rate are legally available. The annual appropriation for the Public Authority, if any, contained in the County's fiscal budget for any fiscal year shall be an absolute limit on County cost for that fiscal year.

(c) The Public Authority shall adopt its budget under the same laws, rules and policies that control the County budget process.

(d) The Public Authority shall have no authority to agree to or approve any collective bargaining or other agreement that requires an increase in wages or benefits unless there is a state and federal match for such increases or County had expressly budgeted for same. Services shall not be reduced in order to fund the Public Authority or implementation of 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 changes in state or federal reimbursement rates.

2.121.120 LIABILITY.

(a) Employees of the Public Authority shall not be employees of the County of Santa Cruz for any purpose.

(b) The Public Authority shall not be deemed to be the employer of **MSS Providers** under this ordinance for purposes of liability due to the negligence or intentional torts of the **IHSS Providers**.

(c) Any obligation of the Public Authority, whether statutory, contractual, or otherwise, shall be the obligation solely of the Authority and shall not be the obligation of the County of Santa Cruz or the State of California.

(d) The Public Authority shall not be held liable for any act or omission of any provider whom the Public Authority did not list on its registry or otherwise refer to a recipient.

(e) The County shall be immune from any liability resulting from its implementation of this chapter and/or administration of the **MSS** program pursuant to Welfare and Institutions Code section 12301.6.

(f) Any and all contracts, leases, or other agreements of any nature, including collective bargaining agreements, between the Public Authority and third parties other than the County shall contain the following statement: "The Authority is an independent legal entity separate and apart from the County of Santa Cruz. 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 Cruz for any financial or legal obligation of the Authority."

(g) The Public Authority shall require any and all third parties contracting

with the Authority to indemnify and hold harmless the Public Authority, to provide the Public Authority with written acknowledgment of such indemnification, and to maintain adequate levels of insurance, as determined by the County's Risk Manager, naming the Public Authority as an additional insured.

(h) Without limiting its indemnification of the County as set forth below, the Public Authority shall acquire and maintain appropriate insurance in amounts and coverage types to be determined by the County's Risk Manager.

(i) The Public Authority shall indemnify, defend and hold harmless the County and its special districts, elected and appointed officers, employees and agents from and against any and all liability, including defense costs and legal fees, and claims for damages of any nature whatsoever, including but not limited to personal injury or property damages, arising from or connected with any act or omission of any officer or employee of the Authority.

2.12 1.130 TERMINATION. By repeal of this chapter, the Board of Supervisors may terminate the Public Authority.

SECTION II

This ordinance shall take effect on the 31st day after the date of final passage.

PASSED AND ADOPTED this _____ day of _____, 2001, by the Board of Supervisors of the County of Santa Cruz by the following vote:

AYES: SUPERVISORS
NOES: SUPERVISORS
ABSENT: SUPERVISORS
ABSTAIN: SUPERVISORS

Chairperson of the Board
of Supervisors

Attest: _____
Clerk of the Board

APPROVED AS TO FORM:

COUNTY COUNSEL



DISTRIBUTION: County Counsel
~~Human~~ Resources Agency