

File No. 140317

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Neighborhood Services & Safety Date May 15, 2014

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Derek Evans Date 5/9/14

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Administrative Code - Irrevocable Employer Health Care Expenditure Requirement and
2 Establishment of Health Care Access Assistance Program]

3 **Ordinance revising the Health Care Security Ordinance to require all health care**
4 **expenditures to be made irrevocably; to establish a City public benefit program known**
5 **as the Health Care Access Assistance Program (HCAAP); to describe the public**
6 **benefits available under each of HCAAP's three component programs, Healthy San**
7 **Francisco, Covered San Francisco, and Health Care Access Accounts; to set certain**
8 **eligibility requirements for program participants; and to set an operative date of**
9 **October 1, 2014.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Administrative Code is hereby amended by revising Sections 14.1
17 through 14.8 of Chapter 14, and deleting Section 14.1.5, to read as follows:

18 **SEC. 14.1. SHORT TITLE; DEFINITIONS.**

19 (a) Short title. This Chapter shall be known and may be cited as the "San Francisco
20 Health Care Security Ordinance."

21 (b) Definitions. For purposes of this Chapter, the following terms shall have the
22 following meanings:

23 (1) "City" means the City and County of San Francisco.

24 (2) "Covered eEmployee" means any person who works in the City where such
25 person qualifies as an employee entitled to payment of a minimum wage from an eEmployer

1 under the Minimum Wage Ordinance, ~~as provided under~~ Chapter 12R of the ~~San Francisco~~
2 Administrative Code, and has performed work for compensation for his or her ~~e~~Employer for
3 ninety (90) days, provided, however, that:

4 ~~(A) From the effective date of this Chapter through December 31, 2007, "at~~
5 ~~least twelve (12) hours" shall be substituted for "at least two (2) hours" where such term appears in~~
6 ~~Section 12R.3(a);~~

7 ~~(B) From January 1, 2008 through December 31, 2008, "at least ten (10)~~
8 ~~hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);~~

9 ~~(1C) Beginning January 1, 2009, "at least eight (8) hours" shall be~~
10 substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

11 ~~(2D) The term "Covered Eemployee" shall not include persons who are~~
12 managerial, supervisory, or confidential employees, unless such employees earn annually
13 under ~~\$88,21272,450.00~~ ~~or in 20142007~~ and, for subsequent years, the figure as set by the
14 administering agency;

15 ~~(3E) The term "Covered Eemployee" shall not include those persons who~~
16 are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

17 ~~(4F) The term "Covered Eemployees" shall not include those persons~~
18 who are "Covered Eemployees" as defined in Section 12Q.2.9 of the Health Care
19 Accountability Ordinance, Chapter 12Q of the ~~San Francisco~~ Administrative Code, if the
20 ~~e~~Employer meets the requirements set forth in Section 12Q.3 for those employees; and

21 ~~(5G) The term "Covered Eemployees" shall not include those persons~~
22 who are employed by a nonprofit corporation for up to one year as trainees in a bona fide
23 training program consistent with Federal law, which training program enables the trainee to
24 advance into a permanent position, provided that the trainee does not replace, displace, or
25 lower the wage or benefits of any existing position or employee.

1 (6H) Nor shall the term "Covered Employees" include those persons
2 whose Employers verify that they are receiving Health Care Services through another
3 Employer, either as an employee or by virtue of being the spouse, domestic partner, ~~or~~ child,
4 or other dependent of another person; provided that the Employer obtains from those persons
5 a voluntary written waiver of the Health Care Expenditure requirements of this Chapter and
6 that such waiver is revocable by those persons at any time.

7 (3) "Covered Employer" means any Medium-sized or Large Business as
8 defined below engaging in business within the City that is required to obtain a valid San
9 Francisco business registration certificate from the San Francisco Tax Collector's office or, in
10 the case of a nonprofit corporation, an Employer for which an average of fifty (50) or more
11 persons per week perform work for compensation during a quarter. Small Businesses are not
12 "Covered Employers" and are exempt from the health care spending requirements under
13 Section 14.3.

14 "Covered San Francisco" means a public benefit program administered by the
15 Department of Public Health, funded in whole or in part by Health Care Expenditures made by
16 Covered Employers to the City under Section 14.3, to make health insurance purchased through
17 Covered California, or similar state-administered exchanges, more affordable for San Francisco
18 employees and residents.

19 (4) "Employer" means an employing unit as defined in Section 135 of the
20 California Unemployment Insurance Code or any Person defined in Section 18 of the
21 California Labor Code. "Employer" shall include all members of a "controlled group of
22 corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and
23 the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of
24 the Internal Revenue Code.
25

1 "Health Care Access Account" means a public health benefit administered by the
2 Department of Public Health, funded in whole or in part by Health Care Expenditures made by
3 Covered Employers to the City under Section 14.3, from which eligible Covered Employees may obtain
4 reimbursement for Health Care Services.

5 "Health Care Access Assistance Program" means a public health benefit program
6 administered by the Department of Public Health; comprised of Healthy San Francisco, Covered San
7 Francisco, and Health Care Access Accounts; and intended to maximize enrollment in Covered
8 California plans and increase every participant's access to Health Care Services.

