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City and County of San Francisco

Edwin M. Lee
Mayor

Department of Public Health

Tangerine M. Brigham
Deputy Director of Health
Director of Healthy San Francisco

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September 19, 2012

Angela Calvillo
Clerk of the Board
San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: San Francisco Civil Grand Jury 2011-12 "Surcharges and Healthy San Francisco: Healthy for Whom?"

Dear Ms. Calvillo:

Enclosed please find a copy of the San Francisco Department of Public Health's response to the above-referenced report. The Department's responses were provided to the San Francisco Civil Grand Jury pursuant to California Penal Code section 933.5 and by the stated September 17, 2012 deadline.

If you have any questions, or require additional information, please do not hesitate to contact me at 415.554.2779 or via electronic mail at tangerine.brigham@sfdph.org.

Sincerely,

Tangerine Brigham

Tangerine M. Brigham

City and County of San Francisco

Edwin M. Lee
Mayor

Department of Public Health

Tangerine M. Brigham
Deputy Director of Health
Director of Healthy San Francisco

September 6, 2012

Mr. Mario Choi
Foreperson Pro Tem
2011-2012 Civil Grand Jury
San Francisco Civil Grand Jury
Superior Court of California
400 McAllister Street, Room 008
San Francisco, CA 94102

Re: San Francisco Civil Grand Jury 2011-12 "Surcharges and Healthy San Francisco: Healthy for Whom?"

Dear Foreperson Choi:

This letter is in response to your July 16, 2012 letter in which you provided the San Francisco Department of Public Health (DPH) with the above-referenced report and asked for DPH responses to the report by September 17, 2012 pursuant to California Penal Code section 933.5.

DPH would like to thank the San Francisco Civil Grand Jury for its work and for this report. DPH's responses follow and have been organized based on the two categories of discussion in the Civil Grand Jury's report and correspond to the numbering system used by the Civil Grand Jury. Please note that several of the findings and/or recommendations relate to the administration of a Health Care Security Ordinance provision that is not under the purview of DPH. In those instances, DPH has deferred to the responses of the appropriate City and County departments.

Customer Surcharges for Health Care Mandates

No.	Civil Grand Jury Position	Agree/Disagree	DPH Response
F1	The Jury could not identify any government investigation that reports that number of businesses adding surcharges to pay for HCSO employer mandates and mandated paid sick days	None Provided – See DPH Response	The Department of Public Health (DPH) does not oversee or enforce employer or business labor practices. DPH defers to the response provided by the Office of Labor Standards Enforcement which enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors.

Employer Health Reimbursement Accounts (HRAs)

No.	Civil Grand Jury Position	Agree/Disagree	DPH Response
F8	Employers with HRAs in 2010 allocated $62 million for medical care, reimbursed employees $12 million and retained up to the remaining $50 million.	None Provided – See DPH Response	The Department of Public Health (DPH) does not oversee or enforce employer or business labor practices. DPH defers to the response provided by the Office of Labor Standards Enforcement which enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors.
F9	Given similar demographics the 20% reimbursement rate for HRAs is well below the City's 50% reimbursement rate for MRAs due to lack of program notification to employees, strict HRA guidelines and employees' unwillingness to disclose their medical conditions to their employer	Partially disagree	DPH has no demographic information on employees who receive either MRAs or HRAs so cannot comment on any potential similarities between the populations. In fiscal year 2011-12, the MRA usage rate was 55%. Employees with MRAs are sent notification of the creation of their accounts and information on how to access funds from their accounts to reimburse them for health care costs. Employees also receive quarterly statements with account balance information and a list of allowable health care expenses. The statements are in English, Chinese and Spanish. Use of the MRA does not require the employee to disclose their health needs or medical condition to their employer.
F11	Employees with two or more employers may have two or more HRAs, likely with differing guidelines for what constitutes medical expenses and with differing time limits	None Provided – See DPH Response	The Civil Grand Jury's position relates to employer HRA's established in compliance with the Employer Spending Requirement provisions of the Heath Care Security Ordinance. DPH does not oversee or monitor employer HRA, this is done by the Office of Labor Standards Enforcement (OLSE). DPH defers to any response provided by the OLSE. DPH oversees the MRA provision under the City Option for those employees who elect it to meet the Employer Spending Requirement.
F12	HRAs may not be an allowable option in meeting the federal requirements under the Affordable Care Act	Unable to respond pending federal guideline or regulations	In 2011, the federal government exempted certain HRAs from ACA provisions. Specifically, HRAs are not required to comply with higher minimum annual limits required of group health plans and health insurance prior to 2014. The ACA may prohibit stand-alone HRAs, but federal government guideline in this area has yet to be released.

No.	Civil Grand Jury Position	Agree/Disagree	DPH Response
F13	The financial incentive to retain unspent HRA funds could be a motivating force for employer to restrict employee access to these funds	None Provided – See DPH Response	The Civil Grand Jury's position relates to employer HRA's established in compliance with the Employer Spending Requirement provisions of the Heath Care Security Ordinance. In addition, this position appears to apply to those employers that self-administer an HRA or provide direct reimbursement to their employees for medical expenses and not to all HRAs. DPH does not oversee or monitor employer HRA, this is done by the Office of Labor Standards Enforcement (OLSE). DPH defers to any response provided by the OLSE.
F14	By submitting personal medical invoices directly to their employers, employees are forces to reveal their medical history	None Provided – See DPH Response	The Civil Grand Jury's position relates to employer HRA's established in compliance with the Employer Spending Requirement provisions of the Heath Care Security Ordinance. In addition, this position appears to apply to those employers that self-administer an HRA or provide direct reimbursement to their employees for medical expenses and not to all HRAs. DPH does not oversee or monitor employer HRA, this is done by the Office of Labor Standards Enforcement (OLSE). DPH defers to any response provided by the OLSE.
R4	Disallow the use of the employer HRA option	None Provided – See DPH Response	DPH defers to the response provided by the City Attorney's Office which is responsible for providing legal advice to officers, department heads, boards, commissions or other units of local government.

No.	Civil Grand Jury Position	Agree/Disagree	DPH Response
R5	Eliminate time limits for employees to use their MRA funds	Disagree	There is no time limit for employees to use their MRA funds. All MRA accounts are activity unless there has been 18 months of continuous inactivity by both the employee (i.e., not seeking reimbursement) and employer (i.e., not making health care expenditures). An employee could continue to access their MRA account even if an employer is no long making expenditures for deposit into the employee's MRA (e.g., after 18 months) as long as there are fund in the account. The account would remain active. Likewise an employer could continue to make expenditures on behalf of an employee, but the employee not accessing funds from their MRA (e.g., in excess of 18 months). This account would remain active. If a MRA is closed due to 18 months of continuous inactivity by both the employee and employer, then the employee may contact the program and ask to have their closed MRA account reinstated. In such cases, DPH would work collaboratively with the San Francisco Health Plan and the MRA vendor (SHPS) to reinstate the account. The MRA vendor archives and retains closed account information for seven years from the date of account closure for auditing purposes. Employee requests done within this time frame are readily accommodated. DPH would not recommend implementation of this recommendation for the reasons noted above.

DPH thanks the Civil Grand Jury for this opportunity to provide comments. If you have any questions, or require additional information, please do not hesitate to contact me at 415.554.2779 or via electronic mail at tangerine.brigham@sfdph.org.

Sincerely,

Tangerine M. Brigham

C: Barbara A. Garcia, MPA, Director of Health