

MEMORANDUM OF UNDERSTANDING

In-Home Supportive Services
Public Authority of Napa County

And

Service Employees International Union,
United Long Term Care Workers Local 6434

January 1, 2013 – December 31, 2015

SECTION 2. PROVIDER RESPONSIBILITIES

It shall be the responsibility of every Provider of In Home Supportive Services in Napa County to:

- A. Perform authorized IHSS tasks only. The IHSS program does not compensate Providers for non-authorized tasks, nor will the Provider be covered by worker's compensation if injured while performing unauthorized work.
- B. Submit accurate, legible and timely time sheets. It is the Provider's responsibility to keep payroll stubs for their own personal records.
- C. Immediately report on-the-job injuries to the Public Authority.
- D. Report to work alone and not bring to the Recipient's home children or family members without the Recipient's express, prior approval.
- E. Maintain Recipient confidentiality and not divulge Recipient information with anyone other than the Public Authority and Napa County IHSS staff. Providers are bound by the Confidentiality of Medical Information Act of 1981, Section 56 et seq. California Civil Code, and section 10850 of the Welfare and Institutions Code. These codes prohibit disclosure of a Recipient's name, personal data, medical conditions or any other information about an IHSS Recipient.
- F. Immediately report by telephone or as soon as practicably possible to either the Napa County Adult Protective Services (APS) or local law enforcement any incident of elder and dependent adult abuse. Providers are considered "mandated reporters" under section 15630 (a) of the Welfare and Institutions Code. Any Provider who within the scope of their employment has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect (including self-neglect) or reasonably suspects such abuse, shall immediately report the incident. The Provider shall also submit a written report to either APS or local law enforcement within two working days. Failure to report is a misdemeanor, punishable by a fine, jail or both.
- G. Offer and perform services without discrimination based on race, religion, religious creed, ancestry, color, national origin or ethnic group identification, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability.
- H. Notify the Recipient in a timely manner of any absences, time off or changes in work schedule.

the next paragraph, this section does not apply to contact with the Provider when the Provider and the Recipient share the same residence or the Provider uses the Recipient's address/phone number as his/her contact information.

Under such circumstances, the union representative may speak with the Provider at the Recipient's residence only after explaining the purpose of the visit/call and after having received permission from both the Recipient and the Provider to either (1) make an appointment at another location and time; or (2) to continue with a meeting at the Recipient's residence. The time spent in any such meeting shall not be counted as work time.

SECTION 5. MANAGEMENT RIGHTS

Subject only to the limitations set forth in this Agreement, the Public Authority's right to direct the work force shall be unimpaired. These rights shall include, but are not limited to, the following:

To manage and direct its business and personnel; to manage, control and determine the mission of its board, departments, committees or work groups, building facilities and operations; to create, change, combine or abolish services and facilities in whole or in part; to set standards of service; to maintain the efficiency of Public Authority operations; to determine procedures and standards of selection for the registry; to establish work standards and schedules of Public Authority operations; to adopt rules of conduct and penalties for violation, thereof; to determine the merits, necessity or organization of any service or activity; to determine the type and scope of work to be performed and the services to be provided through the registry; to determine the methods, processes, means, places and personnel by which the Public Authority's functions are to be carried out; to take all necessary actions to carry out its mission in emergencies; and to make reasonable rules and regulations pertaining to the registry consistent with this Agreement.

SECTION 6. UNION RIGHTS AND RESPONSIBILITIES

A. LIST AND INFORMATION

1. The Public Authority shall, on a monthly basis, provide the Union a list of all current Providers including name, address, telephone number, and hours worked. The list will be provided in an agreed upon computer format.
2. The Union shall defend, indemnify, save, protect and hold harmless the Public Authority and their respective boards, directors, officers and employees from any and all claims, costs and liabilities for any damages and/or injury arising from disclosure to the Union of IHSS Provider names, addresses and phone numbers.

a. Execute a written declaration or affirmation that the employee is a member of a bona fide religion, body or sect which has historically held a conscientious objection to joining or financially supporting any public employee organization as a condition of employment or has a sincerely held religious belief to this affect; and

b. Pay a sum equal to the agency shop fee described in Section 6.G.2 to a non-religious, non-labor, charitable fund chosen by the employee from the following charities: Volunteer Center of Napa County or Hospice of Napa County.

4. The Union at its discretion may waive the payment of Union dues or agency shop service fees for a Provider who is either already a member of SEIU ULTCW Local 6434 in another jurisdiction or is already a member of an SEIU union as a Provider in another county.

The Union shall provide the Public Authority with a copy of the Union's agency fee procedure and each revision thereof, and shall provide notice of said procedure to bargaining unit members as required by all applicable laws. Failure by an employee to invoke the said procedure within one month after actual notice shall be a waiver by the employee of his/her right to contest the amount of the agency fee, unless otherwise required by law.

