

# MEMORANDUM OF UNDERSTANDING

## IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER UNIT 2013 – 2014



IHSS PUBLIC AUTHORITY  
AND  
UNITED LONG TERM CARE WORKERS UNION, SERVICE EMPLOYEES  
INTERNATIONAL UNION LOCAL 6434

IN-HOME SUPPORTIVE SERVICES (IHSS)  
PROVIDER UNIT

MEMORANDUM OF UNDERSTANDING  
2013 – 2014

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**2013-2014  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE IHSS PUBLIC AUTHORITY AND  
UNITED LONG TERM CARE WORKERS UNION, SEIU LOCAL 6434  
CONCERNING THE IN-HOME SUPPORTIVE SERVICES (IHSS) PROVIDER UNIT**

**PREAMBLE**

This Memorandum of Understanding (“the MOU” or “Agreement”) is entered into between the San Bernardino County In-Home Supportive Services Public Authority (“the Public Authority”) and the United Long Term Care Workers Union, SEIU Local 6434 (“the Union”).

The Public Authority was established to enhance in-home supportive services (“IHSS”) in San Bernardino County (“the County”) under California Welfare and Institutions Code Section 12300 et seq., and San Bernardino County Ordinance #3842 (Chapter 42 of Division 2 of Title 1 of the San Bernardino County Code). The parties recognize that the Public Authority does not employ or manage the IHSS Providers (“Providers”) in the County in the role of a traditional employer.

Both the Public Authority and the Union recognize the important role of the Providers in the community and the vital link they form to the recipients of IHSS (“Recipients”). The parties agree that it is in the best interest of the Recipients, the Providers, and the health of the community to improve the working conditions of the Providers, without reducing services to the Recipients and while maintaining the independent provider mode of service delivery which includes the exclusive right of the Recipients to hire, fire and supervise the Providers.

**RECOGNITION**

Pursuant to the provisions of the Employee Relations Resolution of the Public Authority, the Union was certified on June 11, 2002, as the exclusive recognized representative for the IHSS Provider Unit. The Public Authority is the employer of record for the Providers for the sole purpose of collective bargaining. This MOU does not apply to others affiliated with or employed by the Public Authority, including without limitation, administrative and operational staff in the office.

**DENTAL**

- A. It is hereby agreed that the Union shall make available a dental insurance program (“the Dental Plan”) to all active Providers. The Union will be responsible for the administration of the Dental Plan. Should the Dental Plan cease for any reason, neither the Public Authority nor the Union shall be obligated to procure a replacement plan, and payroll deductions for the Dental Plan shall be discontinued concurrent with the cessation of the Dental Plan, by the Union notifying the State Controller’s Office.
- B. All current and future Providers will be automatically enrolled (unless they have affirmatively withdrawn). The Union shall clearly notify all Providers in writing of their option to withdraw from the Dental Plan. Providers may withdraw at any time upon written notification to the Union. Any Provider who withdraws will be processed out of the Dental Plan as soon as practicable but no longer than 30 days after receipt of the Provider’s notification. Any Provider who withdraws shall become ineligible for re-enrollment for a period of at least twelve (12) months following the effective date of withdrawal. The Union shall give notice of ineligibility to the Providers.
- C. Except as otherwise provided in this Agreement, payroll deductions for the Dental Plan shall be made monthly. The current payroll deduction shall be \$5.00 per month. It is understood and agreed that the deductions will be processed by the Union through the State Controller’s Office pursuant to the Union’s contract with the State, and that the Public Authority and County have no authority or responsibility

relative to the State's processing of the deductions and will not be liable for any errors or omissions caused by the Union and/or the State.

- D. Should a Provider not earn sufficient wages, after taxes and social security deductions, to pay Agency Shop dues and Dental Plan payroll deduction in any month, the Union shall bear the cost of the Dental Plan for that month and there shall be no recovery from the Provider in future months. Should a Provider become ineligible for the Dental Plan and is discontinued from coverage under circumstances which cause COBRA to apply and should the Provider enroll in continuation coverage, the Union shall be responsible for any and all collection of Dental Plan premiums.
- E. Those Providers who lose employment as Providers shall retain Dental Plan coverage for the balance of the month in which they lose employment, plus the following month, and shall also have the right to continue coverage under COBRA. Providers losing employment are not subject to the 12 month preclusion, and will be re-enrolled upon resumption of employment.
- F. The Union will pay all administrative costs of providing the Dental Plan.
- G. The Union will comply with all applicable laws and regulations regarding the provision of such benefits, and be responsible for the provision of COBRA notices and administration of all applicable COBRA-related activities.
- H. The Union will indemnify, defend and hold harmless the Public Authority and the County relative to the deductions made for the Dental Plan and administration of the Dental Plan, including the giving of all notices, including COBRA, and any collection costs associated with the continuation coverage.
- I. The Union will provide a cost breakdown to the Public Authority upon the Public Authority's request. The breakdown shall include costs related to dental services and administration of the Dental Plan. This provision is subject to the availability of the requested data.
- J. It is understood that the Dental Plan shall be provided at no cost to the Public Authority or the County.