9 ~~(5) "Health Access Program" means a San Francisco Department of Public Health~~
10 ~~program to provide health care for uninsured San Francisco residents.~~

11 ~~(6) "Health Access Program participant" means any uninsured San Francisco resident,~~
12 ~~regardless of employment or immigration status or pre-existing condition, who is enrolled by his or her~~
13 ~~employer or who enrolls as an individual in the Health Access Program under the terms established by~~
14 ~~the Department of Public Health.~~

15 ~~(A) "Health Care Expenditure" means an amount irrevocably paid by a Covered~~
16 ~~Employer to a Covered Employee or a trustee or a third party on behalf of a Covered Employee for the~~
17 ~~purpose of providing or reimbursing the cost of Health Care Services for Covered Employees and/or~~
18 ~~their spouses, domestic partners, children, or other dependents. "Health Care Expenditure" also~~
19 ~~means an amount paid by a Covered Employer to the City on behalf of a Covered Employee to~~
20 ~~establish his or her eligibility to participate in the Health Care Access Assistance Program in the~~
21 ~~manner and according to the terms set by the Department of Public Health. "Health Care~~
22 ~~Expenditure" shall not include any amount that has been allocated for use by a Covered Employee but~~
23 ~~retained by the Employer, nor any amount that has been paid to a trustee or third party but that may at~~
24 ~~any time be recovered by or returned to the Employer, nor any amount otherwise required to be paid by~~
25 ~~Federal, State, or local law. "Health care expenditure" means any amount paid by a covered employer~~

1 ~~to its covered employees or to a third party on behalf of its covered employees for the purpose of~~
2 ~~providing health care services for covered employees or reimbursing the cost of such services for its~~
3 ~~covered employees, including, but not limited to: (i) contributions designated or paid by such employer~~
4 ~~on behalf of its covered employees to a health savings account as defined under section 223 of the~~
5 ~~United States Internal Revenue Code or to any other account having substantially the same purpose or~~
6 ~~effect without regard to whether such contributions qualify for a tax deduction or are excludable from~~
7 ~~employee income; (ii) reimbursement by such covered employer to its covered employees for expenses~~
8 ~~incurred in the purchase of health care services; (iii) payments by a covered employer to a third party~~
9 ~~for the purpose of providing health care services for covered employees; (iv) costs incurred by a~~
10 ~~covered employer in the direct delivery of health care services to its covered employees; and (v)~~
11 ~~payments by a covered employer to the City to be used on behalf of covered employees. The City may~~
12 ~~use these payments to fund membership in the Health Access Program for uninsured San Francisco~~
13 ~~residents, and establish and maintain reimbursement accounts for covered employees, whether or not~~
14 ~~those covered employees are San Francisco residents.~~

15 ~~(B) Prior to October 1, 2014, a contribution designated or paid to a health~~
16 ~~savings account or to any other account having substantially the same purpose or effect which is not~~
17 ~~irrevocably paid to a third party on behalf of a covered employee, shall not constitute a "health care~~
18 ~~expenditure" unless all of the following conditions are met:~~

19 ~~(i) The contribution is reasonably calculated to benefit the employee;~~
20 ~~(ii) Except as provided in clause (v)(a), the contribution remains~~
21 ~~available to the employee (and any other person eligible for reimbursement for health care expenses~~
22 ~~through the employee) for a minimum of twenty-four (24) months from the date of the contribution.~~

23 ~~(iii) On January 1, 2012, the account contains an amount equal to the~~
24 ~~balance in the account at the close of business on December 31, 2011, if any.~~

1 ~~(C) From January 1, 2010 and each year thereafter, t~~The "hHealth Care
2 Expenditure Rate" shall be determined annually based on the "average contribution" for a
3 full-time employee to the City Health Service System pursuant to Section A8.423 of the San
4 Francisco Charter based on the annual ten county survey amount for the applicable fiscal
5 year, with such average contribution prorated on an hourly basis by dividing the monthly
6 average contribution by one hundred seventy-two (172) (the number of hours worked in a
7 month by a full-time employee). The "~~h~~Health ~~e~~Care ~~e~~Expenditure ~~r~~Rate" shall be seventy-five
8 percent (75%) of the annual ten county survey amount for the applicable ~~calendar fiscal~~ year for
9 Large ~~b~~Businesses and fifty percent (50%) for ~~m~~Medium-sized ~~b~~Businesses.

10 ~~(9)~~ "Health Care Services" means medical care, services, or goods that may
11 qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue
12 Code, or medical care, services, or goods having substantially the same purpose or effect as
13 such deductible expenses.

14 "Healthy San Francisco" means a Department of Public Health program to provide
15 health care for uninsured San Francisco residents who meet the eligibility criteria established by the
16 Department of Public Health.

17 ~~(10)~~ "Hour paid" or "~~h~~Hours ~~p~~Paid" means a work hour or work hours for which
18 a person is paid wages or is entitled to be paid wages for work performed within the City,
19 including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a
20 single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work
21 week for a full-time employee.

22 ~~(11)~~ "Large bBusiness" means an employer for which an average of one
23 hundred (100) or more persons per week perform work for compensation during a quarter.

1 (12) "Medium-sized bBusiness" means an eEmployer for which an average of
2 between twenty (20) and ninety-nine (99) persons per week perform work for compensation
3 during a quarter.

4 (13) "Person" means any natural person, corporation, sole proprietorship,
5 partnership, association, joint venture, limited liability company, or other legal entity.

6 (14) "Required hHealth Care eExpenditure" means the total health care
7 expenditure that a Covered Employer is required to make every quarter for all its Covered
8 Employees.

9 (15) "Small bBusiness" means an eEmployer for which an average of fewer than
10 twenty (20) persons per week perform work for compensation during a quarter.