The Provider's earnings must be sufficient, after required deductions are made, to cover the full amount of the dues or agency shop service fees. Therefore, when a Provider is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of a Provider who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all required deductions have priority over Union dues and agency shop fees.

The Union shall indemnify, defend, and save the County and the Public Authority harmless against any and all claims, demands, suits, orders, or judgments, or other forms of liability that arise out of or in connection with this Union Rights and Responsibilities Section, or action taken or not taken by the County or the Public Authority under this Section. This includes, but is not limited to, the County's or Public Authority's Attorneys' fees and costs.

SECTION 7. PAYROLL

To promote a timely and accurate payroll system, the Public Authority and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues. When the causes of problems are outside the Public Authority's direct control, the Public Authority and Union shall work cooperatively to create solutions by bringing the problems to the attention of the

b. If either state or federal funding dollars are reduced, or the state caps its funding at a provider wage rate lower than the wage rate in place at the time of the reduction, or either the state or federal sharing formula is modified in any manner that would result in an increased cost to the County to maintain the then current wage rate provided under this agreement, the hourly wage rate will be adjusted to reflect the reduced state and/or federal contribution.

3. The parties acknowledge that they have a mutual interest in ensuring the highest level of wages for IHSS providers possible while also ensuring that the County's contribution to the IHSS program are made at prudent levels, given the County's fiscal condition.

The parties agree to a re-opener of this MOU within 60 calendar days of 1) legislative approval of any increase in the availability of federal and/or state funding for provider wages, and 2) official notification to the Public Authority of the amount of funding to be received and the methodology for reimbursement and/or claiming of the funds, and 3) the Union's request of a re-opener. This re-opener is contingent upon the County's actual receipt of the funding increase, in the form of payments or an offset/credit from the federal or state government.

The parties hereby acknowledge that an increase in the availability of federal and/or state funding for provider wages may warrant a departure from the formula set forth in Section 8.2.a. for determining the County's contribution to provider wages.

SECTION 9. HEALTH BENEFITS

1. The parties agree to the elimination of all healthcare benefits currently provided to eligible Providers as soon as is reasonably practical. Upon ratification of the MOU by both parties, the Public Authority shall provide required notice to the current health plan provider, Symetra, in order to terminate health benefits. Upon State approval of the Public Authority Rate Package and on the first day of the month following the termination of current health benefits and completion of required State programming of Case Management Information and Payroll System (CMIPS II), the Public Authority will redirect the \$.60 per hour health benefits payment to wages outlined in Section 8.1.b of the MOU resulting in a total wage of \$12.10 per hour (current hourly wage of \$11.50 per hour plus the current health benefit payment of \$.60 per hour).

This provision shall become null and void should the State of California at any point challenge this arrangement and contend that this increase results in an increase in the County's Maintenance of Effort (MOE) and/or there is a judicial or legislative determination that the Public Authority must provide Health Care Coverage. In which case, the Public Authority will redirect the \$.60 per hour back to health benefits and return to an hourly wage rate of \$11.50 per hour. The parties will then meet and confer over the impacts of the resulting redirection.

Authority's action was incorrect. The Public Authority Director will send the Provider written notification of his/her decision within ten (10) working days of

receipt of the Provider's appeal. This ten (10) day time period may be extended at the Director's discretion.

Step 2: In the event a Provider/Union is not satisfied with the decision of the Public Authority Director, the decision of the Public Authority Director may be appealed to the Napa County Human Resources Director. The appeal must be in writing and state why the Provider/Union believes the Public Authority's action was incorrect. The Napa County Human Resources Director or his or her designee will send the Provider/Union written notification of his/her decision within ten (10) working days of receipt of the Provider's appeal at step 2. This ten (10) day time period may be extended at the Director's discretion. The decision of the Human Resources Director or designee will be final and binding.

3. If an appeal is filed, and the Provider (or the Union if authorized by the Provider) requests copies of the written materials that were relied upon by the Public Authority when making its decision, copies of such documents will be provided by the Public Authority. However, the Public Authority reserves the right to redact or remove specific information that may compromise the Public Authority or the Recipient(s).

C. APPLICATION

This Section applies to Providers seeking employment through the Public Authority's Registry, and is not intended to abrogate in any way the rights of Recipients as set forth in Section 4 of this Agreement.

SECTION 11. TRAINING

A. REGISTRY ORIENTATION TRAINING

All new Providers seeking employment through the Registry will be required to attend orientation training provided by the Public Authority.

B. PROVIDER TRAINING

The Public Authority will develop and implement a training plan, with input from the Union in the Labor Management Committee, in order to enrich the skills base of Providers. The Public Authority encourages the Union to identify topics for training sessions and to urge Providers to take advantage of training opportunities.

