

Kern County

Agt. # 208-2024

MEMORANDUM OF UNDERSTANDING

May 21, 2024 – June 30, 2027

COUNTY OF KERN
IN-HOME SUPPORTIVE SERVICES
PUBLIC AUTHORITY

AND

UNITED DOMESTIC WORKERS OF AMERICA

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PREAMBLE

This Memorandum of Understanding, hereinafter referred to as "MOU", entered into by the County of Kern In-Home Supportive Services Public Authority, hereinafter referred to as the "Public Authority" or "PA", and the United Domestic Workers of America, AFSCME Local 3930, AFL-CIO, hereinafter referred to as the "UDWA" or "Union", has as its purpose the setting forth of the full and entire understanding of the parties regarding the matters set forth herein, reached as the result of good faith negotiations regarding the wages, benefits, and applicable terms and conditions of employment of the IHSS Providers covered hereby.

The parties reaffirm the unique nature of the work and the special relationship between the Consumer and the IHSS Provider, and that Consumers of IHSS retain the sole and undisputed right to hire providers of their choice, remove providers from their service at will, determine in advance and under all circumstances who can and cannot enter their home, supervise, and direct the work of providers providing services to them within the scope of authorized services. The Public Authority has no authority to affect or require the way in which services are delivered, the location or schedule by which services will be delivered, nor the authority to affect issues of a disciplinary nature.

The parties affirm that pursuant to the California Department of Social Services Manual of Policies and Procedures (CDSS MPP), the County is responsible for correctly determining eligibility and need of IHSS, and assisting recipients as needed in establishing their eligibility and need for service. (CDSS MPP Division 30-760.2.) The designated County department shall not delegate the responsibility to do need assessments to any other agency or organization. (CDSS MPP Division 30-761.23.) The Public Authority is not responsible for correctly determining eligibility and need for IHSS, or performing needs assessments.

Pursuant to Government Code section 3505.1, this MOU is jointly submitted and recommended for approval, and implementation in accordance with its terms, to the governing board of the Public Authority.

ARTICLE I - RECOGNITION

Section 1. Full Understanding, Modifications, Waiver

This MOU sets forth the full and entire understanding of the parties regarding the specific matters set forth herein and any other prior or existing oral or written understandings or agreements by the parties, whether formal or informal, regarding any such matters are hereby superseded or terminated in their entirety.

No provision or terms of this agreement may be amended, modified, altered or waived except by written agreement between the parties hereto.

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent for any further waiver of any such breach or conditions.

In the event that any Article, Section or portion of this Agreement is declared invalid by a court of competent jurisdiction or is in contravention of any applicable law the remaining provisions of this Agreement shall not be invalidated thereby and shall remain in full force and effect.

Except as specifically provided herein, it is agreed and understood that, during the life of this agreement, each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required to negotiate, with respect to any subject or matter covered herein, or any proposal made during the negotiations culminating in this MOU.

Section 2. Union Recognition

The Kern County IHSS Public Authority recognizes the United Domestic Workers of America, AFSCME Local 3930, AFL-CIO, as the exclusive representative of the In-Home Supportive Services Individual Providers covered by this MOU.

Section 3. Authorized Agents

For purposes of administering the terms and provisions of this MOU:

- A. The Public Authority's principal authorized agent shall be the Public Authority Executive Director, or his duly authorized representative (Address: 5357 Truxtun Avenue, Bakersfield, California 93309; Telephone (661) 868-1005), except where a particular County representative is specifically designated in connection with the performance of a specified function or obligation set forth herein.
- B. The Union's principal authorized agent shall be the Regional Director of **UDWA**, or his duly authorized representative (Address: 5558 California St. Suite 310, Bakersfield, CA 93309; Telephone (661) 321-0239).

ARTICLE II - GENERAL PROVISIONS

Section 1. 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, marital status, citizenship status (the parties understand that the Public Authority must comply with all applicable immigration laws and regulations, including, but not limited to the verification of right to work in the United States and required documentation to the extent required by law), or any other legally protected class or union activity against any IHSS Provider by the Public Authority or the Union.

Section 2. Liability of the Public Authority

The Public Authority is an independent legal entity, separate and apart from the County of Kern. Any obligation of the Public Authority, whether statutory, contractual or otherwise, shall be the obligation solely of the Public Authority and shall not be the obligation of the County of Kern. The County of Kern shall be immune from any liability resulting from its implementation of chapter 2.140 of the County of Kern Ordinance Code, and/or administration of the In-Home Supportive Services program pursuant to Welfare and Institutions Code section 12301.5.