11 ~~SEC. 14.1.5. ALTERNATE PROVISIONS.~~

12 ~~(a) If the City Attorney certifies to the Mayor and the Board of Supervisors that a court of~~
13 ~~competent jurisdiction in a lawsuit brought by or on behalf of a Covered Employer has struck down the~~
14 ~~provisions of Section 14.1.5, or permanently enjoined their enforcement, then the following provisions~~
15 ~~shall become operative on the first day of the next calendar quarter following the City Attorney's~~
16 ~~certification.~~

17 ~~Notwithstanding any other provision of this Chapter, "health care expenditure" shall~~
18 ~~only include an amount irrevocably paid by a covered employer to a covered employee or to a third~~
19 ~~party on behalf of a covered employee. An amount that is retained by the employer or that may be~~
20 ~~recovered by or returned to the employer shall not constitute a "health care expenditure." An amount~~
21 ~~paid to a third party for the purpose of reimbursing a covered employee for expenses incurred in the~~
22 ~~purchase of health care services shall not constitute a "health care expenditure" unless any unused~~
23 ~~funds carry over from quarter to quarter and from year to year and remain available to the covered~~
24 ~~employee, even after the covered employee's separation from employment.~~

1 ~~Notwithstanding the above, an amount paid as a "health expenditure" may be recovered~~
2 ~~by or returned to the employer without losing its status as a "health care expenditure" in the following~~
3 ~~circumstances:~~

4 ~~(A) A former employee has not made a claim for any of the remaining available~~
5 ~~funds for 18 months (including a claim made on behalf of any other person eligible for reimbursement~~
6 ~~from health care expenses from the former employee's remaining available funds); or,~~

7 ~~(B) The covered employee has died.~~

8 ~~(b) If the City Attorney subsequently certifies to the Mayor and the Board of Supervisors that~~
9 ~~an order enjoining enforcement of the provisions of Section 14.1.5 has been lifted, then the original~~
10 ~~provisions shall again become operative on the first day of the next calendar quarter following the City~~
11 ~~Attorney's certification.~~

12 **SEC. 14.2. SAN FRANCISCO HEALTH CARE ACCESS ASSISTANCE PROGRAM**
13 **AND REIMBURSEMENT ACCOUNTS.**

14 (a) The San Francisco Department of Public Health shall administer the Health Care
15 Access Assistance Program, comprised of Healthy San Francisco, Covered San Francisco, and
16 Health Care Access Accounts. The Department shall determine eligibility and benefits under each
17 program component to maximize participants' overall access to Health Care Services.

18 (b) Under Healthy San Francisco the Health Access Program, eligible uninsured San
19 Francisco residents may obtain health care from a network consisting of San Francisco
20 General Hospital and the Department of Public Health's clinics, and other community non-
21 profit and private providers that meet the program's quality and other criteria for participation.
22 Healthy San FranciscoThe Health Access Program is not an insurance plan for Healthy San
23 FranciscoHealth Access Program participants.

1 ~~(b) The Department of Public Health shall coordinate with a third party vendor to administer~~
2 ~~program operations, including basic customer services, enrollment, tracking service utilization, billing,~~
3 ~~and communication with the participants.~~

4 (c) Healthy San Francisco~~The Health Access Program~~ shall be open to eligible, uninsured
5 San Francisco residents, ~~regardless of employment status~~. Eligibility criteria shall be established
6 by the Department of Public Health; and shall include eligibility for persons (1) with family incomes
7 up to 400% of the federal poverty level who are not eligible for subsidized health insurance coverage
8 through Covered California or for Medicare or Medi-Cal; or (2) who are exempt, due to economic
9 hardship or the cost of employer-sponsored coverage, from the mandate of the federal Affordable Care
10 Act to carry health insurance; or (3) who do not have an affordable offer of insurance coverage as
11 determined by the Department of Public Health. ~~but n~~No person shall be excluded from Healthy
12 San Francisco~~The Health Access Program~~ based on employment or immigration status or a pre-
13 existing condition. ~~Participants may enroll themselves as individuals, with the terms of enrollment to~~
14 ~~be determined pursuant to Section 14.4(a).~~

15 (d) Healthy San Francisco~~The Health Access Program~~ may be funded from a variety of
16 sources, including health care expenditures by payments from ~~C~~covered ~~E~~employers pursuant to
17 Section 14.3, from individuals, and from the City. Funding from the City shall prioritize
18 services for low and moderate income persons, with costs based on Healthy San
19 Francisco~~Health Access Program~~ participant's' ability to pay.

20 (e) Healthy San Francisco~~The Health Access Program~~ shall use the "Medical Home" model
21 in which a primary care physician, nurse practitioner, or physician assistant develop and direct
22 a plan of care for each Healthy San Francisco~~Health Access Program~~ participant, coordinate
23 referrals for testing and specialty services, and monitor management of chronic conditions
24 and diseases. Healthy San Francisco~~Health Access Program~~ participants shall be assigned to a
25 primary care physician, nurse practitioner, or physician assistant.

1 (f) Healthy San Francisco~~The Health Access Program~~ shall provide medical services with
2 an emphasis on wellness, preventive care and innovative service delivery. The pProgram shall
3 provide medical services for the prevention, diagnosis, and treatment of medical conditions,
4 excluding vision, dental, infertility, and cosmetic services. The Department of Public Health
5 may further define the services to be provided, except that such services must, at a minimum,
6 include: professional medical services by doctors, nurse practitioners, physician assistants,
7 and other licensed health care providers, including preventive, primary, diagnostic and
8 specialty services; inpatient and outpatient hospital services, including acute inpatient mental
9 health services; diagnostic and laboratory services, including therapeutic radiological services;
10 prescription drugs, excluding drugs for excluded services; home health care; and emergency
11 care provided in San Francisco by contracted providers, including emergency medical
12 transportation if needed.