C. UNION REPRESENTATIVE

The Public Authority shall provide an opportunity for Union representatives to make a brief presentation at group orientations. Such presentations will be limited

mutually satisfactory accord on any grievance which arises and is presented during the term of this MOU under Step 2, either the grievant, or the Union on the grievant's behalf, may submit the grievance to the Director of the Napa County Department of Human Resources. The Director of the Napa County Department of Human Resources or his/her designee shall have twenty-one (21) days from receipt of the written grievance in which to investigate the issue(s), meet with the complainant and attempt to reach a satisfactory resolution of the problem

Step 4. No grievance may be processed under this Section, which has not first been submitted and investigated in accordance with Step 3. If the parties are unable to reach a mutually satisfactory accord on any grievance which arises and is presented during the term of this MOU, the Union on the grievant's behalf or the IHSS Public Authority may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the grievant and the Director of the Public Authority. Within ten (10) days of the request for arbitration, the parties shall mutually select an arbitrator.

If the parties are unable to agree on an arbitrator within fifteen (15) days from the date of the request, a list of five (5) arbitrators shall be requested by the Director of Human Resources from the State Conciliation Service. Within five (5) working days after receipt of the list and notification of the Union, the parties shall meet to select the arbitrator. The parties shall alternately strike one name from the list until one arbitrator's name remains. The question of which party shall strike the first name shall be determined by a flip of a coin.

The arbitrator shall render a decision within thirty (30) days from the date of final submission of the grievance including receipt of the Court Reporter's transcript and post hearing briefs, if any. The decision of the arbitrator on matters properly before them shall be final and binding on the parties hereto, subject to the provisions outlined below, to the extent permitted by law. The fees and expenses of the arbitrator and of the Court Reporter shall be shared equally by the grievant or the Union on the grievant's behalf, and the Public Authority. Each party, however, shall bear the costs of its own presentation, including preparation and post-hearing briefs, if any.

B. SCOPE OF ARBITRATION DECISIONS

Proposals to add to or change this MOU or to change written agreements supplementary hereto shall not be arbitrable and no proposal to modify, amend, or terminate this MOU nor any matter or subject arising out of or in connection with such proposals, may be referred to arbitration under this Section. The arbitrator shall limit his/her decision to the application and interpretation of the provisions of this Agreement. The arbitrator shall have no authority to add to, delete, or alter any provisions of this Agreement or written agreements supplementary hereto or to establish any new terms or conditions of employment.

SECTION 14. NO INTERRUPTION OF WORK

The unimpaired continuation of In-Home Support Services is of paramount importance to county residents and specifically to the recipients of home care services. Therefore, the union agrees that during the term of this Memorandum of Understanding, neither its officers, employees, agents or members will, directly or indirectly, initiate, engage in, encourage, sanction, support, instigate or suggest any strike, slow down, mass resignation, mass absenteeism, picketing or similar concerted activity which would suspend, interfere with or interrupt the normal work and operations of IHSS Recipients, the Public Authority or the County and its departments. In the event that any Union member participates in such activity in violation of this provision, the Union shall immediately notify the member or members so engaged to cease and desist from such activities and shall further direct such member(s) to promptly return to his or her normal duties. This provision shall continue in full force and effect for the term of this Agreement and for a minimum of six (6) months beyond the term of this Agreement.

SECTION 15. AGREEMENT, MODIFICATION AND WAIVER

A. SOLE AND ENTIRE AGREEMENT

Except as otherwise specifically provided herein, this Agreement, together with any appendices and/or side letters, concludes all collective bargaining between the parties and constitutes the sole and entire agreement between the parties and supercedes any prior agreements or understandings, oral or written, or practices by the Public Authority or the County regarding the Providers unit.

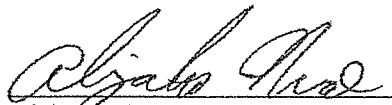
The Parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited right and opportunity to submit proposals with respect to any subject matter not otherwise prohibited by law and that the agreement reached by the parties following the exercise of that right and opportunity is set forth in this MOU.

B. MODIFICATION

Neither party shall, during the term of this MOU, demand any change to the provisions of this MOU, provided, however, that nothing herein shall prohibit the parties from changing the terms of this MOU by mutual agreement. Any such agreement, alteration, understanding, variation waiver, or modification of any of the provisions contained herein shall not be binding upon the parties hereto unless it is made and executed in writing by all parties hereto and, if required, approved by the Governing Body of the Public Authority.

C. WAIVER

The waiver of any breach, term or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.



Alejandro Navarro
Negotiating Team Member



Angelica Cortez
Staff, SEIU ULTCW LOCAL 6434