

## **ORDINANCE NO. 1558**

### AN ORDINANCE ADDING CHAPTER 2.112 TO THE AMADOR COUNTY CODE ESTABLISHING THE IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF AMADOR COUNTY

The Board of Supervisors of the County of Amador ordains as follows:

Section I. Chapter 2.112 is hereby added to the Amador County Code establishing the In-Home Supportive Services Public Authority of Amador County as follows:

Section 2.112.010 Purpose. The purpose of this ordinance is to establish the In-Home Supportive Services Public Authority of Amador County as a separate and distinct legal entity and to establish its powers and responsibilities.

Section 2.112.020 Definitions. The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

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

B. "IHSS Authority" means the In-Home Supportive Services Public Authority of Amador County.

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

D. "Recipient" or "consumer" means a person eligible and authorized to receive in-home supportive services under Welfare and Institutions Code Section 12300 et seq.

Section 2.112.030 Creation of IHSS Authority. Pursuant to Welfare and Institutions Code Section 12301.6 the Board of Supervisors establishes the IHSS Authority as a public authority to facilitate and provide for the delivery of in-home supportive services. The IHSS Authority shall be a public entity separate from the County.

2.112.040 Governing body. The governing body of the IHSS Authority shall be the Amador County Board of Supervisors (the "Governing Body").

2.112.050 Director. The director of the IHSS Authority shall be appointed by the Governing Body of the IHSS Authority.

2.112.060 Advisory committee. The Governing Body of the IHSS Authority shall appoint an Advisory Committee to the IHSS Authority. The Advisory Committee shall consist of nine persons individuals, provided that no fewer than fifty percent (50%) of the members of the Advisory Committee shall be persons 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.

2.112.070 Employees. Except as expressly otherwise provided in this Chapter, Amador County employees shall not be employed by, or deemed to be employees of, the IHSS Authority in any capacity. The IHSS Authority shall serve as the employer of providers of the in-home supportive services for the sole purpose of implementing the Meyers Milias Brown Act as it applies to providers.

2.112.080 Treasury; Treasurer; Auditor.

A. The Treasury of the County of Amador shall be the depository of the funds of the IHSS Authority and the Treasurer of the County of Amador shall be the ex-officio Treasurer of the IHSS Authority. The Auditor of the County of Amador shall be the ex-officio Auditor of the IHSS Authority and shall draw warrants against the funds of the IHSS Authority in the treasury when the demands are approved by the Director or his or her designee. At the close of each fiscal year, the Governing Body shall have an independent audit conducted as set forth in Government Code Section 65055.6.

B. In lieu of the designation of Treasurer and Auditor set forth above, the Governing Body may appoint one of its officers or employees or some other qualified person to either or both positions of Treasurer and Auditor. Such officers may be held by separate officers or employees or combined and held by one officer or employee.

C. An IHSS Authority Counsel shall be appointed by the Governing Body at its first regular meeting. The IHSS Authority Counsel shall act as general counsel to the IHSS and its Governing Body. The County Counsel of the County of Amador shall serve as the initial IHSS Authority Counsel. The IHSS Authority may appoint a different IHSS Authority Counsel at any time.

2.112.070 Labor relations. The County Administrative Officer is designated as manager of labor relations for the IHSS Authority.

2.112.080 Powers. The IHSS Authority shall be a 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 within the County of Amador, 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.

2.112.090 IHSS Authority functions. The IHSS Authority shall carry out the following functions:

- A. Provide assistance to recipients in finding in-home supportive services personnel through the establishment of a registry;
- B. Investigate the qualifications and background of potential in-home supportive services personnel;
- C. Establish a referral system under which in-home supportive services personnel shall be referred to recipients;
- D. Provide training for providers and recipients, except that the IHSS Authority shall not be 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 IHSS 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 IHSS Authority is not obligated to ensure that any provider or recipient attends or completes any training;
- E. Perform other functions and duties related to the delivery of in-home supportive services as prescribed by statute, the Board of Supervisors, and the IHSS Authority;
- F. Ensure 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; and
- G. Serve as the employer of record of in-home supportive services providers for the sole purpose of complying with the Meyers Milius Brown Act as it applies to providers.

2.112.100 Service provider employment functions.

A. Except as otherwise provided in this Chapter, the IHSS Authority shall be deemed to be the employer of record for the in-home supportive services providers referred to recipients, within the meaning of Chapter 10 (commencing with section 3500) of Division 4 of Title 1 of the Government Code.

