

SAN FRANCISCO ADMINISTRATIVE CODE**CHAPTER 70:
IN-HOME SUPPORTIVE SERVICES PUBLIC
AUTHORITY**

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SEC. 70.1. PURPOSE.

The Board of Supervisors for the City and County of San Francisco (hereinafter, City) by this Chapter establishes a public authority whose powers are derived from and consistent with the provisions of Welfare and Institutions Code Section 12301.6. The name of this public authority shall be the In-Home Supportive Services Public Authority, and shall be referred to in this Chapter as the "Authority." Its purpose is to assure the availability of independent providers for the In-Home Supportive Services Program (IHSS) through the establishment of a central registry, and related functions, and to perform any other functions, as may be necessary for the operation of the Authority, or related to the delivery of IHSS in San Francisco, subject to all applicable Federal and State laws and regulations, and to the limitations set forth in this Chapter.

(Added by Ord. 185-95, App. 6/9/95; Ord. 213-08, File No. 081014, App. 9/19/2008)

SEC. 70.2. MEMBERSHIP OF GOVERNING BODY.

(a) The governing body of the Authority shall be composed of 13 members appointed by the Board of Supervisors. The Board 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, the IHSS Authority, members



of the general public, and other interested persons and organizations. No fewer than 50 percent of the membership shall be individuals who are current or past users of personal assistance services paid for through public or private funds or who are recipients of IHSS, referred to in this Chapter as "consumers."

(b) Membership categories on the governing body shall be as follows:

- (1) Two consumers over the age of 55 years, each authorized to represent organizations that advocate for aging people with disabilities;
- (2) Two consumers between the ages of 18 and 60 years, each authorized to represent organizations that advocate for younger people with disabilities;
- (3) One consumer at-large over the age of 55 years;
- (4) One consumer at-large between the ages of 18 and 60 years;
- (5) One worker who provides personal assistance services to a consumer;
- (6) One Commissioner from the Human Services Commission, recommended to the Board by the Commission;
- (7) One Commissioner from the Commission on the Aging, recommended to the Board by the Commission;
- (8) One Commissioner from the Public Health Commission, recommended to the Board by the Commission;
- (9) One member of the Mayor's Disability Council, recommended to the Board by the Council;
- (10) One member representing the bargaining unit of the union that represents IHSS independent providers;
- (11) One consumer at-large who is 18 years of age or older.

(c) For purposes of Government Code Section 87103, and 2 California Code of Regulations 18703.3, it is hereby found and declared that the persons appointed to this governing body are appointed to represent and further the interests of the specific economic interest which an individual member is appointed to represent.

(d) Initial appointment of both the consumer and worker members shall be made from a list of recommendations based on applications designed by, and submitted to, the IHSS Task Force of Planning for Elders in the Central City. The governing body of the Authority may make recommendations to the Board of Supervisors for establishing procedures for consumer and worker member appointments. Every attempt shall be made to assure that each appointee will be able to serve the full term to which he or she has been appointed, in order to ensure continuity in the work of the Authority.

(e) If during his or her term as a member of the governing body of the Authority, Commissioner or member of the Mayor's Disability Council no longer serves on their respective Commission or Council, the body from which that member came shall make another recommendation for appointment and notify the Board of Supervisors of the end of that member's formal service.

(f) After the terms of the initial period are complete, each appointment to the governing body shall thereafter be for a three-year term. A member may be reappointed, but may not serve more than a total of nine consecutive years on the governing body.



(g) Qualified applicants must reside in San Francisco and have: familiarity with, or knowledge of, personal assistance services; the capacity to understand their role to aid and assist the 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. Those City departments from which Authority members are drawn shall provide appropriate assistance to their respective representative in fulfilling his or her duties to the Authority. Each subsequent new member shall receive similar orientation and training from Authority staff within 60 days of appointment.

(h) Regulations governing the grounds for removal from, the governing body shall be established in the Bylaws of the Authority.

(i) Members of the governing body shall receive compensation as established in the Annual Salary Ordinance for attending meetings of the governing body. Additionally, members shall be reimbursed for all necessary expenses incurred for representing the governing body at regional, state and/or national meetings conferences and workshops or other activities as authorized by the governing body.

