

## **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.

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