

1 [Urging the Department of Social Services of the State of California to immediately withdraw
2 All County Letter No. 09-52 and remove the unlawful absolute ban preventing people with
3 previous felony or serious misdemeanor convictions from serving as homecare providers in
4 the In Home Supportive Services (IHSS) program.]

4 **Resolution urging the Department of Social Services to immediately reverse the policy**
5 **excluding a person with any felony conviction or serious misdemeanor from serving as**
6 **an IHSS independent homecare provider.**

7 WHEREAS, The integration mandate of the Americans with Disabilities Act and the
8 Supreme Court's 1999 Olmstead decision recognizes that the unnecessary segregation and
9 isolation of individuals with disabilities is a form of discrimination; and,

10 WHEREAS, The IHSS system was developed to ensure the right of everyone to remain
11 at home and part of their communities as long as they choose; and,

12 WHEREAS, One of the key tenets of the IHSS program is based on the consumer's
13 right to choose their own homecare provider including family members; and,

14 WHEREAS, The IHSS program provides critical in-home supportive services to more
15 than 460,000 Californians who are elderly or living with a disability, and 22,000 are residents
16 of San Francisco; and,

17 WHEREAS, These services, which include personal care (such as bathing, dressing
18 and toileting) and domestic services (such as meal preparation, laundry, and housecleaning)
19 allow recipients to remain living at home and avoid costly institutionalization; and,

20 WHEREAS, San Francisco's 18,000 IHSS workers provide these essential services
21 and, prior to ACL 09-52, those with prior felony or serious misdemeanor convictions were
22 allowed to serve as healthcare providers; and,

23 WHEREAS, Formerly incarcerated people, having paid their debt to society, should
24 share employment rights guaranteed to all workers and need not encounter obstacles to
25 obtaining gainful employment and positively contributing to society; and,

1 WHEREAS, State Legislation AB 19 mandates a criminal background check and
2 fingerprinting for all IHSS providers but does *not* enact a blanket ban excluding persons with
3 a felony or serious misdemeanor from being an IHSS provider; and,

4 WHEREAS, The California Department of Social Services All-County Letter (ACL) No.
5 09-52 details new IHSS enrollment requirements and *does* exclude anyone with a felony or a
6 serious misdemeanor from being an IHSS provider; and,

7 WHEREAS, ACL No. 09-52 contradicts measures established in 2005 by the California
8 legislature (Welfare and Institutions code section 12305.81 subd. (a)) that specify that a
9 person convicted of offenses against government health programs or child or elder abuse
10 were ineligible to serve as providers for 10 years, and that IHSS recipients could employ
11 persons as providers if they were not convicted of the above-mentioned offenses; and,

12 WHEREAS, ACL No. 09-52 is inconsistent with subsection (a) of federal statute 42
13 USC 1320a-7, that excludes people from being service providers *only* for specific job-related
14 offenses and makes it illegal to use absolute bars to employment based on conviction history
15 and subsection (c) (3) (B) which sets minimum time limits, rather than lifetime employment
16 bans; and,

17 WHEREAS, The above mentioned federal laws, based on Title VII of the Civil Rights
18 Act, 42, USC 2000e, are enforced by the Equal Employment Opportunity Commission
19 (EEOC) and EEOC recognized in its February 1987 Policy Statement the disproportionate
20 impact that consideration of conviction has on people of color; and,

21 WHEREAS, The EEOC requires employers to make individualized assessments to
22 counterbalance the discriminatory effect that disproportionate arrests and convictions have on
23 people of color; and,

24 WHEREAS, State policy regarding the certification of Certified Nurse Aides (CNA) and
25 Home Health Aides (HHA), Department of Health Services(DHS) requires applicants to

1 disclose prior misdemeanor and felony convictions and explain the circumstances of the
2 conviction and provide documentation of rehabilitation. The DHS considers the nature and
3 severity of the offense, subsequent acts, time elapsed since the acts or crimes took place,
4 compliance with court sanctions, and evidence of rehabilitation in determining eligibility for
5 certification; and,

6 WHEREAS, The City and County of San Francisco seeks to assist the successful
7 reintegration of formerly incarcerated people into the community after their release from
8 prison, as evidenced by the unanimous adoption of Resolution 051638 on October 11, 2005,
9 urging the Civil Service Commission and the Department of Human Resources to review and
10 revise policies and procedures regarding disclosure and review of criminal history records so
11 that people with a criminal conviction are not unreasonably denied City employment; and,

12 WHEREAS, The current employment policies of the City of San Francisco state the
13 following: "In reviewing an applicant's criminal history information, the City and County of San
14 Francisco shall evaluate the information on a case-by-case basis, with due consideration to
15 the following factors: 1) the nature and gravity of the offense; 2) the degree to which the
16 conviction is related to the duties and responsibilities of the classification and the position for
17 which the individual has applied; 3) the time elapsed since the conviction; 4) the age of the
18 applicant at conviction; 5) frequency of convictions; 6) evidence of rehabilitation, and 7) any
19 other mitigating circumstances"; now, therefore, be it

20 RESOLVED, That the Board of Supervisors believes it is unwise policy to promote the
21 blanket banning practices outlined in ACL No. 09-52; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors urges the Department of Social
23 Services to follow the National Employment Law Project recommendation (2009), "to withdraw
24 ACL No. 09-52 and remove the unlawful absolute ban on people with convictions, thereby
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1 promoting opportunities for workers to be considered fairly based on their current
2 qualifications, experience and dedication rather than on a mistake of the past".
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City and County of San Francisco

Tails
Resolution

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 091330

Date Passed: January 05, 2010

Resolution urging the Department of Social Services to immediately reverse the policy excluding a person with any felony conviction or serious misdemeanor from serving as an In-Home Supportive Services independent homecare provider.

January 05, 2010 Board of Supervisors - ADOPTED

Ayes: 8 - Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

Excused: 3 - Alioto-Pier, Avalos and Daly

File No. 091330

I hereby certify that the foregoing Resolution was ADOPTED on 1/5/2010 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

UNSIGNED

Mayor Gavin Newsom

1/15/10

Date Approved

Date: January 15, 2010

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter.

Clerk of the Board

File No.
091330