COMMITTEE/BOARD OF SUPERVISORS
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Committee: City Operations & Neighborhood Services
Board of Supervisors Meeting

Date: December 14, 2009
Date 1-5-2010

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Completed by: Victor Young Date December 10, 2009
Completed by: Victor Young Date

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.
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 IHSS independent homecare provider.

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

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

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

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

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

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

WHEREAS, Formerly incarcerated people, having paid their debt to society, should share employment rights guaranteed to all workers and need not encounter obstacles to obtaining gainful employment and positively contributing to society; and,
WHEREAS, State Legislation AB 19 mandates a criminal background check and fingerprinting for all IHSS providers but does not enact a blanket ban excluding persons with a felony or serious misdemeanor from being an IHSS provider; and,

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

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

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

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

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

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

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors urges the Department of Social
Services to follow the National Employment Law Project recommendation (2009), "to withdraw
ACL No. 09-52 and remove the unlawful absolute ban on people with convictions, thereby

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promoting opportunities for workers to be considered fairly based on their current qualifications, experience and dedication rather than on a mistake of the past*. 