

ORDINANCE NO. 02-001

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA,
ADDING ARTICLES 1-6 of DIVISION 7 of TITLE I, SECTIONS 1-7-1
THROUGH 1-7-23, ON "IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY".

The Board of Supervisors of the County of Orange, California, does ordain as follows:

SECTION 1. Articles 1-6 of Division 7 of Title I, Sections 1-7-1 through 1-7-23 of the Codified Ordinances of the County of Orange are hereby added to read as follows:

Title I

Division 7

Orange County In-Home Supportive Services Public Authority

Authority Established

Article 1. General Provisions

Sec. 1-7-1 Definitions.

1. "IHSS" means in-home supportive services as described in Welfare and Institutions Code section 12300, *et seq.*

2. "Provider" means a person who provides authorized in-home supportive services to a recipient.

3. "Recipient" means a person eligible for and authorized to receive in-home supportive services under Welfare and Institutions Code section 12300, *et seq.*

4. "County" means County of Orange.

Sec. 1-7-2 Authority Created. Pursuant to Welfare and Institutions Code section 12301.6 the Orange County Board of Supervisors establishes a public authority to provide for the delivery of in-home supportive services.

Sec. 1-7-3 Name. The name of the authority shall be the Orange County In-Home Supportive Services Public Authority and shall be referred to in this Chapter as the "Authority".

Sec. 1-7-4 Governing Body. The governing body of the Orange County In-Home Supportive Services Public Authority is the Board of Supervisors of the County of Orange.

Sec. 1-7-5 Separate Entity. The Authority shall be a public entity separate from the County of Orange and shall file the statements required by Government Code section 53051.

Sec. 1-7-6 Advisory Committee. The In-Home Supportive Services Advisory Committee authorized by the Board of Supervisors on June 13, 2000, shall be the Advisory Committee required to comply with Welfare and Institutions Code section 12301.6. At all times such advisory committee shall consist of eleven individuals, pursuant to Article 7 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

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2 **Article 2. Authority Powers**

3 **Sec. 1-7-7 Character of Authority.** The Orange County In-Home Supportive Services Public
4 Authority shall be a corporate public body, exercising public and essential governmental functions, that
5 has all the powers necessary or convenient to carry out the delivery of in-home supportive services in
6 Orange County, including the power to contract for services in Orange County, the power to contract for
7 services pursuant to sections 12302 and 12302.1 of the Welfare and Institutions Code, and to make or
provide for direct payment to a provider chosen by the recipient for the purchase of services pursuant to
sections 12302 and 12302.2 of the Welfare and Institutions Code. All contracts between the Authority
and third parties shall contain an express provision advising the contractor that the Authority is a
separate governmental entity and that such agreement does not bind the County.

8 **Sec. 1-7-8 Authority Employees.** Employees of the Authority shall not be employees of the County
9 for any purpose.

10 **Sec. 1-7-9 Authority Functions.** The Authority shall carry out the following functions:

11 1. The provision of assistance to recipients in finding in-home supportive services
providers through the establishment of a registry.

12 2. Investigation of the qualifications and background of potential in-home
13 supportive services providers.

14 3. Establishment of a referral system under which in-home supportive services
15 providers shall be referred to recipients.

16 4. Provide access to training for providers and recipients.

17 5. Performing other functions related to the delivery of in-home supportive services
18 as directed by the Governing Board.

19 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.

20 **Sec. 1-7-10 Service Provider Employment Functions:**

21 1. The Authority shall be deemed to be the employer of in-home supportive services
22 providers, within the meaning of Chapter 10 (commencing with section 3500) of Division 4 of Title 1 of
the Government Code, provided, nevertheless, that recipients shall retain the right to select, terminate,
and direct the work of any in-home supportive services providers providing services to them.

23 2. In order to assure the preservation of the individual provider mode and limit the
24 liability of the Authority, the Authority shall have no authority or jurisdiction to regulate, control, or
25 limit the rights and responsibilities of recipients of in-home supportive services to hire, fire or supervise
26 providers. The right to supervise includes, but is not limited to, the right to determine matters such as
27 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 Authority.

28 **Sec. 1-7-11 Recipient Selection of Providers.** Recipients of in-home supportive services may select
in-home supportive services providers who are not referred to them by the Authority. Those providers

1 shall nevertheless be referred to the Authority for the purposes of wages, benefits, and other terms and
2 conditions of employment.

3 Sec. 1-7-12 State and County Responsibilities. The creation and operation of the Authority shall not
4 alter, require the alteration of, or interfere with the state payroll system and other provisions of Welfare
5 and Institutions Code section 12302.2 for individual providers of in-home supportive services, or affect
6 the state's responsibility with respect to unemployment insurance or worker's compensation for
7 providers of in-home supportive services. Nor shall the creation and operation of the Authority alter,
8 require the alteration of, or interfere with existing County responsibilities to perform eligibility functions
9 and needs assessments as required by the provisions of the Welfare and Institutions Code.

10 **Article 3. Authority Administration**

11 Sec. 1-7-13 Authority Executive Director. The Executive Director of the Authority shall be
12 appointed by the Governing Body or its designee. Additional staff of the Authority shall be approved by
13 the Governing Body or its designee.

