



# ORDINANCE No. \_\_\_\_\_

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### **AN ORDINANCE AMENDING ARTICLE 41 OF CHAPTER II OF THE NEVADA COUNTY ADMINISTRATIVE CODE REGARDING IN HOME SUPPORTIVE SERVICES**

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA,  
ORDAINS AS FOLLOWS:

#### SECTION I:

Article 41 of Chapter II of the Nevada County Administrative Code regarding In Home Supportive Services is hereby amended in its entirety to read as shown in Exhibit A attached hereto and incorporated herein by this reference.

#### SECTION II:

Severability. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

#### SECTION III:

This Ordinance shall take effect and be in force on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and before the expiration of fifteen (15) days after its passage a summary shall be published once, with the names of the Supervisors voting for and against same in The Union, a newspaper of general circulation printed and published in the County of Nevada.

## **EXHIBIT A**

### **ARTICLE 41 IN HOME SUPPORTIVE SERVICES**

#### **Sec. A-II 41.1 Creation and Purpose of the Public Authority**

As required by Welfare and Institutions Code section 12302.25, the Sierra County Board of Supervisors in conjunction with the County of Nevada hereby establishes a regional public authority as a joint powers authority, an entity separate, distinct and apart from the counties of Nevada and Sierra, and a corporate public body exercising public and essential governmental functions. The purpose of this public authority is to provide for the delivery of the In Home Supportive Services Program (IHSS) in the counties of Nevada and Sierra, as well as the provision of social services to eligible participants, as specified in this Ordinance, the Ordinance adopted by the County of Nevada, and the Joint Powers Agreement between the counties, subject to all applicable Federal and State laws and regulations. The public authority shall be known as the Nevada-Sierra Connecting Point Public Authority.

#### **Sec. A-II 41.2 Definitions**

For the purpose of this Chapter, the following definitions apply:

- A. "IHSS" means in home supportive services as described in Welfare and Institutions Code Sections 12300(a), (b), et seq., as amended from time to time.
- B. "Authority" means the Nevada-Sierra Connecting Point Public Authority.
- C. "Provider" means a person who provides authorized in home supportive services to a recipient.
- D. "Recipient" means a person eligible and authorized to receive in home supportive services pursuant to Welfare and Institutions Code Section 12300, et seq.
- E. "Consumer" means a person who is a current or past user of personal assistance services paid through public or private funds, and includes a recipient of assistance from IHSS.
- F. "County" means the Counties of Nevada and Sierra, both collectively and individually as the context may require.

#### **Sec. A-II 41.3 Membership of the Public Authority Board**

The Nevada-Sierra Connecting Point Public Authority Governing Board shall govern the Public Authority. Initial membership on the Public Authority Governing Board shall be as follows:

- A. Appointment by the Board of Supervisors. The Governing Board of the Nevada-Sierra Connecting Point Public Authority shall be composed of a maximum of eleven (11) members appointed by the Board of Supervisors of the two counties, as follows: Nevada County shall appoint 9 board members and Sierra County shall appoint one (1) member. Sierra County may appoint a second member, provided, however, if the seat for the Sierra County's second member remains vacant for more than sixty (60) days, the Sierra County Board of Supervisors shall appoint a member recommended by the JPA Board to serve the remainder of unexpired term of the vacant seat. The Boards of Supervisors shall solicit recommendations for appointment of qualified members through a fair and open process, including reasonable written notice to, and affording reasonable response time from, members of the general public and interested persons and organizations. No fewer than 50 percent, or six individuals, of the membership shall be individuals who are consumers (current or past recipient of personal assistant services). The Board of Supervisors of the respective counties shall have sole authority to remove governing body members appointed from their counties, who may be removed at the will and pleasure of the Board of Supervisors.
- B. Representative Capacity. For purposes of Government Code section 87103 and 2 Cal. Code of Regulations 18703.3, the persons appointed to the Public Authority Governing Board are appointed to represent and further the interests of the specific economic interest which an individual member is appointed to represent and each such person therefore does not have financial interests in

decisions of the Public Authority that will have a material financial effect on such person or a member of his or her immediate family, distinguishable from its effects on the public generally.