13 (g) Covered San Francisco shall provide financial assistance to eligible participants to offset a
14 portion of the cost of health insurance purchased through Covered California or similar state-
15 administered exchanges as determined by the Department of Public Health.

16 (h) Participation in Covered San Francisco shall be available to eligible Covered Employees
17 whose Employers make health care expenditures to the City on their behalf, to their dependents, and to
18 others as determined by the Department of Public Health.

19 (i) The Department of Public Health shall annually determine the level of public benefits
20 available to Covered San Francisco participants subject to the following:

21 (1) That the costs of Covered San Francisco shall be met by Health Care Expenditures
22 made by Covered Employers to the City pursuant to Section 14.3, in addition to any funds that may be
23 made available by the Board, allocated at the discretion of the Department of Public Health, or
24 received as grants.

1 (2) That the design of the Covered San Francisco public benefit shall incentivize
2 enrollment in Covered California health plans so as to maximize affordability for participants, taking
3 into account both the individual share of premiums and other individual cost sharing under the terms of
4 these plans.

5 (j) The Department of Public Health shall coordinate with Covered California and other state
6 or federal agencies as appropriate to create mechanisms for the efficient coordination of Covered San
7 Francisco benefits and to minimize the administrative burden placed on Covered San Francisco
8 participants and on the City.

9 (kg) The Department of Public Health shall also be authorized to use payments made
10 to the City by Covered eEmployers to satisfy their Health Care Eexpenditure requirements as set
11 forth in Section 14.3 to establish and maintain Health Care Access reimbursement Aaccounts
12 from which eligible Ccovered Eemployees may obtain reimbursement of hHealth eCare
13 eExpenditures in the amount and under the terms set by the Department of Public Health. Such
14 Health Care Access Accounts shall be made available to Covered Employees who are not eligible for
15 Healthy San Francisco or Covered San Francisco, including Medi-Cal enrollees and others as
16 determined by the Department of Public Health.

17 (l) The Department of Public Health shall promulgate information about the Health Care
18 Access Assistance Program and each of its components to maximize awareness of these public health
19 benefits and to maximize enrollment in Covered California or other forms of health insurance.

20 (m) The Department of Public Health may coordinate with a third party vendor to administer
21 program operations, including enrollment, tracking service utilization, billing, and communication with
22 the participants.

23 (n) The Department of Public Health shall establish a procedure by which participants in the
24 Health Care Access Assistance Program may appeal their placement in the Healthy San Francisco,
25 Covered San Francisco, or Health Care Access Account programs.

1 (oh) The City Controller shall ensure *that any required hHealth eCare eExpenditures*
2 *made by an Covered eEmployer to the City pursuant to Section 14.3* are kept separate and apart
3 from general funds and shall limit use of the expenditures *to support the Health Care Access*
4 *Assistance Program. or to the establishment and maintenance of reimbursement accounts from which*
5 *covered employees may obtain reimbursement of health care expenditures. If any covered employee*
6 *fails to enroll in the Health Access Program or establish a reimbursement account with the Department*
7 *of Public Health within a reasonable time, as determined by the Department of Public Health, the City*
8 *may use the funds paid to the City and County of San Francisco on behalf of that employee for the*
9 *benefit of the health care programs created by this Ordinance, but the City may not transfer these funds*
10 *to the City's general fund.*

11 **SEC. 14.3. REQUIRED HEALTH CARE EXPENDITURES.**

12 **(a) Required Expenditures.** Covered Eemployers shall make Rrequired hHealth eCare
13 eExpenditures to or on behalf of their Cecovered Eemployees each quarter. The Rrequired
14 hHealth eCare eExpenditure for a Cecovered Eemployer shall be calculated by multiplying the
15 total number of hours paid for each of its Cecovered Eemployees during the quarter (including
16 only hours starting on the first day of the calendar month following ninety (90) calendar days
17 after a Cecovered Eemployee's date of hire) by the applicable hHealth eCare eExpenditure
18 rRate. In determining whether a Cecovered Eemployer has made its Rrequired hHealth eCare
19 eExpenditures, payments to or on behalf of a Cecovered Eemployee shall not be considered if
20 they exceed the following amount: the number of hours paid for the Cecovered Eemployee
21 during the quarter multiplied by the applicable hHealth eCare eExpenditure rRate. The City's
22 Office of Labor Standards Enforcement (OLSE) shall enforce the hHealth Care eExpenditure
23 requirements under this Section 14.3.

1 **(b) Employer Notice to Employees.**

2 (1) By December 1 of each year, OLSE shall publish and make available to
3 Covered Employers, in all languages spoken by more than five percent of the San Francisco
4 work force, a notice suitable for posting by Covered Employers in the workplace informing
5 Covered Employees of their rights and the Covered Employer's obligations under the
6 Ordinance.

7 (2) Every Covered Employer shall post in a conspicuous place at any workplace
8 or job site where any Covered Employee works the notice published each year by OLSE.
9 Every Covered Employer shall post such notices in English, Spanish, Chinese and any other
10 language spoken by at least five percent of the Employees at the workplace or job site.

