

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS  
OF IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY  
AND RECORD OF ACTION**

August 22, 2023

**FROM**

**MYETTE CHRISTIAN, Acting Executive Director, In-Home Supportive Services Public Authority**

**SUBJECT**

Contract with the Health Care Employees/Employer Dental and Medical Trust Fund for Health Insurance

**RECOMMENDATION(S)**

Acting as the governing body of the In-Home Supportive Services Public Authority, approve **Contract No. 23-875** with the Health Care Employees/Employer Dental and Medical Trust Fund, including non-standard terms, to provide health insurance coverage for enrolled In-Home Supportive Services Public Authority Care Providers, at a total cost not to exceed \$99,734,135, retroactively effective July 1, 2023 through June 30, 2028.

(Presenter: Myette Christian, Acting Executive Director, 891-9108)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Create, Maintain and Grow Jobs and Economic Value in the County.**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

This item does not impact Discretionary General Funding (Net County Cost). The funding required of the In-Home Supportive Services (IHSS) Public Authority (PA) for IHSS PA Care Provider health insurance coverage is based on the negotiated rate of \$0.32 per provider hour worked. The total amount of this contract will not exceed \$99,734,135 and will be funded 50% (\$49,867,068) with federal funds, 33.5% (\$33,410,935) with State Funds, and 16.5% (\$16,456,132) with Social Services Realignment funds. Adequate appropriation is included in the In-Home Supportive Services Public Authority's (IHSS PA) 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

The recommended contract will allow IHSS PA to continue to provide approximately 2,200 enrolled IHSS PA Care Providers (Care Providers) with health care insurance coverage through the Health Care Employees/Employer Dental and Medical Trust Fund (Trust Fund). The IHSS PA is deemed the employer of record for Care Providers for the limited purposes of collective bargaining. Pursuant to the Memorandum of Understanding between IHSS PA and Service Employees International Union (SEIU) Local 2015, IHSS PA provides health care insurance for enrolled Care Providers. Care Providers prepare meals, perform housekeeping tasks, and assist with the health and personal care of the elderly, blind, or disabled who are unable to remain in their homes without assistance, under the IHSS program.

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The recommended contract includes terms that differ from the standard IHSS PA contract and omits certain IHSS PA/County standard contract terms. Negotiations with the Trust Fund resulted in non-standard terms in the contract. The non-standard and missing terms include the following:

1. IHSS PA will indemnify, defend, and hold the Trust Fund, and its authorized officers, employees, agents, and volunteers, harmless for any and all claims, actions, losses, damages and/or liability arising out of any negligent act or omission of IHSS PA in connection with this contract. The contract also contains standard language indemnifying IHSS PA.
  - The IHSS PA standard contract does not include any indemnification or defense by IHSS PA of a contractor.
  - Potential Impact: By agreeing to indemnify the Trust Fund, IHSS PA could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against IHSS PA, time limited, or expense limited could be brought against the Trust Fund without such limitations and IHSS PA would be responsible to defend and reimburse the Trust Fund for costs, expenses, and damages, which could exceed the total contract amount.
2. Governing law would be federal law where California law is preempted by federal law.
  - The IHSS PA standard contract requires California governing law.
  - Potential Impact: This contract provides that it shall be governed by and construed according to the laws of the State of California, except insofar as it is preempted by federal law. Where California law is preempted by federal law, any questions, issues or claims arising under this contract will be interpreted and governed pursuant to applicable federal law and will require IHSS PA to hire outside counsel competent to advise on applicable federal law, which may result in fees that exceed the total contract amount.
3. Venue would be in federal Court seated in Los Angeles, California where the contract is governed by federal law.
  - The IHSS PA standard contract requires venue for disputes in Superior Court of California, County of San Bernardino, San Bernardino District.
  - Potential Impact: This contract provides that insofar as contractor is governed by federal law, and most specifically by the Employee Retirement Income Security Act of 1974 as amended, in appropriate matters jurisdiction shall be in the federal court seated in Los Angeles, California. Having a venue in federal court in Los Angeles County, California may result in additional expenses that exceed the amount of the contract.
4. The contract does not require that all insurance policies contain additional endorsements naming IHSS PA and San Bernardino County as additional named insured with respect to liabilities arising out of the performance of service under the contract or prohibiting limits on the scope of coverage.
  - The IHSS PA standard contract requires that all policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies contain additional endorsements naming IHSS PA and the County as additional named insured with respect to liabilities arising out of the performance of services and that