C. Terms of and Limits on Service. The initial board members shall be appointed for periods with staggered terms, as follows:

Three (3) members for one (1) year terms (two from Nevada, and one Sierra);

Four (4) members for two (2) year terms; (two from Nevada and one from Sierra);

Four (4) members for three (3) year terms. (from Nevada)

The respective Boards of Supervisors shall specify the term at the time of the initial appointments.

After the initial terms end, all terms shall be three-years.

D. Residency. Qualified appointees must reside in their respective counties and have familiarity with, or knowledge of, personal assistance services, the capacity to understand their role to aid and assist the Public Authority in the administration of its duties; and the ability to attend regularly scheduled meetings, which shall occur only in facilities, which meet disability access requirements. Within the first ninety (90) days of being seated, the member of the Public Authority Board shall receive orientation and training regarding the functions and duties of the Public Authority, current issues related to delivery of IHSS, and the responsibilities of the Public Authority Governing Board. Each subsequent new member shall receive similar orientation and training from Public Authority staff within sixty (60) days of appointment.

## **Sec. A-II 41.4 Public Authority Functions and Powers**

A. Functions and Powers. The functions and powers of the Nevada-Sierra Connecting Point Public Authority shall be those set forth in the Joint Powers Agreement, including maintaining a bi-county public authority as the employer of record for the IHSS providers, facilitating services as required by the IHSS law, and providing social services to eligible recipients, which may from time to time be amended by the Board of Supervisors for the Counties of Nevada and Sierra. The Authority shall be an entity separate and distinct from the member counties and shall file the Statement of Fact for the Roster of Public Agencies required by Government Code section 53051.

The Authority shall have all powers necessary and convenient to carry out the powers conferred upon it by Welfare and Institutions Code sections 12300 et seq., this Ordinance and the Joint Powers Agreement, 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.

B. Status of Authority Employees, Providers, and Officers. Employees of the Nevada Sierra IHSS Public Authority, members of the Authority Board and its officers, agents, and the IHSS providers shall not be deemed to be employees of the member counties for any purpose.

C. Service Provider Employment.

1. The Authority shall be deemed to be the employer of record of in home supportive services providers within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Consumers (the recipients of IHSS services) shall retain the right to hire, fire, and supervise the work of any in-home supportive services provider providing services to them.
2. In order to ensure 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 to 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 caring 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.

D. Consumer Selection of Providers. Recipients of in-home supportive services may select in-home supportive services personnel who are not referred to them by the Authority. Those personnel shall nevertheless be referred to the Authority for the purposes of wages, benefits, and other terms and conditions of employment.

E. State Payroll Functions. The creation and operation of the Nevada-Sierra Connecting Point 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 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.

## **Sec. A-II 41.5 Authority Administration**

A. Executive Director. The Executive Director of the Nevada - Sierra IHSS Public Authority shall be appointed by the Authority Board. The Executive Director may hire staff, if such authority is provided in the Authority's adopted rules and regulations.

B. Labor Relations. 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 the providers, the Board shall:

1. 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 twenty percent (20%) 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.
2. Require any collective bargaining agreement reached between the Authority and any labor organization certified to represent providers of IHSS services be subject to the limitations of the Ordinances and to the Joint Powers Agreement creating the Authority 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 the vote cast in a ballot in which all providers of IHSS services, as recognized by the Authority, shall be eligible to participate. Final adoption of any such agreement shall be by a simple majority vote of the Authority.
3. Require 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.
4. Take all legal action necessary to bar any strike or other concerted interruption of services to IHSS recipients.
5. Require that in home supportive services personnel be entitled to all of the rights conferred upon them by the Meyers Miliias-Brown Act (Government Code section 3500 et

seq.), including the right to be represented in their employment relationship with the Authority by an employee organization of their choice, and the right to meet and confer with the Authority with regard to wages, benefits, and other terms and conditions of employment.