11 **(c) Additional Employer Responsibilities.** A Cecovered Eeemployer shall: (*1*)
12 maintain accurate records of hHealth eCare eExpenditures, Rrequired hHealth eCare
13 eExpenditures, and proof of such expenditures made each quarter each year, and allow OLSE
14 reasonable access to such records, provided, however, that Cecovered Eeemployers shall not be
15 required to maintain such records in any particular form; and (*2*) provide information to *the*
16 OLSE, or *the* OLSE's designee, on an annual basis containing such other information as
17 OLSE shall require, including information on the eEmployer's compliance with this Chapter,
18 but OLSE may not require an eEmployer to provide information in violation of State or federal
19 privacy laws. *If a eCovered eEmployer uses a health reimbursement account to satisfy its obligation to*
20 *make health care expenditures for any of its eCovered eEmployees, the eEmployer shall also report to*
21 *OLSE the terms of such accounts, including what costs are eligible for reimbursement.*

22 Where an eEmployer does not maintain or retain adequate records documenting the
23 hHealth Care eExpenditures made, or does not allow OLSE reasonable access to such
24 records, it shall be presumed that the eEmployer did not make the Rrequired hHealth Care
25 eExpenditures for the quarter for which records are lacking, absent clear and convincing

1 evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to
2 provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's
3 responsibilities as the enforcing agency under this Chapter Ordinance. With regard to all such
4 information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to
5 the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco
6 Business and Tax Regulations Code.

7 (d) If a Covered Employer imposes a surcharge on its customers to cover in whole or
8 in part the costs of the ~~h~~Health ~~e~~Care ~~e~~Expenditure requirement under this Chapter, the
9 Covered Employer shall provide to OLSE on an annual basis the amount collected during the
10 12-month reporting period from the surcharge for employee health care and the amount spent
11 on employee health care. If the amount collected from the surcharge is greater than the
12 amount spent on employee health care, the Covered Employer must irrevocably pay or
13 designate an amount equal to that difference for ~~h~~Health ~~e~~Care ~~e~~Expenditures for its Covered
14 Employees under this Chapter. OLSE may refer any potential cases of consumer fraud to
15 appropriate authorities.

16 **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

17 (a) The City shall develop and promulgate rules and regulations to govern the operation
18 of this Chapter. ~~The regulations shall include specific rules by~~ The Department of Public Health
19 shall develop and promulgate rules and regulations to govern ~~on~~ the operation of ~~both~~ the Health
20 Care Access Assistance Program and the reimbursement accounts identified in Section 14.2(g),
21 including but not limited to eligibility for enrollment in Healthy San Francisco and Covered San
22 Francisco, the Health Access Program and the establishment of Health Care Access reimbursement
23 Accounts, and rules by the OLSE shall develop and promulgate rules and regulations for
24 enforcement of the obligations of ~~the~~ ~~e~~Employers under this Chapter. The rules and regulations
25 shall also establish procedures for Covered Employers to maintain accurate records of

1 ~~h~~Health ~~e~~Care ~~e~~Expenditures and ~~R~~required ~~h~~Health ~~e~~Care ~~e~~Expenditures and provide a report
2 to ~~the OLSE City~~ without requiring any disclosures of information that would violate State or
3 Federal privacy laws. The rules and regulations shall further establish procedures for providing
4 ~~e~~Employers notice that they may have violated this Chapter, a right to respond to the notice, a
5 procedure for notification of the final determination of a violation, and an appeal procedure
6 before a hearing officer appointed by the City Controller. The sole means of review of the
7 hearing officer's decision shall be by filing in the San Francisco Superior Court a petition for a
8 writ of mandate under Section 1094.5 of the California Code of Civil Procedure. No rules shall
9 be adopted finally until after a public hearing.

10 (b) ~~During implementation of this Chapter and on an ongoing basis thereafter, t~~The City shall
11 maintain an education and advice program to assist ~~e~~Employers with meeting the
12 requirements of this Chapter.

13 (c) Any ~~e~~Employer that reduces the number of employees below the number that
14 would have resulted in the ~~e~~Employer being considered a "~~C~~ecovered ~~E~~mployee," or below the
15 number that would have resulted in the ~~e~~Employer being considered a ~~m~~Medium-sized or
16 ~~L~~Large ~~b~~Business, shall demonstrate that such reduction was not done for the purpose of
17 evading the obligations of this Chapter or shall be in violation of ~~this~~ Chapter.

18 (d) It shall be unlawful for any ~~e~~Employer or ~~C~~ecovered ~~E~~mployee to deprive or threaten
19 to deprive any person of employment, take or threaten to take any reprisal or retaliatory action
20 against any person, or directly or indirectly intimidate, threaten, coerce, command or influence
21 or attempt to intimidate, threaten, coerce, command or influence any person because such
22 person has cooperated or otherwise participated in an action to enforce, inquire about, or
23 inform others about the requirements of this Chapter. Taking adverse action against a person
24 within ninety (90) days of the person's exercise of rights protected under this Chapter shall
25 raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

1 (e) (1) The City shall enforce the obligations of Ceovered Eeemployers under this
2 Chapter, including requiring restitution to employees where appropriate, and shall impose
3 administrative penalties ~~upon~~ Ceovered Eeemployers who fail to make Rrequired HHealth eCare
4 eExpenditures on behalf of their employees within five business days of the quarterly due
5 date. ~~Failure to make a required health care expenditure shall include making a purported expenditure~~
6 ~~that is determined by OLSE not to be reasonably calculated to benefit the employee.~~ The amount of
7 the penalty shall be up to one-and-one-half times the total expenditures that a Ceovered
8 Eeemployer failed to make, but in any event the total penalty for this violation shall not exceed
9 \$100 for each employee for each quarter that the required expenditures were not made within
10 five business days of the quarterly due date. ~~The \$100 penalty limit shall increase each year by an~~
11 ~~amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage~~
12 ~~earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical~~
13 ~~area.~~