Section 3. Direct Deposit

The Public Authority will reasonably cooperate with the Union to inform the providers of the availability of direct deposit of IHSS providers pay checks. The parties agree that direct deposit is optional, and that the Public Authority will not incur additional costs related to direct deposit or in complying with this section.

Section 4. Dues Deduction

- A. The Union has the exclusive privilege of dues deduction or agency fee deduction (if applicable) for all IHSS Providers in the bargaining unit covered by this agreement. Union dues shall be deducted by the State, as authorized by the Union, from all bargaining unit members and from all bargaining unit wages and other earned compensation, including "lump sum" and/or retroactive pay. The Public Authority has no authority to deduct dues.
- B. The Public Authority shall provide on a monthly basis, information that is relevant to the Union's representation; information that shall include: provider name, social security number, full address with zip code, phone number, work period/pay period, hour paid per month, the gross amount of pay received. Notwithstanding the forgoing the Public Authority shall not be required to provide any information that is not accessible through the Case Management Information and Payrolling

System (CMIPS) or through the Public Authority's own records systems. This information shall be provided in electronic format, by a means mutually agreeable to both parties.

- C. The Union shall indemnify, defend, and hold harmless the Public Authority, the County of Kern, and the State of California and their respective governing bodies, officers, agents, and employees, against any and all claims, demands, suits, orders, or judgments, or any other forms of liability that arise out of this section, or any action taken or not taken by the Public Authority or County of Kern under this section. This includes, but is not limited to, the Public Authority's or the County of Kern's attorney fees and costs.

Section 5: Payroll

The Public Authority and the Union will utilize the Labor Management Relations Committee to identify causes and solutions to on-going problems resulting in late, lost, or inaccurate paychecks and related payroll issues.

When the causes of problems are outside the direct control of the Public Authority, as is commonly the case, the Public Authority and the Union agree to bring the problems to the attention of the responsible agencies.

Section 6: Languages

The Public Authority will adhere to any applicable federal requirements relating to capability to communicate with providers.

ARTICLE III-RIGHTS OF PARTIES

Section 1. No Strike

UDWA shall not, at any time, engage in, sanction, or support any strike, slowdown, or stoppage of work, or refusal to perform customary duties.

Section 2. Bulletin Boards

The Public Authority agrees that the Union may provide a standard bulletin board (not to exceed 24" X 36") for placement adjacent to existing Public Authority bulletin boards. The Employer-Employee Relations Resolution provisions govern posting of notices. Shop stewards may post Union communications dealing with official Union business on Public Authority approved bulletin boards. A copy of each communication shall be filed with the County Administrative Office and the affected department head(s). The Union agrees not to post any notices that concern job actions or the political activities of the Union. Failure to adhere to the use of the bulletin board will result in its revocation as a privilege extended to the Union by the Public Authority.

Section 3. Union Access to Public Authority Buildings

The Public Authority agrees to admit to its Kern County offices, the authorized representative(s) of the Union, for purposes of conducting appropriate, legitimate Union business related to enforcing this MOU. The Union shall notify the Public Authority of the name of its authorized representatives upon ratification of this MOU.

Section 4. Union Stewards

The Public Authority recognizes UDWA's Kern County union stewards.

The Public Authority agrees that the Union may, in future contract negotiations, bring a plan to compensate stewards for time spent in administering the MOU. The Union understands that this plan to consider future discussions is not a commitment to agree; furthermore, the Union understands that any time a steward spends performing union business shall not be considered as being within the consumer's allotted service hours.

ARTICLE IV - LABOR MANAGEMENT RELATIONS COMMITTEE

Section 1. Recognition

The Public Authority and the Union recognize the importance of maintaining an effective working relationship.

Section 2. Purpose

The Public Authority and the Union have established a Labor-Management Relations Committee. The purpose of the Committee is to discuss matters of mutual interest relating to the IHSS Program, and to take mutually agreed upon action relating to those issues. Topics to be considered shall be agreed to by the parties; however, the committee shall not engage in negotiations or consider matters properly the subject of a grievance. The existence of the Labor-Management Relations Committee shall not, in any way, substitute for or interfere with the responsibility of the parties to meet and confer in good faith.