## **GRIEVANCE PROCEDURE**

### A. Definitions

- 1. Grievance – In the context of this Agreement, a grievance shall mean a dispute regarding implementation of the provisions of this MOU brought by either party.
- 2. Authorized representative shall mean an individual officially designated by one party to accept a grievance presented by the other party. Each party shall have one representative for this purpose.

### B. Grievance Procedure

- 1. If one party has cause to believe that any provision of the MOU has been violated by the other party, the aggrieved party shall provide to the other party's representative in writing a detailed statement of the grievance, including the Articles of the MOU alleged to have been violated; evidence supporting the allegation; and a good faith proposal to resolve the dispute. Grievances shall be filed within twenty-one (21) days of the incident or occurrence or knowledge of the incident or occurrence, whichever comes later.
- 2. Within fifteen (15) days of submission of the written grievance, the representative of the other party shall respond in writing either accepting the proposed resolution or to schedule a meeting.
- 3. If the parties are unable to reach a mutually satisfactory accord on any grievance after a good faith effort to reach resolution through discussion has been on-going for twenty-one (21) days, the

aggrieved party may request that the grievance be referred to an impartial Arbitrator to resolve the grievance.

4. The Public Authority and the Union shall select the impartial Arbitrator by mutual agreement within fifteen (15) days after the grievance was submitted to arbitration. If, however, the parties are unable to reach agreement, the parties shall request a list of seven (7) Arbitrators from the State Mediation and Conciliation Service and, within five (5) days of receipt of the list, the parties shall select the Arbitrator from the list by alternately striking names. The party that will strike first shall be determined by lot.
5. The decision of the Arbitrator shall be rendered within thirty (30) days from the date of the hearing or the date any briefs are submitted, whichever is later. The decision of the Arbitrator shall be final and binding, subject to the following:

In the event the Arbitrator determines an economic remedy is an appropriate remedy, he/she shall limit any retroactive award to a date that is no earlier than thirty (30) days before the date the grievance was filed. When an economic remedy against the Public Authority is included in any Arbitrator's award under this Grievance Procedure, the Arbitrator shall initially render an "Intended Decision." In preparation of the "Intended Decision," the Arbitrator shall consult with an expert familiar with IHSS Public Authority funding. Such expert shall be mutually agreed upon by both parties. In the event no mutual agreement is reached, the Arbitrator shall choose such an expert. The "Intended Decision" shall be submitted to the Public Authority's Board of Directors for review and determination as to whether the Public Authority has "legally available" funds to pay the award. "Legally available" funds shall be defined as those funds which are properly claimable by the County against the state and federal matches for the IHSS Program and which are made available to the Public Authority by the County. It is understood that the San Bernardino County Code Section 12.4209 provides that the Public Authority shall not have authority to incur any costs unless there is a state and/or federal funding match for such costs and that the County has funded the Public Authority for such costs. The Board of Director's determination of whether funds are "legally available" shall be submitted to the Arbitrator. The Arbitrator shall review and consider the Board's determination, along with the Union's position, and render the "Arbitrator's Award," including a finding of whether funds to the Public Authority are in fact "legally available." Either party may seek judicial review of any "Arbitrator's Award" which provides for an economic remedy against the Public Authority within ninety (90) calendar days of the filing of the "Arbitrator's Award."

6. The fees and expenses of the Arbitrator and of the Court Reporter shall be shared equally by the Public Authority and the Union. Each party shall bear the costs of its own representation.
- C. Time Limits – The time limits specified above may be waived by mutual agreement of the parties.

#### **HEALTH BENEFITS**

- A. Preamble – The parties agree that securing health benefits for uninsured Providers is an important goal. Maintaining the health of Providers is important to meet the needs of the Recipient, to facilitate the recruitment and retention of new Providers to the program, and to minimize health costs to the public.

## B. Funding

1. Effective July 1, 2013, the Public Authority shall provide a maximum of \$625,000 (local share) per year, which equates to \$937,000 during the term of this eighteen (18) month Agreement, to fund a health care program ("Health Plan"). In no event shall there be any obligation of the Public Authority to provide any funding beyond the maximum of \$625,000 local share per year. The Public Authority reserves the right to manage enrollment in the plan to ensure that the \$937,000 local share is not exceeded by the end of the 18-month term. If the Agreement is terminated or otherwise ceases to be effective prior to the end of the 18-month term, the Public Authority's funding obligation under this article shall cease and be prorated accordingly, unless such total funding obligation (\$937,000) or some portion of it remains in effect pursuant to S.B. No. 1036 or other state law.
2. Enrolled Providers shall be required to pay a monthly contribution towards the premium via payroll deduction. Said monthly contribution shall equal the premium less any contribution provided by the Public Authority.
3. Continuation of the Health Plan is subject to continuation of sufficient state and federal funding participation ratios to enable the Public Authority to procure and maintain a health insurance program; and continuing appropriations by the County Board of Supervisors each fiscal year. If, during the term of this Agreement, net state and federal cost sharing for health insurance decreases, the Public Authority shall not be required to increase its own share in order to maintain the benefit level. Instead the Public Authority may decrease the limit on the total number of Providers covered by the Health Plan so that the Public Authority's local share is not increased. If net state and federal cost sharing for health insurance decreases such that the Public Authority deems it is unable to procure and/or maintain a health insurance program, the Public Authority's obligation to provide a health care program shall cease.
4. It is recognized and agreed that it is in the discretion of the County Board of Supervisors to increase or to not increase appropriations and any action of the Board of Directors for the Public Authority is not binding on the County Board of Supervisors acting on behalf of the separate governmental entity County.
5. It is recognized and agreed that the County is not a party to the MOU and is under no obligation to increase appropriations.
6. SEIU agrees that it will not legally challenge any appropriation decision of the County Board of Supervisors and that any action of the Board of Supervisors is not a grievance, unfair labor practice, or breach of this labor contract.
7. The Public Authority shall encourage the IHSS Board of Directors to ratify the terms of this Agreement. The Union shall encourage the Providers to ratify the terms of this Agreement.