14 (2) For other violations of this Chapter by eEmployers and Ceovered
15 Eeemployers, the maximum administrative penalties shall be as follows: For refusing to allow
16 access to records, pursuant to Section 14.3(c), \$25.00 as to each worker whose records are
17 in issue for each day that the violation occurs; for the failure to maintain or retain accurate and
18 adequate records pursuant to Section 14.3(c) and for the failure to make the annual reports of
19 information required by OLSE pursuant to Sections 14.3(c) and 14.3(d), \$500.00 for each
20 quarter that the violation occurs; for violation of Section 14.4(d) (retaliation), \$100.00 as to
21 each person who is the target of the prohibited action for each day that the violation occurs;
22 and for any other violation not specified in this subsection (e)(2), \$25.00 per day for each day
23 that the violation occurs.

1 (3) The City Attorney may bring a civil action to recover civil penalties for the
2 violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those
3 subsections, and to recover the City's enforcement costs, including attorneys' fees.

4 (4) Penalties Amounts recovered under this Section 14.4 shall be deposited in the
5 City's General Fund.

6 ~~(f) The City Controller shall coordinate with the Department of Public Health and OLSE to~~
7 ~~prepare periodic reports on the implementation of this Chapter including participant rates, any effect~~
8 ~~on services provided by the Department of Public Health, the cost of providing services to the Health~~
9 ~~Care Access Assistance Program participants and the economic impact of the Chapter's provisions.~~
10 ~~Reports shall be provided to the Board of Supervisors on a quarterly basis for quarters beginning July~~
11 ~~1, 2007 through June 30, 2008, then every six months through June 30, 2010. Reports shall include~~
12 ~~specific information on any significant event affecting the implementation of this Chapter and also~~
13 ~~include recommendations for improvement where needed, in which case the Board of Supervisors or a~~
14 ~~committee thereof shall hold a hearing within thirty (30) days of receiving the report to consider~~
15 ~~responsive action.~~

16 ~~(g) The Director of Public Health shall convene an advisory Health Access Working Group~~
17 ~~to provide the Department of Public Health and the Health Access Program with expert consultation~~
18 ~~and direction, with input on members from the Mayor and the Board of Supervisors. The Health Access~~
19 ~~Working Group shall be advisory in nature and may provide the Health Access Program with input on~~
20 ~~matters including: setting membership rates; designing the range of benefits and health care services~~
21 ~~for participants; and researching utilization, actuarial, and costs.~~

1 ~~(h) The Department of Public Health and the OLSE shall report to the Board of Supervisors~~
2 ~~by July 1, 2007, on the development of rules for the Health Access Program and for the enforcement~~
3 ~~and administration of the employer obligations under this Chapter. The Board of Supervisors or a~~
4 ~~committee thereof shall hold a hearing on the proposed rules to ensure that participants in the Health~~
5 ~~Access Program shall have access to high quality and culturally competent services.~~

6 **SEC. 14.5. SEVERABILITY.**

7 If any section, subsection, clause, phrase, or ~~word~~portion of this Chapter is for any
8 reason held to be invalid or unconstitutional by a decision of any court ~~or Federal or State agency~~
9 of competent jurisdiction, such ~~portion shall be deemed a separate, distinct and independent~~
10 ~~provision and such holding~~ decision shall not affect the validity of the remaining portions of this
11 Chapter thereof. The Board of Supervisors hereby declares that it would have passed this Chapter and
12 each and every section, subsection, sentence, clause, phrase, and word not declared invalid or
13 unconstitutional without regard to whether any other portion of this Chapter would be subsequently
14 declared invalid or unconstitutional. To this end, the provisions of this ordinance shall be deemed
15 severable.

16 **SEC. 14.6. NO CONFLICT WITH FEDERAL OR STATE LAWPREEMPTION.**

17 Nothing in this Chapter shall be interpreted or applied so as to create any power, duty
18 or obligation in conflict with, ~~or preempted by,~~ any Federal or State law.

19 **SEC. 14.7. GENERAL WELFARE.**

20 By this Chapter, the City is assuming an undertaking only to promote the general
21 welfare and otherwise satisfy its obligations to provide health care under applicable law. This
22 Chapter should in no way be construed as an expansion of the City's existing obligations to
23 provide health care under State and Federal law, and the City shall set all necessary criteria
24 for enrollment consistent with its legal obligations. The City is not assuming, nor is it imposing
25 on its officers and employees, an obligation for breach of which it is liable in money damages

1 to any ~~p~~Person who claims that such breach proximately caused injury. To the fullest extent
2 permitted by law, the City shall assume no liability whatsoever. To the fullest extent permitted
3 by law, any actions taken by a public officer or employee under the provisions of this Chapter
4 shall not become a personal liability of any public officer or employee of the City.