(Added by Ord. 185-95, App. 6/9/95; amended by Ord. 67-00, File No. 000354, App. 4/28/2000; Ord. 55-05, File No. 050120, App. 4/1/2005; Ord. 213-08, File No. 081014, App. 9/19/2008)

SEC. 70.3. POWERS.

(a) The Authority shall be an entity separate from the City and County of San Francisco and shall file the Statement of Fact for the Roster of Public Agencies required by Section 53051 of the Government Code.

(b) The Authority shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the delivery of IHSS, including the power to contract for services pursuant to Sections 12302 and 12302.1 of the Welfare and Institutions Code, subject to any limitations set forth in this Chapter.

(c) The Authority shall only engage in the following duties and functions involving IHSS until such time that the requirements for the transferring of additional functions, as set forth in Section 70.6 of this Chapter, are met: planning and advocacy for IHSS consumers and independent providers; operation of a registry, including investigation of the qualifications and background of potential independent providers, and referral of potential independent providers to consumers; and acting as the employer of IHSS independent providers in conformance with Subsection (g) of this Section.

(d) Any obligation or legal liability of the Authority, whether statutory, contractual or otherwise, shall be the obligation or liability solely of the Authority and shall not be the obligation or the liability of the City. 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 City.

(e) All contracts, leases, or other agreements of any nature, including collective bargaining agreements, between the Authority and any party, except those with the City, shall contain the following statement: "The Authority is an independent legal entity, separate and apart from the City and County of San Francisco. The Authority has no power to bind the City to any



contractual or legal obligations. Nor may the obligees of the Authority seek recourse against the City for any financial or legal obligation of the Authority."

- (f) Employees of the Authority shall not be employees of the City for any purpose.
 - (g) The Authority shall be deemed to be the employer of IHSS independent providers referred to consumers, under Paragraph (3) of Subdivision (d) 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. The Authority shall not be deemed to be the employer of IHSS independent providers under this Chapter for purposes of liability due to the negligence or intentional torts of those IHSS independent providers.
 - (h) Nothing in these enumerated powers shall be construed to limit or interfere with the consumers' right to retain, select, terminate, and direct the work of any independent provider providing IHSS to them.
 - (i) Nothing in these enumerated powers shall be construed to alter, require the alteration of, or interfere with the State's payroll system and other provisions of Section 12302.2 of the Welfare and Institutions Code for independent providers of IHSS, or to affect the State's responsibilities with respect to unemployment insurance, or workers' compensation for independent providers of IHSS.
 - (j) The Authority shall maintain general liability insurance in an amount determined to be adequate by the City's Risk Manager, and shall name the City as an additional insured.
 - (k) The governing body of the Authority shall hire the Executive Director of the Authority, and adopt rules and regulations, not inconsistent with the provisions of this Chapter, in order to implement and interpret this Chapter.
- (Added by Ord. 185-95, App. 619/95; Ord . 213-08, File No. 081014, App. 9/19/2008)

SEC. 70.4. FISCAL PROVISIONS.

- (a) In order to facilitate the implementation of the Authority in a timely manner, the City Treasurer and the City Controller may enter into contracts with the Authority for the provision of fiscal services, with or without compensation from the Authority, under such terms and conditions as the Treasurer and Controller may require. If any such contract is executed, the Controller shall establish and maintain a specific account or accounts for this purpose. In addition, other City departments may enter into contracts with the Authority, with or without compensation, for the provision of various services that may be needed by the Authority. All such contracts are subject to the applicable approval process as required by the San Francisco Charter, the San Francisco Administrative Code and the respective department regulation and policy.
- (b) In adopting this Chapter, the Board recognizes that the funding of IHSS is the product of a complex relationship of federal, State and City financing, and that the ability of the Authority to operate and to negotiate the wages and benefits of the independent providers of IHSS is contingent upon the availability of adequate funding from all sources. Nothing in this Chapter is intended to require the City to appropriate any funds for the operation of the Authority or for the payment of wages or benefits to the independent providers of IHSS.
- (c) The Human Services Agency through the Department of Aging and Adult Services shall



be the financial liaison between the City and County of San Francisco and the Authority. The Human Services Agency shall take appropriate action in order to procure all available federal and State funds for the administration and delivery of IHSS, and by contract, grant or agreement, transfer monies procured from these sources and from any funds that the City may appropriate, to the Authority for the operation of its designated functions, subject to the budgetary and fiscal provisions of the San Francisco Charter and the San Francisco Administrative Code. The Authority shall submit its annual funding request to the Department of Aging and Adult Services no later than the deadline determined by the Human Services Agency to enable the Agency to prepare and submit its budget to the Mayor's office. The Authority shall comply with all claiming and reporting deadlines set by the Human Services Agency and the Department of Aging and Adult Services.