B. In order to assure the preservation of the individual provider mode and to limit the liability of the IHSS Authority, recipients retain the right to select, terminate, and supervise the work of any in-home supportive services personnel providing services to them, and the IHSS Authority shall have no authority or jurisdiction to regulate, control, or limit such rights and responsibilities of the recipients. 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. The retention by the recipients of such rights and responsibilities independent of the IHSS Authority shall be equivalent to the retention by the recipients of such rights and responsibilities independent of the County prior to the formation of the IHSS Authority.

2.112.110 Recipient selection. Recipients of in-home supportive services may select in-home supportive services personnel who are not referred to them by the IHSS Authority, but following such selection shall refer such personnel to the IHSS Authority for the purposes of wages, benefits, and other terms and conditions of employment.

2.112.120 State responsibilities. The creation and operation of the IHSS 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 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.

2.112.130 Reimbursement provisions.

A. The costs and expenses incurred by the County to provide accounting, administrative, legal, labor relations, and other services to the IHSS Authority and to make payments to or provide benefits for in-home

supportive services providers shall be an obligation of and charged against the funds of the IHSS Authority or otherwise reimbursed by IHSS Authority to County.

B. The establishment and operation of the IHSS 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 for the IHSS Authority, if any, which shall constitute an absolute limit on such County costs and payments.

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

D. The IHSS 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.

E. The maximum amount of County funds available to the IHSS Authority 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 by the IHSS Authority in collective bargaining taking place that fiscal year. The absolute cap on annual County spending on such wage or benefits increases shall not be affected by any potential changes in State or federal reimbursement rates.

2.112.140 Liability.

A. No employer liability for acts of referred personnel. For purposes of liability due to the negligent or intentional torts or other unlawful acts of the in-home supportive services providers, the IHSS Authority shall be deemed not to be the employer of in-home supportive services providers employed by recipients under the authority of this Chapter. The IHSS Authority shall not be held liable for any act or omission of an in-home supportive services personnel whatsoever.

C. No County liability. The County of Amador and the State of California shall not be liable for any liability resulting from the implementation of Welfare and Institutions Code Section 12301.6 or any provision of this Chapter. All contracts, leases, or other agreements of any nature, including collective bargaining

agreements, between the IHSS Authority and third parties other than the County shall contain an express provision advising the third party that the IHSS Authority is a separate governmental entity and that such agreement does not bind the County.

D. IHSS Authority liability. Any obligation or debt of the IHSS Authority, whether statutory, contractual, or otherwise, shall be the obligation or debt solely of the IHSS Authority and shall not be the obligation of the County or of the State of California.

E. Indemnification and insurance required of contractors. The IHSS Authority shall require any and all third parties contracting with the IHSS Authority to indemnify and hold harmless the IHSS Authority, to provide the IHSS Authority with written acknowledgment of such indemnification, and to maintain adequate levels of insurance, as determined by the County's Risk Manager, naming the IHSS Authority as an additional insured.

F. Indemnification by IHSS Authority. The IHSS Authority shall indemnify, defend and hold harmless the County and its 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 IHSS Authority including but not limited to providers.

G. Liability insurance of the IHSS Authority. The IHSS Authority shall acquire and maintain appropriate insurance in amounts and coverage types to be determined by the County's Risk Manager to be adequate. Such insurance policies shall name the County and the members of the Board of Supervisors as additional insureds. Evidence of such insurance shall be provided to the County's Risk Manager within thirty days of procurement.

2.112.150 Resumption of County's IHSS Duties. If this Chapter is found by a court of competent jurisdiction to be invalid, the IHSS Authority created by this chapter shall cease to exist, and the County shall immediately resume the provision of IHSS as it was provided prior to the adoption of the ordinance.

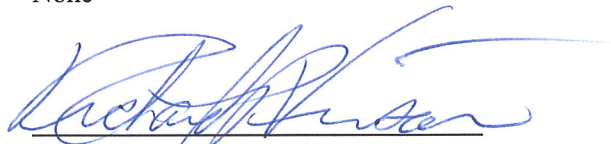
Section II. Publication. This ordinance or a summary thereof shall be published in the manner prescribed in Government Code Section 25124 and shall become effective 30 days after adoption.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 10th day of December 2002, by the following vote:

AYES: Richard P. Vinson, Louis D. Boitano, Rich F. Escamilla, Richard M. Forster, and Mario Biagi

NOES: None

ABSENT: None

A handwritten signature in blue ink, appearing to read "Richard P. Vinson", written over a horizontal line.

Chairman, Board of Supervisors

ATTEST:

MARDELL ANDERSON, Clerk of the Board of Supervisors, Amador County, California

A handwritten signature in blue ink, appearing to read "Priscilla Muranaga", written over a horizontal line.

Deputy