

ORDINANCE NO. 9345 (NEW SERIES)

AN ORDINANCE ADDING ARTICLE IIIb
TO THE SAN DIEGO COUNTY ADMINISTRATIVE CODE
RELATING TO THE CREATION OF THE
COUNTY OF SAN DIEGO IN-HOME SUPPORTIVE SERVICES
PUBLIC AUTHORITY

The Board of Supervisors of the County of San Diego ordains
as follows:

Section 1. A new Article IIIb is hereby added to the San
Diego County Administrative Code to read as follows:

ARTICLE IIIb
COUNTY OF SAN DIEGO
IN-HOME SUPPORTIVE SERVICES
PUBLIC AUTHORITY

SEC. 82.200 DEFINITIONS.

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

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

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

4. "County" means County of San Diego.

SEC. 82.201 PUBLIC AUTHORITY CREATED. Pursuant to Welfare and
Institutions Code section 12301.6, a public authority is
established to provide for the delivery of in-home supportive
services.

SEC. 82.202 NAME. The name of the Public Authority shall be
County of San Diego In-Home Supportive Services Public
Authority.

SEC. 82.203 SEPARATE ENTITY. The County of San Diego In-Home
Supportive Services Public Authority shall be a public entity
separate from the County of San Diego and shall file the
statements required by Government Code section 53051.

SEC. 82.204 GOVERNING BODY. The governing body of the County of San Diego In-Home Supportive Services Public Authority is the County of San Diego Board of Supervisors.

SEC. 82.205 ADVISORY COMMITTEE. The In-Home Supportive Services Advisory Committee authorized by the Board of Supervisors on May 16, 2000, shall be the Advisory Committee required to comply with Welfare and Institutions Code section 12301.6. At all times, no fewer than fifty-one percent (51%) of the membership 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 pursuant to Article 7 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. In the event vacancies occur in the original membership of the Advisory Committee, vacancies shall be filled by individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services pursuant to Article 7 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code. The Advisory Committee and the Executive Director of the Public Authority shall present an annual report to the governing body of the Public Authority.

SEC. 82.206 CHARACTER OF PUBLIC AUTHORITY. The County of San Diego In-Home Supportive Services 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 in-home supportive services in the County of San Diego, including the power to contract for 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.

SEC. 82.207 PUBLIC AUTHORITY EMPLOYEES. Employees of the County of San Diego In-Home Supportive Services Public Authority shall not be employees of County of San Diego for any purpose.

SEC. 82.208 PUBLIC AUTHORITY FUNCTIONS.

A. The County of San Diego In-Home Supportive Services Public Authority shall carry out the following functions:

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 personnel.

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

4. Providing for training for providers and recipients.

5. Performing other functions related to the delivery of in-home supportive services.

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.

B. The Public Authority may provide the following functions:

1. Provide for additional compensation within budget limitations to individual providers who serve the severely disabled.

2. Provide payroll services for IHSS individual providers.

3. Require Department of Justice background clearances for IHSS providers on the Registry.

4. Provide program oversight to review the work of individual providers.

5. Provide emergency services when an IHSS recipient's regular service provider is unavailable.

SEC. 82.209 PUBLIC AUTHORITY CONTRACTING AUTHORITY. In order to carry out its functions, the Public Authority may enter contracts with the County and other organizations or entities as necessary. Such contracts may include, but are not limited to, contracts for the provision of banking, auditor, payroll, counsel, administrative and other necessary services for the operation of the Public Authority. Funds necessary to pay for contract services are subject to the budget appropriations processes of the Public Authority and the County.

SEC. 82.210 SERVICE PROVIDER EMPLOYMENT FUNCTIONS. The

County of San Diego In-Home Supportive Services Public Authority shall be deemed to be the employer of in-home supportive services personnel referred to recipients as provided in paragraph 3 of subdivision (e), within the meaning of Chapter 10 (commencing with § 3500) of Division 4 of Title 1 of the Government Code, provided, nevertheless, that recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

In order to assure the preservation of the individual provider mode and limit the liability of the Public Authority, the Public 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 Public Authority, just as they held such rights and responsibilities independent of the county prior to the formation of the Public Authority.

SEC. 82.211 RECIPIENT SELECTION. Recipients of in-home supportive services may select in-home supportive services personnel who are not referred to them by the County of San Diego In-Home Supportive Service Public Authority. Those personnel shall nevertheless be referred to the Public Authority for the purposes of wages, benefits, and other terms and conditions of employment.