The total of all operating costs, wages and benefits proposed or established by the Authority must be consistent with the provisions of the final City budget.

The Authority may not establish a payment rate that includes the costs of wages, benefits and operation, until the governing body of the Authority makes a finding that the funds necessary for payment of that rate are legally available.

(d) If and when the federal or State agencies responsible for IHSS promulgate regulations that authorize and create direct funding mechanisms for the Authority, the Authority and the Human Services Agency may modify their agreements to facilitate that direct financial relationship.

(Added by Ord. 185-95, App. 6/9/95; amended by Ord. 67-00, File No. 000354, App. 4/28/2000; Ord. 213-08, File No. 081014, App. 9/19/2008)

SEC. 70.5. ANNUAL REPORT AND PLAN.

The Authority shall submit annually a report to the Board of Supervisors detailing its functions and evaluating its operation for that year. In addition, such report shall present the Authority's specific goals and objectives for the coming year and its plan for meeting those goals and objectives. If, for any coming year, the Authority intends to expand its duties, the Authority shall present a detailed plan and budget for the implementation of that expansion of duties. Such plan shall be circulated to all interested City departments and community groups prior to presentation to the Board of Supervisors.

(Added by Ord. 185-95, App. 6/9/95)

SEC. 70.6. TRANSITION OF FUNCTIONS.

Prior to any transfer of federal or State-mandated IHSS functions from City responsibility to the Authority, all affected Commissions, by resolution, and the Board of Supervisors, by ordinance, must approve such relinquishment by the City to the Authority of responsibility with respect to IHSS services. Further, the Authority, through its applicable process, must accept all legal liability for those legally mandated responsibilities transferred by the City to the Authority.

(Added by Ord. 185-95, App. 6/9/95)



SEC. 70.7. TERMINATION.

By repeal of this Chapter, the Board of Supervisors may abolish the Authority.
(Added by Ord. 185-95, App. 6/9/95)

SEC. 70.8. ENUMERATION OF POWERS.

The enumeration of powers in this Chapter of some of the provisions of Welfare and Institutions Code Section 12301.6 shall not be interpreted as manifesting an intent of the Board of Supervisors to subject either the City or the Authority to duties or liabilities not imposed by that statute.

(Added by Ord. 185-95, App. 6/9/95)

SEC. 70.9. DISCLAIMERS.

By establishing the Authority, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Added by Ord. 185-95, App. 6/9/95)

SEC. 70.10. SEVERABILITY.

(a) If any provision of this Chapter, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Chapter, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Chapter are severable.

(b) Notwithstanding the provisions of Subsection (a) of this Section, if any provision of this Chapter imposing limitations or restrictions on the Authority, or the powers or duties of the Authority, including the ability of the Authority to propose or establish payment rates, shall be held invalid, the provisions of this Chapter shall not be deemed severable and this Chapter shall be held invalid in its entirety.

(Added by Ord. 185-95, App. 6/9/95)

SEC. 70.11. MINIMUM COMPENSATION.

All Employees of the In-Home Supportive Services Public Authority, including, without limitation, IHSS personnel referred to consumers, or referred by consumers for inclusion in the Authority, shall be deemed to be "Covered Employees" and shall be paid no less than the "Minimum Compensation," as that term is defined in Chapter 12P of the Administrative Code, and shall be deemed "Employees" and paid no less than the "Minimum Wage," as that term is defined in Chapter 12.R of the Administrative Code. This Section shall be implemented in a manner that does not conflict with applicable federal or State laws.

(Added by Ord. 216-00, File No. 001272, App. 9/8/2000; amended by Proposition J, 11/4/2014)