## C. Health Plan Eligibility and Enrollment

1. Effective July 1, 2013, the Public Authority will continue to cover all those Providers currently enrolled, and who continue to meet eligibility requirements, in the Symetra program through September 30, 2013. The monthly premium will be fixed at \$264.00 per enrollee per month. The Public Authority will pay \$254.00 towards the premium and the provider will pay a \$10.00/month contribution by payroll deduction.
2. Individuals who were "grandfathered" into the Long Term Care Workers Health Trust at the previous eligibility level of 25 hours/month, and who have not reached the current eligibility threshold of 80 hours per month will continue to be enrolled through September 30, 2013. These individuals will not have the option to transfer coverage to the Kaiser plan.

3. Effective October 1, 2013, following approval of a **written vendor agreement**, the Public Authority will enroll providers currently covered by the Symetra health plan who continue to meet eligibility requirements, into a Kaiser Permanente health plan through December 31, 2014, subject to the funding provisions of subsection B.3 of this article. The Public Authority will pay \$366.00 monthly towards the premium and the Provider will pay the remainder of the premium by payroll deduction, exclusive of any premium refund amount, which is established at \$30.00 per month in the month that the Kaiser plan goes into effect for a total initial Public Authority contribution rate of \$396.00, until such refund is exhausted.

When Symetra provides the Public Authority with a premium refund, then the Public Authority will use up to \$400,000 of such refund less no more than 2% for administrative costs, or whatever amount of the premium refund is permissible under the law and any requirements of federal and state funding, whichever is less, to pay an additional \$30.00 monthly towards the premium until such refund is exhausted, or the MOU expires, whichever comes first. If additional premium refunds become available, the Public Authority will use such funds during the term of the Agreement to offset the Provider contribution up to \$30.00 per month, less no more than 2% for administrative costs. Such premium offset will expire at the end of the Agreement term or if the money the Public Authority has allocated toward the premium offset is exhausted, whichever occurs first. At the end of the term of the Agreement, or the exhaustion of the allocated premium offset funds, whichever occurs first, the Public Authority shall have no further obligation to provide any funding beyond the maximum of \$625,000 local share per year. The calculation of said premium refund is attached (see Schedule A).

4. The Public Authority and Union agree to work together, through the Labor Management Committee, to discuss any adjustments. Specifically, the Public Authority and the Union will conduct at least a quarterly review of Providers enrolled in the plan to determine if enrollee additions and subtractions are at a rate so that costs will not exceed funding at the end of the MOU term (see Schedule B for sample run-out). The Public Authority shall have the right to freeze enrollment and, if necessary, discontinue coverage for Providers to remain within the local cost budget for health care and so that the annualized cost of covered providers equals the \$625,000 local share per year (i.e., at the Public Authority premium contribution of \$366.00 per month approximately 912 providers can be covered to equal the \$625,000 local share per year).

The Public Authority shall provide written notice to the Providers of any adjustments to be made pursuant to this section at least thirty (30) days prior to the effective date of such adjustments.

5. **Upon execution of this Agreement** the Public Authority's waiting list will be used to fill open slots during the term of this Agreement.
6. Providers with other health insurance coverage or who are eligible for such coverage such as Medi-Cal, Medicare, Healthy Families or Healthy Kids, spousal coverage, COBRA, individual, conversion or coverage under a Group Plan offering Domestic Partners are not eligible to enroll in the Health Plan, as long as they remain enrolled in the another plan.
7. Providers shall not be permitted to enroll dependents in the Health Plan.
8. Upon receipt of applications for enrollment, the Public Authority or designee shall determine eligibility for enrollment and the Health Plans shall process enrollments as directed by the Public Authority.

9. Should there be more eligible applicants than slots available, priority for enrollment shall be given to Providers with the most cumulative service hours since June 1, 2002. In the event of a tie, priority shall be given to the Provider with the most seniority (i.e., with the earliest date of hire).
10. Ineligible applicants shall be notified of ineligibility and advised that they can apply again during the next Open Enrollment if their eligibility has changed.
11. Eligible applicants who are not enrolled in the Health Plan due to lack of available slots shall be notified of this fact and placed on a waiting list in priority order as established in 6 and 9, above. As slots become available during the Plan Year, applicants on the waiting list who remain eligible for enrollment pursuant to 4 above, may be enrolled.
12. Determinations of eligibility and priority of enrollment of eligible applicants shall be made by the Public Authority or designee in compliance with this Article and shall not be subject to review, appeal or grievance.
13. Continued eligibility for active members will be reviewed by the Public Authority or designee monthly. To retain coverage, the IHSS Provider must have worked 80 hours or more per month for any two (2) months in the preceding quarter. If the Provider does not meet this condition, the Provider shall be notified that he/she will lose coverage as of the beginning of the following month. The Public Authority shall ensure that notice regarding COBRA rights is provided with this notification.
14. If an IHSS Provider terminates coverage for any reason during the Plan Year, he/she must wait until the next Open Enrollment period to re-apply.
15. For Providers who are not eligible for coverage under this plan, the Union and the Public Authority will encourage them to avail themselves of the health care exchanges under Covered California, if eligible.