SEC. 82.212 STATE AND COUNTY RESPONSIBILITIES. The creation and operation of the County of San Diego In-Home Supportive Services Public Authority shall not alter, require the alteration of, or interfere with the state payroll system or other provisions of Welfare and Institutions Code section 12302.2 for individual providers of in-home supportive services, or affect the state's responsibility with respect to unemployment insurance or worker's compensation for providers of in-home supportive services. Nor shall the creation and operation of the Public Authority alter, require the alteration of, or interfere with existing County responsibilities to

perform eligibility functions and needs assessments as required by the provisions of the Welfare and Institutions Code.

SEC. 82.213 PUBLIC AUTHORITY STAFF. The governing body of the public authority, or it's designee shall appoint and/or contract for such staff as is necessary for the administration and operation of the Public Authority.

SEC. 82.214 LABOR RELATIONS. The Public Authority or the Board of Supervisors shall establish rules and regulations for employer-employee relations through the adoption of an Employer-Employee Relations Resolution. Said resolution shall provide:

1. The Public Authority shall have a non-strike clause in any and all collective bargaining agreements with providers and personnel of the Public Authority. The non-strike clause shall continue at least one year beyond the other provisions of any and all collective bargaining agreements.

2. Final adoption of any such agreement negotiated between the Public Authority and any certified labor organization shall be by simple majority of the governing body of the Public Authority.

3. The County Labor Relations Division is designated as manager of labor relations for the Public Authority.

SEC. 82.215 COUNTY COSTS. The costs and expenses of County of San Diego to provide administrative, legal, labor relations, and other services to the County of San Diego In-Home Supportive Services Public Authority, and to make payments or provide benefits for in-home supportive services providers, shall be charged against the funds of the Public Authority.

SEC. 82.216 FISCAL PROVISIONS.

1. The establishment and operation of the Public 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 Public Authority, if any, which shall be an absolute limit on County cost.

2. 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, as amended from time to time. 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, as amended, for any fiscal year shall be an absolute limit on County cost for that fiscal year.

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

4. The Public 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 is a state or federal match for such increases. In-Home Supportive Services shall not be reduced in order to fund the Public Authority or implementation of Government Code section 3500, et seq.

5. 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.

SEC. 82.217 NO EMPLOYER LIABILITY. The County of San Diego In-Home Supportive Services Public Authority shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this ordinance for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

SEC. 82.218 NO NON-REFERRAL LIABILITY. The County of San Diego In-Home Supportive Services Public Authority shall not be held liable for any action or omission of any in-home supportive services personnel whom the Public Authority did not list on a registry or otherwise refer to a recipient.

SEC. 82.219 NO COUNTY OR STATE LIABILITY. The County of San Diego and the State of California shall be immune from any liability resulting from the implementation of Welfare and Institutions Code section 12301.6.

SEC. 82.220 PUBLIC AUTHORITY LIABILITY.

1. Any obligation of the County of San Diego In-Home Supportive Services Public Authority, whether statutory, contractual, or otherwise, shall be the obligation solely of the Public Authority and shall not be the obligation of the County of San Diego or the State of California.

2. The County shall be immune from any liability resulting from its implementation of this chapter and/or administration of the In-Home Supportive Services program pursuant to Welfare and Institutions Code section 12301.5.

3. 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 an express provisions advising the third party that the Public Authority is a separate governmental entity and that such agreement does not bind the County of San Diego.

4. The Public Authority shall require any and all third parties contracting with the Public Authority to indemnify and hold harmless the Public Authority, to provide the Public Authority with written acknowledgement 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.

SEC. 82.221 LIABILITY INSURANCE. 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 to be adequate, and shall name the County and members of the Board of Supervisors as additional insureds on any policies of insurance maintained by the Public Authority. Evidence of such insurance shall be provided to the County's risk manager within thirty (30) days of procurement.

SEC. 82.222 INDEMNIFICATION. 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 Public Authority.

SEC. 82.223 SEVERABILITY.

If any section of this article, or any part or provision of such section is held to be invalid or unenforceable by any court of competent jurisdiction, such section or any part or provision of such section shall be suspended and the remainder of this article shall not be affected thereby and shall continue in force and effect.

SEC. 82.224 TERMINATION. By repeal of this article, the Board of Supervisors may terminate the County of San Diego In-Home Supportive Services Public Authority.

Section 2. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after the date of adoption of this Ordinance, a summary shall be published once with the name of those members voting for and against the same in the newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 19th day of June, 2001.