C. Fiscal Provisions. In establishing the Authority the member counties recognize 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 providers of IHSS is contingent upon the availability of adequate funding. Nothing in this Ordinance or in the Joint Powers Agreement is intended to require the County to appropriate or to transfer any funds for the operation of the Authority or for the payment of wages or benefits for in home supportive services personnel.

The total of all administrative costs, wages, and benefits proposed or established by the Authority shall be consistent with the provisions of the budgets adopted by the member counties and shall be based on the methodology for allocation of costs as set out in the Joint Powers Agreement between Nevada and Sierra Counties; provided however, that the Authority shall not provide for any payments promulgated or calculated from or based on contributions or payments from the County in excess of the amounts expressly provided for in the County's annual budget, as it may be amended from time to time. The 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 establishment and operation of the Public Authority or application of Government Code sections 3500, et seq., shall not result in payments from the County's General Fund beyond the amounts provided for in the County's annual budget, as amended from time to time. The Public Authority shall utilize all available start-up funds pursuant to Welfare and Institutions Code section 14132.95 and shall seek to maximize the benefit of any available new or increased non-County-matching Federal or State funds or other available grant or foundation funds.

The Public Authority shall adopt its budget under the same laws, rules, and policies that control the budget process applicable to general law counties.

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.

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 Department of Health Services for the Authority's reimbursement rate and any rate adjustment.

Payment for all services provided pursuant to this Ordinance is contingent upon the appropriation of County, State and Federal funds for the purpose of providing IHSS.

## **Sec. A-II 41.6 Liability of Authority**

A. County Liability. The County shall not be liable for, and shall be immune from, any liability resulting from the programs and services provided by the Authority, including, but not limited to, the implementation of Welfare and Institutions Code section 12300, et seq., pursuant to this Ordinance, the Joint Powers Agreement, or any implementing agreement or through the appropriation of funds to the Public Authority.

B. Public Authority Liability.

1. Any obligation of the Nevada Sierra IHSS Public Authority, whether statutory, contractual, or otherwise, shall be the sole obligation of the Authority and shall not be the obligation of the County.

2. The Authority shall not be deemed to be an employer for the purposes of liability due to the negligence or intentional torts of any provider.
3. The Authority shall not be held liable for any action or omission of any provider whom the Authority did not list on a registry or otherwise refer to a consumer.
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 member counties, shall contain an express provision advising the third party that the Authority is an independent legal entity, separate and apart from the Counties of Nevada and Sierra, and that the Authority has no power to bind the counties to any contractual or legal obligations. The third party must be further advised that obligees of the Authority may not seek recourse against the member counties for any financial or legal obligation of the Authority.
5. The member counties shall be immune from any liability resulting from its implementation of Welfare and Institutions Code sections 12300, 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 member counties.
6. Without limiting its indemnification of the member counties, the Authority shall maintain insurance in an amount determined to be adequate by the County's Risk Manager and shall name the member Counties as additional insureds. Evidence of such insurance shall be provided to each County's Risk Manager within thirty (30) days of the execution of the agreement between the Authority and the County, and shall be regularly provided thereafter.
7. The Authority shall indemnify, defend, and hold harmless the member Counties and their elected and appointed officers, employees, and agents from any and against any and all liability, including acts of active negligence, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including but not limited to personal injury or property damage arising from, or connected with, any action or omission of any officer or employee of the Authority. The Authority shall provide an acknowledgment of such indemnification in writing to the member Counties.
8. The Authority shall require all third parties with whom it contracts, other than the member Counties, 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.

## **Sec. A-II 41.7 Miscellaneous**

- A. 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.
- B. 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 portions 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.
- C. Effectuation. It is the intent of the Board of Supervisors that the provisions of this Ordinance shall be effectuated in a prompt and diligent manner. This Ordinance shall be declared to be in full force and effect from and after thirty (30) days from the date of its passage.