D. Mid-Term Changes to Benefits, Premiums or Enrollment

1. It is recognized that the Health Plan provider may be required to modify the Health Plan benefits or premiums during a Plan Year due to regulatory and legislative changes affecting health care and administrative costs. If benefit changes are made, the Public Authority shall ensure that the Providers are given notification of the effective date of any plan changes. If there are changes to the premium rates charged to the Public Authority, such that the Public Authority's health care budget is insufficient to continue coverage for those Providers currently covered by the Health Plan, the Public Authority shall freeze enrollment and, if necessary, discontinue coverage for Providers in reverse order of their enrollment onto the Health Plan (i.e., the last enrolled will be the first disenrolled) to remain within the local cost budget for health care.
2. Annually, the Public Authority shall receive notice of premiums to be charged for the subsequent Plan Year. If there are changes to the premium rates charged to the Public Authority, such that the Public Authority's health care budget is insufficient to continue coverage for those Providers currently covered by the Health Plan or if no agreement is reached regarding the provision of additional local funds by the Public Authority, the Public Authority shall freeze enrollment and, if deemed necessary by the Public Authority, discontinue coverage for Providers in reverse order of their enrollment onto the Health Plan (i.e., the last enrolled will be the first disenrolled) to remain within the local cost budget for health care.



3. If the Health Plan premium should increase more than 8% during the term of this MOU, the parties will meet to discuss issues such as alternate plans, enrollment levels, Provider premium contributions, or other ways to ensure that the number of covered Providers is at the appropriate level to match the Public Authority's annual local share contribution towards health benefits.
4. The parties will review the Kaiser plan, renewal rate and utilization report, if available, by March 2014, and if deemed necessary will seek bids for alternatives to the Kaiser plan.
5. The parties recognize that the Public Authority does not employ or manage the IHSS Providers in the County in the role of a traditional employer, at the time of this Agreement, however, should a determination be made in the future by the Courts, legislation or regulation that is binding on the Public Authority that the Public Authority is the employer or a joint employer of the Providers, the parties shall re-open the contract regarding economic terms.

#### **LABOR-MANAGEMENT COMMITTEE**

- A. In order to encourage open communication, promote harmonious relations and resolve matters of mutual concern, the parties shall maintain a Labor-Management Committee. The committee shall be governed by the following:
  1. The committee shall meet every other month or as mutually agreed to by the parties.
  2. The topics for such meetings may include, but are not limited to, mutual respect, payroll problems, health and safety issues, training and education.
  3. The committee shall be composed of three (3) representatives appointed by the Public Authority and three (3) representatives appointed by the Union. Observers and guests may be invited by either party when their presence will be helpful in the resolution of specific issues.
- B. The provisions of this Article and the subjects and recommendations of the committee shall not be subject to the Grievance Procedure.
- C. The committee shall not have the authority to modify the terms and conditions of this MOU. Any changes recommended by the committee that would have the effect of modifying provisions of this MOU shall be addressed during the next negotiations period between the parties unless the parties mutually agree to reopen the Agreement to address a specific issue.

#### **LIABILITY OF PUBLIC AUTHORITY**

The Public Authority is an independent legal entity, separate and apart from the County of San Bernardino. The Public Authority has no power to bind the County to any contractual or legal obligations, nor may the obligees of the Public Authority seek recourse against the County of San Bernardino for any financial or legal obligation of the Public Authority.

#### **MANAGEMENT RIGHTS**

Unless otherwise expressly specified in the MOU, the Public Authority shall have the right to determine the mission of its governing body, committees and other related work groups; maintain the efficiency of its operations; determine the methods, means and personnel by which its operations are to be conducted; and take all necessary actions to carry out its mission in emergencies.

## NON-DISCRIMINATION

There shall be no discrimination in the interpretation, application, or enforcement of the express terms of this MOU because of sex, race, creed, color, national origin, sexual orientation, age, disability or participation or non-participation in the union activities against any Provider by the IHSS Public Authority or by the Union.

Nothing in this Section shall limit the rights of IHSS Recipients as provided in the Recipients' Rights Section.

## NO STRIKE

During the term of the MOU, the Union, its members and representatives shall not engage in, authorize, sanction or support any strike, slowdown or other stoppage of work.

## ORIENTATIONS

Whenever the Public Authority conducts, or causes to be conducted, group orientation sessions for Providers, it shall give the Union reasonable notice (no less than three business days shall be reasonable); and the Public Authority shall set aside a timeslot for the Union to make a twenty (20) minute presentation to the Providers at such orientations.