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- such endorsements not limit the scope of coverage for IHSS PA or the County to vicarious liability.
- Potential Impact: Failure to include the standard language naming IHSS PA and San Bernardino County as additional insured means that IHSS PA and County have no assurance that the Trust Fund will be financially responsible for claims that may arise out of the performance of services under this contract, which could result in expenses to IHSS PA that exceed the total contract amount.
5. The contract does not include the IHSS PA's standard requirements for waiver of subrogation rights.
    - The IHSS PA standard contract requires that contractors require the carriers of required coverages to waive all rights of subrogation against IHSS PA and/or the County and that all general or auto liability insurance coverage provided not prohibit the contractor and contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The standard contract terms also require contractors to waive all rights of subrogation against IHSS PA and/or the County.
    - Potential Impact: No waiver of subrogation may allow the Trust Fund's insurer to bring suit against IHSS PA, which could result in expenses that exceed the total contract amount.
  6. The contract does not require that the Trust Fund provide to IHSS PA proof of insurance coverage.
    - The IHSS PA standard contract requires proof of coverage by requiring contractors to furnish Certificates of Insurance to IHSS PA, evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required to be provided prior to the commencement services, and that the certificates provide that such insurance will not be terminated or expire without 30 days written notice to IHSS PA, and that the Trust Fund must maintain such insurance from the time it commences performance of services until the completion of services. The standard contract would also require that within 15 days of commencement of the contract, the Trust Fund furnish a copy of the declaration page for all applicable policies and provide complete certified copies of the policies and endorsements upon request.
    - Potential Impact: By agreeing not to include the standard proof of coverage requirements, IHSS PA will have no means of receiving from the Trust Fund Certificates of Insurance which would provide evidence that the Contractor has obtained the insurance coverage specified in the contract at the time the contract is executed, and additional endorsements, as required prior to commencement of performance of services under the contract. As a result, IHSS PA and the County will have no assurance that the Trust Fund will be financially responsible for claims that may arise out of the performance of services under this contract, which could result in expenses to IHSS PA that exceed the total contract amount.
  7. The contract does not provide for a periodic review of insurance requirements by IHSS PA or for the Director of Risk Management and Executive Director of IHSS PA to reduce, waive, or suspend any insurance requirements when insurance is not available, unreasonably priced or not needed to protect IHSS PA or the County. Additionally, this contract does not allow the Director of Risk Management or Executive Director to change the insurance requirements to require additional types of insurance or higher coverage limits when it is determined that additional types of insurance coverages or coverage limits become reasonably priced or available.

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- The IHSS PA standard contract provides that insurance requirements are subject to period review by IHSS PA, that the Director of Risk Management or Executive Director are authorized to reduce, waive, or suspend any insurance requirements when insurance is not available, unreasonably priced or not needed to protect IHSS PA or the County. IHSS PA also provides that the Director of Risk Management or Executive Director are authorized, but not required, to change the insurance requirements to require additional types of insurance or higher coverage limits when they determine that additional types of insurance coverages or coverage limits become reasonably priced or available.
  - Potential Impact: By agreeing not to include the standard insurance review requirements, IHSS PA would be limiting its ability to conduct periodic reviews of insurance requirements under this contract and change or add additional types of insurance coverages if those coverages become reasonably priced or available.
8. This contract does not require the Trust Fund to maintain Professional Liability Insurance coverage.
- The IHSS PA standard contract requires contractors to maintain Professional Liability Insurance with limits of not less than \$1,000,000 per claim and \$2,000,000 aggregate limits.
  - Potential Impact: By agreeing not to include the standard Professional Liability Coverage, IHSS PA has no assurance that the Trust Fund will be financially responsible for claims that may arise under this contract which would otherwise be covered. This could result in expenses to IHSS PA that exceed the total contract amount.
9. This contract does not require the Trust Fund to maintain Directors and Officers Insurance coverage.
- The IHSS PA standard contract requires contractors to maintain Directors and Officers Insurance coverage with limits of not less than \$1,000,000.
  - Potential Impact: By agreeing not to include the standard Directors and Officers Insurance coverage, IHSS PA has no assurance that the Trust Fund will be financially responsible for claims that may arise under this contract which would otherwise be covered by Directors and Officers Insurance coverage. This could result in expenses to IHSS PA that exceed the total contract amount.

IHSS PA recommends retroactive approval of the contract, including non-standard terms, in order to continue providing Care Providers with health insurance coverage. The contract term is effective July 1, 2023 through June 30, 2028, but may be terminated earlier by either party without cause upon 60 days' written notice, or 30 days' written notice should the Trust Fund fail to provide health insurance coverage pursuant to the contract.

On June 20, 2023, IHSS PA presented the completed contract to the Trust Fund for final approval to be brought before the Board of Directors on June 27, 2023. The Trust Fund required 30 days for adequate fiscal and legal review. On July 20, 2023, IHSS PA was notified that final agreement with terms was reached by Trust Fund.

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**PROCUREMENT**

As a result of consultation and negotiations with the SEIU Local 2015, it was determined that the Trust Fund, the current provider, has strong experience in delivering these services to the majority of IHSS agencies across the State, in addition to a history with the County IHSS PA. In addition, Trust Fund is named as the recommended provider for these services in the current SEIU Local 2015 MOU. IHSS PA recommends that, based on this experience and history, the Trust Fund should remain the provider for IHSS PA. The Purchasing Department supports this non-competitive procurement for the provision of Care Provider health care insurance coverage through the Trust Fund.

**REVIEW BY OTHERS**

This item has been reviewed by Human Services Contracts (Patty Steven, Contract Manager, 388-0241) on April 19, 2023; County Counsel (Jose Mendoza, Deputy County Counsel, 387-5455) on July 17, 2023; Risk Management (Victor Tordesillas, Director, 386-8623) on July 14, 2023; Purchasing (Michelle Churchill, Supervising Buyer, 387-2070) on May 31, 2023; Finance (Paul Garcia, Administrative Analyst, 386-8392) on August 2, 2023; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on June 6, 2023.

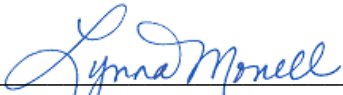
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Record of Action of the Board of Directors  
In-Home Supportive Services Public Authority

**APPROVED (CONSENT CALENDAR)**

Moved: Joe Baca, Jr. Seconded: Curt Hagman  
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.  
Absent: Col. Paul Cook (Ret.)

Lynna Monell, SECRETARY

BY   
DATED: August 22, 2023



cc: HS - Younger w/ agree  
Contractor c/o HS w/ agree  
File w/ agree

JLL 08/23/2023