- (a) Each Party shall select their own participants for the Committee. However, either party may request the removal of a participant from the other group if that participant becomes too disruptive to the work of the committee.
- (b) The Committee shall be composed of up to four (4) Union representatives and up to four (4) Public Authority representatives, or their designees.
- (c) The Committee chair will alternate between the two parties. The Chair is responsible for preparing the mutually agreed upon agenda.
- (d) The Committee may meet as frequently as agreed to by the parties, but shall convene no less than quarterly.
- (e) Each Party will be responsible for maintaining their own record of the proceedings.
- (f) Union Committee members serve on a voluntary basis and will receive no remuneration from the Public Authority for their participation.
- (g) The Labor-Management Relations Committee shall be dissolved upon expiration of this MOU, and shall be reviewed during labor negotiations for the successor MOU.

ARTICLE V - GRIEVANCE AND ARBITRATION PROCEDURE

The parties agree that under the statute and Ordinance establishing the Public Authority, IHSS Consumers have the sole and undisputed right to hire providers of their choice, remove providers from their service at will, supervise, and direct the work of providers providing services to them within the scope of authorized services. The Public Authority has no authority to affect or require the way in which services are delivered, the location or schedule by which services will be delivered, nor the authority to affect issues of a disciplinary nature.

The Grievance Procedure shall not apply to matters concerning the relationship between the IHSS Consumer and the IHSS Provider described above, any matter over which the Public Authority has no jurisdiction, any matter regarding Consumer rights, or any matter regarding the County of Kem. Participation in the grievance process in any capacity shall be solely on the IHSS Provider's time, and shall not be considered as paid time.

Section 1. Definitions

- A. A grievance is a dispute that involves the interpretation or application of a provision of this Agreement excluding, however, matters over which the Public Authority has no jurisdiction, consumer rights or regarding the County of Kem. The Union may provide representation at any stage of the grievance process.
- B. Provider participation in the grievance procedure in any capacity shall be solely on the provider's own time, and shall not be treated as being within any Consumer's allocated service hours, or as paid time.
- C. Grievance resolution must be initiated within twenty (20) days of the incident or occurrence that gives rise to the grievance and shall be processed in the following manner.
- D. As used herein, "day" is defined as a day exclusive of Saturday, Sunday, or County holidays.

Information Grievance Disposition

Within twenty (20) days from the occurrence of the issue that gave rise to the grievance, any IHSS Provider and/or their Union representative who believes that a provision of this agreement has been violated will promptly and informally meet to discuss the grievance with the Public Authority designee. The Public Authority designee will respond to the grievance within five (5) days of the meeting. If the IHSS Provider is not satisfied with the decision, the IHSS Provider may utilize the formal grievance procedure.

Grievance forms are available in the Public Authority Office for this purpose.

Formal Grievance Procedure

Step 1: The grievance form and any supporting documents shall be delivered to the Public Authority representative no later than ten (10) days from receipt of the Public Authority's designee response, or within fifteen (15) days from the informal meeting if no decision was rendered. Any IHSS Provider and/or their Union Representative shall initiate the formal grievance procedure, in writing on the grievance form, stating the nature of the grievance and the desired solution, together with any supporting documents.

The Public Authority designee shall hold a formal meeting with the IHSS Provider within ten (10) days of receipt of the formal grievance to review the facts, gather all supporting documents, discuss the grievance and desired solution, and discuss the proper appeal procedure.

The Public Authority's designee will issue a written decision on the original grievance form within five (5) days of the formal meeting.

Step 2: If the IHSS Provider feels the Public Authority's designee has not resolved the grievance, the IHSS Provider may appeal to the Public Authority Executive Director. All supporting documents and evidence relative to the grievance shall be included with the appeal and made known to both parties. The Public Authority Executive Director shall schedule a formal meeting with the IHSS Provider and his/her representative, if requested, within ten (10) days from the date of the appeal receipt, and attempt to settle the grievance. The formal meeting shall occur within a reasonable time following the receipt of the appeal. A decision shall be made, in writing, on the original grievance form to the IHSS Provider by the Public Authority Executive Director within ten (10) days from the close of the formal meeting.

Step 3: If the IHSS Provider is not satisfied with the decision of the Public Authority Executive Director, he may submit the grievance to the designated bargaining agent of the Public Authority, as defined in Kern County Ordinance Number G-6877, section 2.140.150, within five (5) days from receipt of the Public Authority Executive Director's decision. In his appeal to the bargaining agent, all supporting documents must be attached to the grievance form, together with the reason for appeal and remedy requested. The bargaining agent or his/her designee will review the original grievance, all supporting documents, the Public Authority Executive Director's response, and the remedy requested, and issue a written decision within ten (10) days of receipt of the grievance.