## RECIPIENTS' RIGHTS

- A. Under the state law and the County Ordinance establishing the Public Authority, the Recipients have the sole and undisputed right to hire Providers of their choice; remove Providers at-will from their service; supervise the work of Providers; and determine in advance and under what circumstances anyone may enter their homes.
- B. The Union shall neither seek nor receive information regarding the name, address, phone number or any other personal information regarding Recipients. Union representatives and Providers shall maintain strict standards of confidentiality regarding Recipients obtained from whatever source, pertaining to Recipients unless disclosure is compelled by legal process or otherwise required/permitted by law.

## REGISTRY SENIORITY

- A. **General.** The Public Authority and the Union recognize the importance of providing registry services to Consumers and to Providers. The Public Authority is required by law to establish a registry ("the Registry"). Nothing in this article shall prevent the Union from establishing a Registry or the parties from establishing a joint registry.
- B. **Applicants.**
  - 1. The Registry shall provide applicants with written material, in English and Spanish, about the Registry, such as provider roles and responsibilities, Registry process, enrollment packets and standard forms.
  - 2. The Registry shall provide applicants with training material provided by the Union, promoting the California Long-Term Care Education Center.
- C. **Referrals.** Providers shall be referred as follows:
  - 1. The Public Authority Registry staff shall make a determination for each Provider on the Registry roster. In determining the qualifications, the Registry staff shall consider training, experience, ability and willingness to work hours and tasks requested, language preferred by Recipient, and geographical and Recipient preferences as appropriate.

2. The Registry shall determine the seniority date for each provider on the Registry roster. The order of names on the referral list of qualified Providers shall be by seniority on the Public Authority Registry. Seniority shall be based on the Providers first date of employment as a Provider.
3. If a Recipient does not request a provider by name, the Registry shall refer the most senior Providers with the required qualifications that come up on the random sort provided by Registry software, while avoiding duplicative lists.

**D. Labor Management Committee.**

1. A six-member Labor Management Committee (LMC) shall be formed for the purpose of jointly reviewing and discussing the Registry's ongoing referral process and related policies and procedures, and offering input and recommendations to the Public Authority as to potential improvements in such matters. The Public Authority and the Union shall each appoint three (3) members to the LMC, and the members shall serve at the pleasure of their respective appointing organizations. The LMC shall meet on a bi-monthly basis. The person serving as Chair of the LMC meetings shall rotate from meeting to meeting between the Public Authority and the Union. The LMC meetings shall be limited in attendance to the members and one or two guests of either party, unless the parties agree to additional attendees. The Committee shall submit its recommendations to the Public Authority in writing. However, final Registry policies and procedures shall remain the purview of the Public Authority leadership and its Board of Directors.
2. To assist the LMC's discussions, the Public Authority shall, upon request, share with the Union and the LMC the data which the Public Authority collects with respect to the monthly volumes of Provider and Consumer participants, referrals and placements and withdrawals. The Public Authority will not release any Consumer or Provider personal identifying information. The Public Authority and the Union shall also share with one another and with the LMC copies of their respective materials related to Provider and Consumer roles and responsibilities, Registry process, enrollment packets and standard forms, in order to facilitate Committee discussion of "best practice."

**E. Registry Complaint Process.**

1. STEP ONE: Any current Registry Provider who believes that he or she has been adversely affected due to an alleged failure by the Registry to comply with the applicable rules and policies governing Registry shall, within thirty (30) calendar days of when the Provider knew or should have known of the event giving rise to the complaint, send to the Public Authority a written complaint and/or request for review stating the basis for the complaint and a statement as to what the Provider wishes the Registry to do to remedy the situation. The Registry Manager shall, within thirty (30) calendar days after receiving the complaint, review the matter and prepare and send a written response to the complaining Provider.
2. STEP TWO: If the Provider is not satisfied with that response he or she may, within fifteen (15) calendar days of the reply under Step One, as evidenced by the postmark, send to the Executive Director of the Public Authority a written request for review. The Executive Director of the Public Authority, or her designee, shall within fifteen (15) calendar days after receipt of the request for review, review his/her matter and prepare and send a written response to the complaining Provider.
3. STEP THREE: If the Provider remains dissatisfied, he or she may, within a twelve (12) calendar day period of the completion of Step Two, as evidenced by the postmark of the reply, send to the Executive Director, or designee, a written request for review and final determination. If the claim is that the Provider has been wrongfully suspended or removed by the Registry from Registry participation, the matter will be referred to the Labor Management Committee for a recommendation to the Executive Director, who shall have the final and binding decision.

- F. **Union Representation.** Upon request of the complaining Provider, the Union shall be permitted to accompany and/or represent the Provider at any steps of the above complaint process.

#### SAVINGS CLAUSE

If any term or provision of the MOU is found to be in conflict with any law or ordinance, the Public Authority and the Union shall meet promptly to expeditiously renegotiate the term or provision. All other terms and provisions of the MOU shall remain in full force and effect.