14 Sec. 1-7-14 Labor Relations. The Orange County In-Home Supportive Services Authority Employee
15 Relations Resolution (Board of Supervisors' Resolution No. ___), or any succeeding such
16 resolution, shall be applicable respecting the labor relations responsibilities of the Authority, provided,
17 nevertheless:

18 1. A showing of interest of at least twenty percent (20%) of the eligible providers, as
19 defined by the Authority, shall be sufficient showing of interest for any labor organization to initiate any
20 election or representation procedures established by the Authority for the purposes of certifying an
21 exclusive representative for purposes of collective bargaining. The twenty percent (20%) showing will
22 represent the minimum required proof of support to call for a representation election. Should a labor
23 organization submit at least twenty percent (20%) but less than thirty percent (30%) proof of eligible
24 providers support, such representation election shall not be considered valid and no certification will
25 result therefrom unless at least thirty percent (30%) of the eligible providers entitled to participate in
26 said representation election will have cast their votes; or

27 2. If a labor organization demonstrates proof of support by a showing of at least
28 thirty percent (30%) of the eligible providers within the proposed unit, which shall represent the
maximum required proof of support to call for a representation election under these procedures. Should
a labor organization submit thirty percent (30%) proof of eligible providers support, there shall be no
minimum level of eligible voter participation required in said representation election.

3. 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 year beyond the other provisions of any and all collective bargaining agreements.

4. Any collective bargaining agreement reached between the Authority and any
labor organization certified to represent providers shall be subject to the limitations of this chapter and to
ratification in its entirety (i.e. all provisions of such agreements shall be subject to the same vote) by a
simple majority of votes cast in a ballot in which all eligible providers, as defined by the Authority, shall
be qualified to participate. Final adoption of any such agreement shall be by simple majority of the
Governing Body.

5. The County Office of Human Resources is designated as manager of labor
relations for the Authority.

Sec. 1-7-15 County Costs. The costs and expenses of County of Orange to provide administrative,
legal, labor relations, and other services to the Authority, and to make payments to or provide benefits
for in-home supportive services providers, shall be charged against the funds of the Authority.

1 **Sec. 1-7-16 Fiscal Provisions.**

2 1. The establishment and operation of the Authority or application of Government
3 Code section 3500, et seq., shall not result in payments from the County's general fund beyond the
4 County's annual appropriation for the Authority, if any, which shall be an absolute limit on County cost.

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

11 3. The Authority shall adopt its budget under the same laws, rules and policies that
12 control the County budget process.

13 4. The maximum amount of County funds available in any given budget year for the
14 wage and benefit negotiations, if any, shall be set by the Board of Supervisors as part of the County's
15 annual budget. While the establishment of this figure shall not obligate the County, it shall serve as the
16 absolute limit to County costs for any increases negotiated in collective bargaining taking place that
17 fiscal year. The absolute cap on annual County spending on wage or benefits increases shall not be
18 affected by any potential changes in state or federal reimbursement rates.

19 **Article 4. County and Authority Liability**

20 **Sec. 1-7-17 No Employer Liability.** The Authority shall not be deemed to be the employer of IHSS
21 Providers referred to recipients under this Ordinance for purposes of liability due to the negligence or
22 intentional torts of the IHSS Providers.

23 **Sec. 1-7-18 No Referral Liability.** The Authority shall not be held liable for failure to list a provider
24 on a registry or otherwise refer a provider to a recipient.

25 **Sec. 1-7-19 No County Liability.** The County of Orange and the State of California shall be immune
26 from any liability resulting from the implementation of Welfare and Institutions Code section 12301.6.

27 **Sec. 1-7-20 Authority Liability.**

28 1. 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 of Orange or the
State of California.

2. The Authority shall not be held liable for any act or omission of any provider.

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

4. Any and all contracts, leases, or other agreements of any nature, including
collective bargaining agreements, between the Authority and third parties other than the County shall
contain an express provision advising the third party that the Authority is a separate governmental entity
and that such agreement does not bind the County of Orange.

5. The Authority shall require any and all third parties contracting with the Authority
to indemnify and hold harmless the Authority, to provide the Authority with written acknowledgment of
such indemnification, and to maintain adequate levels of insurance, as determined by the County's risk

1 manager, naming the Authority, County and Board of Supervisors of the County of Orange as additional
2 insureds.

3 Sec. 1-7-21 Liability and Other Insurance. Without limiting its indemnification of the county as set
4 forth below, the Authority shall acquire and maintain appropriate insurance in amounts and coverage
5 types to be determined by the County's risk manager to be adequate, and shall name the County and the
6 members of the Board of Supervisors as additional insureds on any policies of insurance maintained by
7 the Authority. Evidence of such insurance shall be provided to the Director of the Social Services
8 Agency or his/her designee within thirty days of procurement.

9 Sec. 1-7-22 Indemnification. The Authority shall indemnify, defend and hold harmless the County
10 and its special districts, elected and appointed officers, employees and agents from and against any and
11 all liability, including defense costs and legal fees, and claims for damages of any nature whatsoever,
12 including but not limited to personal injury or property damages, arising from or connected with any act
13 or omission of any officer or employee of the Authority. The Authority shall provide an
14 acknowledgment of such indemnification in writing to the Director of the Social Services Agency or
15 his/her designee.

16 **Article 5. Non-Severability**

17 1. If any section of this chapter, or the application of such section to any person or
18 circumstance, is held invalid, each and every provision of this chapter shall not be deemed severable
19 from the provisions of this ordinance establishing the Authority, and this chapter shall be held invalid in
20 its entirety.

21 2. If this chapter becomes invalid under with subsection (1) above, the Authority
22 created by this chapter shall cease to exist, and the county shall immediately resume the provision of
23 IHSS as it was so provided prior to the adoption of this ordinance.

24 **Article 6. Termination**

25 Sec. 1-7-23 By repeal of this Division, the Board of Supervisors may abolish the Authority.

26 **SECTION 2. EFFECTIVE DATE**

27 This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15)
28 days after the date of adoption of this Ordinance, a Summary shall be published once with the names of
those members voting for and against the same in the newspaper of general circulation published in the
County of Orange.