If the IHSS Provider is not satisfied with the decision of the bargaining agent or his/her designee, the IHSS Provider may, within thirty (30) days of receipt of the decision, submit the grievance to arbitration by written request to the bargaining agent.

If the grievance is submitted to arbitration, the grievant, his/her representative, if any, and the bargaining agent or his/her designee, shall, within five (5) days of receipt of the grievant's request, set a date for a meeting to:

1. Attempt to settle the grievance.
2. Agree to any stipulations.
3. Agree upon the issue statement. (Issue statement will reflect the issue as presented in the original grievance as written on the grievance form.)
4. Select an impartial arbitrator.

Selection of the Advisory Arbitrator

If the parties fail to agree on an arbitrator, a list of five (5) neutrals will be jointly requested from the Federal Mediation Service, the State Mediation and Conciliation Service, or the American Arbitrator's Association. The agency will be mutually selected.

The parties shall select a neutral by alternately striking a name from the list, with the remaining name being the selected neutral. Should both parties agree that the first list submitted is unsatisfactory, the parties may request a second list.

The arbitrator will not have the power to add to, subtract from, or otherwise modify the provision of any MOU, Rules, Regulations, or Ordinances of the Public Authority or the County of Kern.

The arbitrator will confine him/herself to the issue submitted.

The arbitrator shall be requested to submit his/her decision within thirty (30) days from the close of the hearing.

The arbitrator's decision is binding upon approval by the governing board of the Public Authority. The governing board shall formally act upon the arbitrator's decision within thirty (30) days of reviewing the decision.

In the event that the Governing Body does not approve of the arbitrator's decision, the Governing Body shall provide written findings.

The cost of the arbitrator shall be borne equally between the Public Authority and the grievant. Each party shall bear its own costs relating to arbitration including, but not limited to, witness fees, transcriptions, and attorney fees.

ARTICLE VI- WAGES

Section 1. Wages:

Wage supplements, solely for the duration of the agreement, in the amount \$.60 (sixty cents) above the minimum wage effective July 1, 2024, or upon approval by the State if later than July 1, 2024. An additional wage supplement of \$.20 (twenty cents) will be effective July 1, 2025 (for a total of \$.80) and an additional wage supplement of \$.20 will be effective on July 1, 2026 (for a total of \$1.00).

ARTICLE VII- HEALTH BENEFITS

Section 1. Health Benefit Contribution Rate

The Public Authority shall have no responsibility for health benefits.

The Union shall indemnify, defend, and hold harmless the Public Authority and the County of Kern, and their respective governing bodies, officers, agents, and employees, against any and all claims, demands, suits, orders, or judgments, or any other forms of liability that arise out of this section or the provision, or failure to provide, health benefits to providers. This includes, but is not limited to, the Public Authority's or the County of Kern's attorney fees and costs.

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ARTICLE VIII - AGENCY SHOP

Section I. Agency Shop:

- A. Agency Shop as used in this Article means an organizational security arrangement as defined in Government Code Section 3502.5 and applicable law.
- B. Unless the Provider qualifies for an exemption under Section H below, each Provider shall be required to either become and remain a member of the Union and pay Union dues or pay an agency fee to the Union in an amount that does not exceed that which may be lawfully collected.
- C. As provided in Article II, Section 4, union dues or fees shall be deducted from the Provider's paycheck on a monthly basis starting the first day of the month following completion of thirty (30) days of employment, subject to the limitations and practices of the State Controller's payroll system.
- D. As to non-members objecting to the Union spending their agency fee on matters unrelated to collective bargaining and contract administration, the amount of the agency fee charged shall not reflect expenditures which the courts have determined to be non-chargeable, including political contributions to candidates and parties, members only benefits, charitable contributions and ideological expenditures and, to the extent prohibited by law, shall not reflect expenditures for certain aspects of lobbying, ballot measures, publications, organizing and litigation.
- E. The Union shall comply with applicable law regarding disclosure and allocation of its expenses, notice to Providers of their right to object, provision for agency fee payers to challenge the Union's determinations of amounts chargeable to the objecting non-members, and appropriate escrow provisions to hold contested amounts while the challenges are underway.
- F. The Union shall make available, at its expense, an expeditious administrative appeals procedure to unit members who object to the payment of any portion of the representation service fee. Such procedure shall provide for a prompt decision to be made by an impartial decision-maker jointly selected by the Union and the objecting Provider(s). A copy of such a procedure shall be made available by the Union to non-Union member Providers and the Public Authority.
- G. The foregoing description of permissible agency fee charges and related procedures is included herein for informational purposes and is not intended to change applicable law.
- H. Exemption from Agency Fee Obligations
 - I. Religious/Conscientious Objections - A Provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The Provider must present a written declaration to the Union, with a copy to the Public Authority that he/she qualified for this exemption. The Provider will be required to pay agency shop fees to a nonreligious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, from the list mutually determined by the Public Authority and UDWA.
 - I. Leave Without Pay/Insufficient Earnings - 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 pay for agency fees. 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.
 - J. Rescission of Agency Shop - An agency shop provision may be rescinded pursuant to the procedures contained in Government Code Section 3502.5(d). Rescission elections shall be conducted by the SCMS using the same procedures utilized for the implementation election.