#### TERM AND RENEGOTIATION

- A. This Agreement becomes effective upon approval of the Public Authority Board of Directors, and shall remain in full force and effect through December 31, 2014. In the event that the California In-Home Supportive Services Authority (Statewide Authority) assumes the responsibilities set forth in Title 23, as authorized by Senate Bill 1036, this Agreement shall remain in effect between the Statewide Authority and SEIU-ULTCW, unless contrary to law. If a successor Agreement has not been reached by 12:00 a.m. (midnight) on December 31, 2014, the terms and conditions of this Agreement shall be extended for ninety (90) days or until a successor Agreement is adopted, whichever occurs sooner. All economic provisions are subject to funding availability as provided in specified Articles and paragraph (C) below.
- B. In the event either party hereto desires to negotiate a successor Agreement, such party shall serve upon the other one hundred twenty (120) days prior to expiration of the Agreement, a written request to commence negotiations for such successor Agreement. Upon receipt of such written request, negotiations shall begin no later than fifteen (15) work days after such receipt.
- C. Because of the uniqueness of the legislative scheme for IHSS Public Authorities, the continuing costs of wages, benefits and operations contained in the Agreement are subject to the ongoing funding by the County, pursuant to County Code Section 12.4209 as well as the state and federal funding. Should the County not provide adequate funding for the costs of the wages, benefits and operations contained herein, or should the state or federal governments change funding allocations or reduce funding, the parties shall forthwith meet and confer to provide for any necessary adjustments resulting from any reduction in funding. However, should funding be decreased to the Public Authority from any source immediate reductions in wages and economic benefits shall be implemented commensurate with the maximum level of funding that is approved by both the state and federal funding agencies, pending further meeting and conferring.

#### TRAINING

- A. The Public Authority and the Union recognize that providing access to training for IHSS Providers is an important goal and a significant component of the IHSS Program. The Public Authority will partner, as appropriate, with the California Long-Term Care Education Center to ensure that training programs for IHSS Providers are available throughout the County of San Bernardino. The parties recognize that constraints on funding pose substantial challenges in achieving this goal. To meet these challenges, it is important for the parties to work cooperatively to improve training opportunities of Providers. Toward this end the Labor-Management Committee shall develop a joint plan for implementing a Provider training program for IHSS Providers and to explore available resources for funding such a program. The parties understand that the Public Authority cannot implement any program which will result in committing any funds beyond those designated for training in the approved state rate application; however, this does not preclude funding such a program with grant monies or other funding approved by the Public Authority and designated by the Board of Directors for training purposes. It shall be the Labor-Management Committee's goal to make recommendations to the Board of Directors no later than ninety (90) days after the effective date of this contract.

- B. The parties acknowledge that it is in the interest of the Union and the Public Authority to utilize the limited funding available to identify and address the areas of greatest need. Participation shall be voluntary and on a "first come, first served" basis. Participation shall not be made a condition for employment as an IHSS Provider. In conformance with Welfare Institutions Code Section 12306 et seq., Provider work hours may not be altered to accommodate attendance at trainings and time used in participation in training may not be compensated as Provider hours. However, the Public Authority will strive to set training schedules that promote the greatest participation by Providers.
- C. The Public Authority retains the exclusive right and authority to determine the scope of training and the method of training provision.
- D. The parties agree that failure of the state to meet its obligations to participate in funding for training of IHSS Providers will excuse the Public Authority from implementing or completing some or all of the provisions of this Section.
- E. Nothing in this Section shall in any way serve to limit the Union from continuing to provide any existing training programs or from designing and implementing its own training programs for Providers.

### TRANSPORTATION

The Public Authority and the Union shall work together to improve access services and para-transit services for Providers.

The Public Authority shall notify Providers, in writing, that they are not required, as a condition of employment, to use their own personal vehicle.

### UNION RIGHTS

#### A. List and Information

- 1. The Public Authority shall provide the Union a list of the Providers. Such list shall include the names, addresses, telephone numbers, social security numbers, and hours authorized and hours paid in the previous month. The list shall be provided on a monthly basis and in an agreed upon computer format.
- 2. The Union recognizes that prior to distribution of social security numbers, the Public Authority must first amend its contract with the County to provide Providers' social security numbers, and that such contract amendment shall include a requirement that the Union fully indemnify the County as provided in subsection 3, below.
- 3. The Union shall defend, indemnify, save, protect and hold harmless the Public Authority and the County 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 the Providers' names, social security numbers, hours authorized and hours paid, addresses and phone numbers.
- 4. The Union shall limit its use of Providers' social security numbers to the exclusive purpose of obtaining dues deductions as required by the Union's wage assignment agreement with the State Controller's Office.

#### B. Union Security

- 1. The Union agrees that it has a duty to provide fair and non-discriminatory representation to all Providers in the Unit regardless of whether they are members of the Union.