5 **SEC. 14.8. OPERATIVE DATE.**

6 *The changes in this Chapter resulting from enactment of Ordinance No. _____ shall*
7 *become operative on October 1, 2014 or the effective date of said ordinance, whichever is later. in*
8 *three phases. The day this Chapter becomes effective, implementation of the Chapter shall commence.*
9 *The Health Access Program shall become operative on July 1, 2007. Any requirements on employers*
10 *for which an average of fifty (50) or more persons per week perform work for compensation during a*
11 *quarter shall become operative on January 1, 2008. Any requirements on employers for which an*
12 *average of from twenty (20) to forty-nine (49) persons per week perform work for compensation during*
13 *a quarter shall become operative on April 1, 2008. This Chapter is intended to have prospective effect*
14 *only.*

15
16 Section 2. Effective Date and Operative Date. This Chapter shall become effective 30
17 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
18 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
19 or the Board of Supervisors overrides the Mayor's veto of the ordinance. As indicated in
20 Section 14.8 of the Administrative Code, this ordinance shall become operative on October 1,
21 2014 or its effective date, whichever is later.

22
23 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

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Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

for Sherri Sokeland Kaiser
Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Irrevocable Employer Health Care Expenditure Requirement and Establishment of Health Care Access Assistance Program]

Ordinance revising the Health Care Security Ordinance to require all health care expenditures to be made irrevocably; to establish a City public benefit program known as the Health Care Access Assistance Program (HCAAP); to describe the public benefits available under each of HCAAP's three component programs, Healthy San Francisco, Covered San Francisco, and Health Care Access Accounts; to set certain eligibility requirements for program participants; and to set an operative date of October 1, 2014.

Existing Law

The Health Care Security Ordinance currently allows covered employers to meet their obligation to make "health care expenditures" on behalf of their covered employees either with irrevocable expenditures, such as insurance premium payments, or with revocable expenditures, such as allocations to health reimbursement accounts where unspent funds return to the employer. Revocable expenditures must meet additional conditions to be credited as "health care expenditures" under the Ordinance. They must be "reasonably calculated to benefit the employee;" remain available to the employee for reimbursement of health care expenses for at least two years from the date of the expenditure or 90 days after separation; and are subject to additional notice and reporting requirements.

The Ordinance includes an alternate provision that goes into effect if a court strikes down or enjoins the extra conditions placed on revocable expenditures. In that event, revocable health care expenditures must remain available to an employee indefinitely, regardless of separation, until the employee's reimbursement account has been inactive for 18 months or the employee has died.

The Ordinance also allows employers to meet their health care spending requirement by making health care expenditures to the City. Under existing law, the City uses those funds on behalf of the employer's covered employees in one of two ways. First, the Ordinance establishes Healthy San Francisco (HSF), a program that provides comprehensive medical care to eligible, uninsured San Francisco residents, regardless of employment or immigration status or preexisting medical conditions. HSF-eligible employees whose employers have made contributions to the City on their behalf receive discounts on HSF program participation fees. If the covered employee is not eligible for HSF, the City creates a Medical Reimbursement Account for that employee in the same amount as the employer's contribution. The Ordinance also requires the Controller to segregate employer health care expenditures from the City's general funds and directs that unclaimed employer funds be used to support HSF.

FILE NO.

Amendments to Current Law

As amended, the Ordinance would require “health care expenditures” to be irrevocably paid and, as a result, would no longer credit amounts that could revert to the employer toward the employer’s health care spending requirement. It would also delete the alternative provision addressing unfavorable court orders.

The amended Ordinance would continue to permit employers to make payments to the City to satisfy their health care spending requirement, and it would establish a new public health benefit program, the Health Care Access Assistance Program (HCAAP), to benefit the employees whose employers contributed on their behalf. HCAAP would consist of three component programs: HSF, Covered San Francisco, and Health Care Access Accounts.

The proposal would add new eligibility criteria for HSF. While it would continue to be open to eligible, uninsured San Francisco residents, regardless of employment or immigration status or pre-existing medical conditions, the amended Ordinance would also require HSF to be open to residents with family incomes up to 400% of the federal poverty level who are not eligible for subsidized health insurance coverage through Covered California, Medicare, or Medi-Cal. HSF would also be available to residents who are exempt from the mandate of the federal Affordable Care Act to carry health insurance for economic reasons and to those who do not have an affordable offer of insurance coverage as determined by the Department of Public Health (DPH).

Covered San Francisco would be a new benefit program that would provide financial assistance to make individual and family insurance plans offered through Covered California more affordable. Covered San Francisco would be open to eligible, covered employees whose employers made health care expenditures to the City and to their dependents. It could also be opened to others at the discretion of DPH. Covered San Francisco would be funded with employer health care expenditures and could be expanded with grants or City funds if those became available.

Health Care Access Accounts would be available to the remaining employees whose employers made health care expenditures to the City but who were not eligible to participate in Healthy San Francisco or Covered San Francisco.

The amended Ordinance would give DPH the authority and the discretion to set any further eligibility criteria and define the benefits available under each program consistent with the guidance in the Ordinance. It would also give HCAAP participants the right to appeal to DPH if they did not agree with their assignment to one component program (HSF, Covered SF, Health Care Access Accounts) instead of another. Further, it provides that employer health care expenditures must be segregated from other City funds and allocates any unclaimed employer funds to support the HCAAP.

FILE NO.

The proposal would become operative on October 1, 2014.

Background Information

As originally enacted and until 2011, the Health Care Security Ordinance did not contain additional requirements for revocable health care expenditures. According to the information the Office of Labor Standards Enforcement (OLSE) received from employers' annual reporting forms, the average reimbursement rate of employee reimbursement plans in 2010 was 20%, and the median rate was 12%. Over half of the employee reimbursement plans in place for each of the years 2008-2010 had reimbursement rates of between 0 and 10%, meaning that more than half of the employers using revocable expenditures to reimbursement accounts to satisfy their obligations under the Ordinance recaptured 90% or more of their health care expenditures. Conversely, the affected employees received 10% or less of the dollars allocated for their health care.