- K. The Union shall indemnify, defend, and hold harmless the Public Authority, the County of Kern, and the State of California and their respective governing bodies, officers, agents, and employees, against any and all claims, demands, suits, orders, or judgments, or any other forms of liability that arise out of this Article, or any action taken or not taken by the Public Authority or County of Kern under this Article. This includes, but is not limited to, the Public Authority's or the County of Kern's attorney fees and costs.

ARTICLE IX - REGISTRY

Pursuant to Welfare and Institutions Code section 12301.6, the Public Authority shall provide for assistance to Consumers in finding IHSS Providers through the establishment of a registry and establish a referral system under which IHSS Providers shall be referred to Consumers. Consumers of IHSS retain the sole and undisputed right to hire providers of their choice, remove providers from their service at will, determine in advance and under all circumstances who can and cannot enter their home, supervise, and direct the work of providers providing services to them within the scope of authorized services. The Public Authority has no authority to affect or require the way in which services are delivered, the location or schedule by which services will be delivered, nor the authority to affect issues of a disciplinary nature. Consumers may elect to receive services from IHSS Providers who are not referred to them by the Public Authority.

The sole purpose of the registry service provided by the Public Authority is to provide assistance to recipients in finding IHSS Providers, and the establishment of a referral system under which IHSS Providers shall be referred to recipients.

The parties agree that the "Exclusion From The Registry Policy" established by the Public Authority is outside the scope of this MOU.

ARTICLE X-TRAINING AND DEVELOPMENT

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 Labor-Management Relations Committee shall develop a joint plan to identify training opportunities of interest to IHSS providers available throughout the community.

a. Orientation

All new IHSS providers are required to attend an orientation if they desire to be included in the referral system by the Public Authority. Attending an orientation is not considered hours worked. The purpose of the orientation is to familiarize and instruct the new provider on the IHSS program, the correct way to complete and submit a timesheet for payroll purposes, and answer any administrative questions a provider may have.

b. Training

The Public Authority will reasonably attempt to identify training opportunities of interest to IHSS providers available throughout the community. Training will be voluntary and is not considered hours worked.

ARTICLE XI -TERM

This MOU between the Public Authority and United Domestic Workers of America is effective May 21, 2024, if approved by the Board of Supervisors, the governing body of the Public Authority, and expires June 30, 2027.

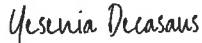
UNITED DOMESTIC WORKERS OF AMERICA:




Doug Moore
UDW Executive Director



Astrid Zuniga
UDW President



Yesenia DeCasaus
Assistant Director of Internal Operations



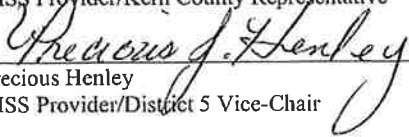
J.B. Afoh-Manin
Negotiator



Sandy Moreno
IHSS Provider/Union Representative



Sydney O'Connor
IHSS Provider/Kern County Representative



Precious Henley
IHSS Provider/District 5 Vice-Chair

COUNTY OF KERN:

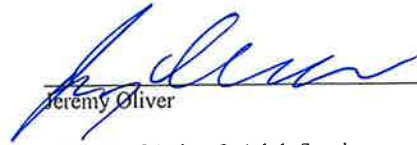


David Couch, Chairman
In-Home Supportive Services Public Authority



Tracey A. Eldridge

Chief Human Resources Officer



Jeremy Oliver

Director of Aging & Adult Services



Kate Zimmermann

Deputy County Counsel