2. It shall be a condition of employment that all Providers covered by the MOU shall become and remain members of the Union in good standing or pay a fair share agency fee. Membership in good standing shall mean that the Provider pays the regular periodic dues as a condition of acquiring or retaining membership in the Union. An agency fee is the minimum regular periodic fee required of non-members as their fair share cost of representation, subject to the limitations and protections of applicable law. The dues or fees shall be deducted from the Providers' paycheck on a monthly basis following completion of thirty (30) calendar days of employment. For Providers employed as of the date of adoption of the MOU, the obligation to pay Union dues or agency fees shall commence with the first full payroll period following final adoption of the MOU.
3. Any Provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting unions, shall not be required to join or financially support the Union. Such Providers shall, as a condition of continued employment and in lieu of periodic dues or agency fees, pay sums equal to said amounts to one of the following organizations selected from the County's employee Combined Giving Campaign list: Inland Hospice Association; Desert AIDS Project; or First Steps Child Development Center, Inc. In order to make such an objection, a Provider must execute a written statement that the Provider is a member of a bona fide religion, body or sect that has historically held a conscientious objection to joining or financially supporting unions, and must also present verification to the Union and the Public Authority of active membership in that religion, body or sect. Charitable contributions will be by payroll deduction only, and are subject to state payroll deduction practices and limitations. Upon request, the Union shall provide proof of distribution of charitable contributions on a monthly basis to the Provider and the Public Authority.
4. 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.
5. Annually, the Union shall provide the Executive Director with copies of the financial report as required by law.
6. The Union shall defend, indemnify, save, protect and hold harmless the Public Authority and its Board, directors, officers and employees from any and all claims, judgments, costs and liabilities for any damages and/or injury arising from the enforcement of this union security provision.
7. When an individual Provider's earnings for a calendar month, after required federal and state deductions are made, are insufficient to cover the amount of dues or agency shop fees, no dues payment or agency shop fee will be withheld for that calendar month.
8. When an individual Provider is in a non-paid status for an entire calendar month, no dues payment or agency shop fee will be withheld for that calendar month. Further, no withholding will be made to cover that calendar month from future earnings.
9. All required federal and state deductions shall have priority over Union dues and agency shop fees.

C. Official Representatives

At the beginning of the term of the MOU, the Union shall notify the Public Authority of the names of the Union's field representatives and shop stewards. The Union shall notify the Public Authority of any changes to the list as they occur. The representatives and stewards shall not be recognized by the Public Authority until such list or changes are received by the Public Authority.

## WAGES

- A. The wages of Providers shall be \$9.25 per hour during the term of this Agreement, unless reduced as otherwise permitted in this Agreement.
- B. The parties shall re-open negotiations regarding wages in the month of June, 2014. The Union shall provide written notice prior to June 1, 2014 of its intent to negotiate and to set dates to meet for bargaining.
- C. Continuation of this wage rate is subject to continuation of state and federal funding participation ratios at or above levels provided for under current law; and continuing appropriations by the County Board of Supervisors each fiscal year thereafter. Upon receipt of notice of a reduction in maximum wage rate below any amount as listed in the schedule above by either the state or federal government, the Public Authority shall forthwith notify the Union and shall take action to decrease wages of Providers to the maximum wage rate of both state and federal funding effective the date the funding is reduced.
- D. It is recognized and agreed that it is in the discretion of the County Board of Supervisors to increase or to not increase appropriations and any action of the Board of Directors for the Public Authority is not binding on the County Board of Supervisors acting on behalf of the separate governmental entity, County.
- E. It is recognized and agreed that the County is not a party to the MOU and is under no obligation to increase appropriations.
- F. Union agrees that it will not legally challenge any appropriation decision of the County Board of Supervisors and that any action of the Board of Supervisors is not a grievance, unfair labor practice or breach of this labor contract.

APPENDIX A

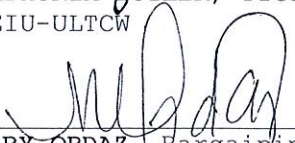
This Memorandum of Understanding is subject to approval by the Board of Directors. The parties hereto agree to perform whatever acts are necessary, both jointly and separately, to urge the Board to approve and enforce this Memorandum of Understanding.

Following approval of this Memorandum of Understanding by the Board, its terms and conditions shall be implemented according to the terms and conditions contained herein as well as by San Bernardino County Code, Section 12.4201 et seq., California Welfare and Institutions Code Section 12300 et seq., or other appropriate lawful action.

DATED: July 9, 2013

FOR SEIU UNITED LONG TERM CARE WORKERS  
LOCAL 6434


  
LAPHONZA BUTLER, President  
SEIU-ULTCW

  
MARY ORDAZ, Bargaining Committee Member  
SEIU-ULTCW

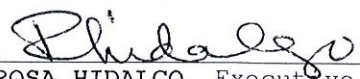
  
ENRIQUE CAMACHO, Bargaining Committee Member  
SEIU-ULTCW

  
MARIA LUISA CALOCA, Bargaining Committee Member  
SEIU-ULTCW

FOR SAN BERNARDINO COUNTY PUBLIC  
AUTHORITY FOR IHSS

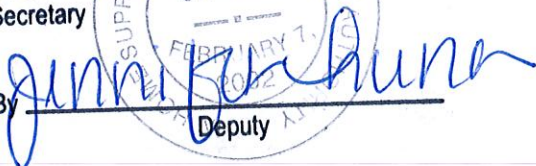
  
MARK DE BOER, Chief Negotiator  
Public Authority

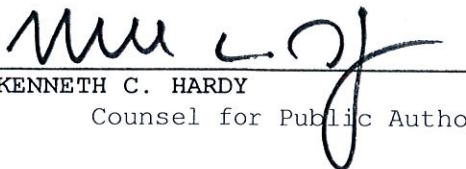
  
JANICE RUTHERFORD, Chair, Board of Directors  
Public Authority

  
ROSA HIDALGO, Executive Director  
Public Authority

APPROVED AS TO LEGAL FORM:

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LAURA H. WELCH  
Secretary

By   
Deputy

  
KENNETH C. HARDY  
Counsel for Public Authority



## APPENDIX B

1. The UHW Trust proposal of \$426.00 per member per month for the Kaiser \$1,000 Hospital only Deductible HMO plan is based on census data (age, gender and zip code) and the price will be in effect from October 1, 2013 through July 31, 2014;
2. The Trust will coordinate with Kaiser Field Services (Southern California) and Public Authority and ULTCW to design a model program (based on learning from Northern Cal and Oregon) for Kaiser to reach out to Homecare Providers and orient them to Kaiser Total Health Program and how to use this plan cost effectively. The Outreach efforts will be concurrent with the sign ups into the plan for the eligible members;
3. The first renewal increase or change in premium (August 1, 2014) will be developed based on the average increase offered from Kaiser Permanente to the UHW Trust for the Southern California Groups. (Description of Groups Attached).

## SCHEDULE A

### PREMIUM REFUND CALCULATIONS – SYMETRA UMBRELLA PLAN

The umbrella policy is a self funded plan and as such the funding is a suggested amount by Symetra. The suggested funding is what the re-insurance is based upon, but as previously mentioned it is an estimate of the expected claims. When claims are lower than expected, this leaves a reserve in the account, which is what has happened in San Bernardino IHSS PA. Symetra is bound by law to pay all run-out claims, however, at this point we can only estimate the amount of reserves that will remain once the umbrella plan can be closed. The umbrella plan will need to stay open with appropriate funding for one year past the coverage end date of June 30, 2013, to allow for claims to be filed for services provided on June 30, 2013 or prior.

Date Range	Funding Factor*	Total Funding	% of Paid Claims	Fund Balance
April 1, 2010 – June 30, 2011	\$83.50	\$1,237,720	88%	\$148,526
July 1, 2011 – June 30, 2012	\$126.40	\$1,642,847	83%	\$279,284
July 1, 2012 – May 31, 2013**	120.60	\$1,362,297	75%**	\$340,574
			Total	\$768,385

\* Amount put in per person per month

\*\* Not a complete year estimate

The umbrella policy has approximately \$768,385 balance as of May 2013. Of this amount, approximately \$400,000 will be released to pay \$30.00 monthly per covered Provider towards the health premium, while \$368,386 of the funds has to remain in the account for a period of 12 months to cover service claims.

**SCHEDULE B  
SAMPLE RUN-OUT**

	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Total
<b>\$60/\$30(Umbrella)</b>														
Covered IP's	1096	1080	1033	1050	1050	1050	1050	1050	1050	1032	1016	1002	986	
Monthly Cost for Benefits w/\$60	\$278,384	\$274,320	\$262,382	\$384,300	\$384,300	\$384,300	\$384,300	\$384,300	\$384,300	\$377,712	\$371,856	\$366,732	\$360,876	\$4,598,062
Current Contributed From County	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$676,000
County Share Needed	\$43,428	\$42,794	\$40,932	\$59,951	\$59,951	\$59,951	\$59,951	\$59,951	\$59,951	\$58,923	\$58,010	\$57,210	\$56,297	\$717,298
County Share Needed Minus Current Share	-\$8,572	-\$9,206	-\$11,068	\$7,951	\$7,951	\$7,951	\$7,951	\$7,951	\$7,951	\$6,923	\$6,010	\$5,210	\$4,297	\$41,298
Umbrella \$30 Contribution	\$0	\$0	\$0	\$31,500	\$31,500	\$31,500	\$31,500	\$31,500	\$31,500	\$30,960	\$30,480	\$30,060	\$29,580	\$310,080
Monthly IP removals/Add Ons	16	16	47	29	18	15	17	18	16	18	16	14	16	256
Waiting List Term 80hrs	28	28	28	28	28	28	28	28	28	28	28	28	28	
Waiting List	531	503	475	430	384	341	296	250	206	178	150	122	94	
<b>\$60/\$30(Umbrella) Cont. w/8% increase</b>														
Aug-14	970	954	940	924	908									Grand Total
Covered IP's	\$388,000	\$381,600	\$376,000	\$369,600	\$363,200	\$1,878,400								\$6,476,462
Monthly Cost for Benefits w/\$60 (\$460)	\$52,000	\$52,000	\$52,000	\$52,000	\$52,000	\$260,000								\$936,000
Current Contributed From County	\$60,528	\$59,530	\$58,656	\$57,658	\$56,659	\$293,030								\$1,010,328
County Share Needed	\$8,528	\$7,530	\$6,656	\$5,658	\$4,659	\$33,030								\$74,328
Umbrella \$30 Contribution	\$29,100	\$0	\$0	\$0	\$0	\$29,100								\$339,180
Monthly IP removals/Add Ons	16	16	14	16	16									Total Umbrella
Waiting List Term 80 hrs	28	28	28	28	28									\$413,508
Waiting List	66	38	10	0	0									