This information about revocable expenditures raised legislative concern, and in 2011, the Ordinance was amended to include the additional criteria currently in place for revocable health care expenditures. According to the information employers reported to OLSE about their post-amendment expenditures in 2012, the most recent year for which information is currently available, the average reimbursement rate rose to 25%, and the median rate rose to 18%.

Provisions of the Affordable Care Act that went into effect on January 1, 2014, are also likely to affect the uptake rate for reimbursement plans. Employee reimbursement accounts that are not linked to health insurance plans can now only reimburse for limited medical expenses, primarily vision and dental care. Such accounts can no longer reimburse employees for the full range of health care services or for non-vision or dental insurance premiums, co-pays, or prescription drugs. Although employers have not yet reported the reimbursement rates they are experiencing for these much more restricted plans, it is reasonable to assume that the rates will drop, perhaps significantly, below current levels.

Also effective January 1, 2014, the Affordable Care Act implemented state-administered health insurance exchanges for uninsured individuals to purchase health insurance that satisfies the individual insurance mandate. Individuals with a family income below 400% of the federal poverty line may be eligible for federal premium assistance tax credits that make their insurance premiums more affordable, but some of these lower-income individuals do not have access to the tax credits. These ineligible persons include employees who have offers of individual insurance from their employers that cost less than 9% of their family income, regardless of whether the insurance covers their dependents. Undocumented and recent immigrants may also be ineligible for subsidies. These groups and others still may not have access to affordable individual or family insurance despite the significant accessibility and affordability improvements to the insurance marketplace under the Affordable Care Act.

FILE NO.

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From: Caldeira, Rick (BOS)
Sent: Tuesday, May 06, 2014 11:01 AM
To: BOS Legislation (BOS)
Cc: True, Judson; Miller, Alisa; Wong, Linda (BOS); Evans, Derek; Campbell, Severin (BUD)
Subject: RE: File 14-0317: Health Care Security Ordinance

Categories: 140317

FYI, no fiscal impact. For file.

From: Campbell, Severin (BUD)
Sent: Tuesday, May 06, 2014 10:59 AM
To: Caldeira, Rick (BOS)
Subject: File 14-0317

Dear Rick

Based on additional discussions with the Department of Public Health, we consider that the Health Care Security Ordinance (File 14-0317), as an ordinance that enables the proposed Health Care Access Assistance Program, does not in and of itself have fiscal impact. The actual fiscal impact to the City depends on subsequent program design decisions, and any such costs to the City will require Board of Supervisors appropriation approval before they can be incurred.

Severin Campbell
Budget & Legislative Analyst's Office
(415) 553-4647

On May 2, 2014, at 4:43 PM, "BOS Legislation (BOS)" <bos.legislation@sfgov.org> wrote:

Good afternoon, Judson,

The BLA office is revising its determination on Board file 140317. The matter is determined to have a fiscal impact. Presently the matter is assigned to Neighborhood Services and Safety, and will need to transfer to a fiscal committee. Please see the below for more information.

Regards,

John Carroll
Legislative Clerk
Board of Supervisors
San Francisco City Hall, Room 244
San Francisco, CA 94102
(415)554-4445 - Direct
(415)554-5184 - General
(415)554-5163 - Fax
john.carroll@sfgov.org | board.of.supervisors@sfgov.org

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From: Caldeira, Rick (BOS)
Sent: Friday, May 02, 2014 4:23 PM
To: BOS Legislation (BOS)
Subject: Fwd: File 14-0317: Health Care Security Ordinance

Please process and get Judson to transfer, if needed.

Begin forwarded message:

From: "Campbell, Severin (BUD)" <severin.campbell@sfgov.org>
Date: May 2, 2014 at 4:21:38 PM PDT
To: "Caldeira, Rick (BOS)" <rick.caldeira@sfgov.org>
Cc: "Wong, Linda (BOS)" <linda.wong@sfgov.org>, "Newman, Debra (BUD)" <debra.newman@sfgov.org>, "Miller, Alisa" <alisa.miller@sfgov.org>
Subject: File 14-0317: Health Care Security Ordinance

Hello Rick and Linda

In our initial review of File 14-0317 (Health Care Security Ordinance), we determined that this ordinance does not have fiscal impact. On further discussion with Greg Wagner, DPH Chief Financial Officer, we are revising our determination to state that this ordinance does have fiscal impact and needs to be assigned to a fiscal committee.

Please call if you have any questions.

Thank you.

Severin Campbell
Budget & Legislative Analyst's Office
(415) 553-4647



Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee or as Special Order at Board.
- 4. Request for letter beginning "Supervisor [] inquires"
- 5. City Attorney request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

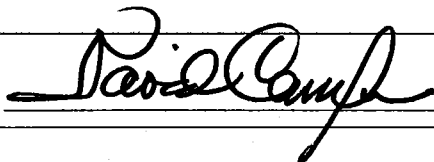
Campos, Avalos, Kim, Mar

Subject:

Administrative Code - Irrevocable Employer Health Care Expenditure Requirement and Establishment of Health Care Access Assistance Program

The text is listed below or attached:

[]

Signature of Sponsoring Supervisor: 

For Clerk's Use Only: