

1 [San Francisco Health Care Security Ordinance]

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3 **Ordinance amending the San Francisco Administrative Code to add Chapter 14,**
4 **Sections 14.1 through 14.8, to provide health care security for San Francisco residents**
5 **by creating a public health access program for the uninsured, requiring employer paid**
6 **health expenditures, identifying options for how an employer may make such**
7 **expenditures, creating an advisory health access working group, and setting an**
8 **operative date.**

9 Note: Additions are *single-underline italics Times New Roman*;
10 deletions are *strikethrough italics Times New Roman*.
11 Board amendment additions are double underlined.
12 Board amendment deletions are ~~strikethrough normal~~.

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

14 Section 1. **Declaration of legislative findings and intent.** All San Francisco
15 residents should have quality, affordable health care. Currently, approximately 82,000 adult
16 San Francisco residents are uninsured, even though more than half of those individuals are
17 employed. San Francisco taxpayers bear the cost of paying for emergency room visits and
18 other unnecessarily expensive health care for the uninsured. By establishing a Health Access
19 Program for uninsured San Francisco residents with an emphasis on preventive care and by
20 requiring businesses to make reasonable health care expenditures on behalf of their
21 employees depending on the businesses' ability to pay, the burden on San Francisco
22 taxpayers for providing health care for the uninsured can be reduced. At the same time, San
23 Francisco can offer uninsured individuals the choice to enroll in a system that provides quality
24 health care for an affordable price and offer employers the choice to enroll their employees in
25 that system. San Francisco also has a vital interest in preventing a "race to the bottom" in
which employers stop paying for employee health care to remain competitive and instead shift
those costs to San Francisco taxpayers.

1 Section 2. The San Francisco Administrative Code is hereby amended by adding
2 Chapter 14, Sections 14.1 through 14.8, to read as follows:
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4 **SEC. 14.1. SHORT TITLE; DEFINITIONS.**

5 (a) Short title. This Chapter shall be known and may be cited as the “San Francisco Health
6 Care Security Ordinance.”

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

9 (1) “City” means the City and County of San Francisco.

10 (2) “Covered employee” means any person who works in the City where such person qualifies
11 as an employee entitled to payment of a minimum wage from an employer under the Minimum Wage
12 Ordinance as provided under Chapter 12R of the San Francisco Administrative Code and has
13 performed work for compensation for his or her employer for ninety (90) days, provided, however, that
14 the term “employee” shall not include persons who are managerial, supervisory, or confidential
15 employees, unless such employees earn annually under \$72,450 or in 2007 and for subsequent years,
16 the figure as set by the administering agency, and shall not include those persons who are eligible to
17 receive benefits under Medicare or the Civilian Health and Medical Program Uniformed Services
18 (CHAMPUS). Nor shall “covered employees” include those persons who are “covered employees” as
19 defined in Section 12Q.2.9 of the Health Care Accountability Ordinance, Chapter 12Q of the San
20 Francisco Administrative Code, if the employer meets the requirements set forth in Section 12Q.3 for
21 those employees. Nor shall “covered employees” include those persons who are employed by a
22 nonprofit corporation for up to one year as trainees in a bona fide training program consistent with
23 Federal law, which training program enables the trainee to advance into a permanent position,
24 provided that the trainee does not replace, displace, or lower the wage or benefits of any existing
25 position or employee.

(3) “Covered employer” means any medium-sized or large business as defined below engaging
in business within the City that is required to obtain a valid San Francisco business registration

1 certificate from the San Francisco Tax Collector's office or, in the case of a nonprofit corporation, a
2 business with a minimum of fifty (50) covered employees. Small businesses are not "covered
3 employers" and are exempt from the health care spending requirements under Section 14.3.

4 (4) "Employer" means an employing unit as defined in Section 135 of the California
5 Unemployment Insurance Code or any person defined in Section 18 of the California Labor Code.
6 "Employer" shall include all members of a "controlled group of corporations" as defined in Section
7 1563(a) of the United States Internal Revenue Code, except that "more than 50 percent" shall be
8 substituted for "at least 80 percent" wherever such term appears in Section 1563(a)(1) of the Internal
9 Revenue Code and the determination shall be made without regard to Sections 1563(a)(4) and
10 1563(e)(3)(C) of the Internal Revenue Code.

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

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

17 (7) "Health care expenditure" means any amount paid by a covered employer to its covered
18 employees or to a third party on behalf of its covered employees for the purpose of providing health
19 care services for covered employees or reimbursing the cost of such services for its covered employees,
20 including, but not limited to (a) contributions by such employer on behalf of its covered employees to a
21 health savings account as defined under section 223 of the United States Internal Revenue Code or to
22 any other account having substantially the same purpose or effect without regard to whether such
23 contributions qualify for a tax deduction or are excludable from employee income; (b) reimbursement
24 by such covered employer to its covered employees for expenses incurred in the purchase of health care
25 services; (c) payments by a covered employer to a third party for the purpose of providing health care
services for covered employees; (d) costs incurred by a covered employer in the direct delivery of
health care services to its covered employees; and (e) payments by a covered employer to the City to
fund the Health Access Program for uninsured San Francisco residents, including employees.

1 Notwithstanding any other provision of this subsection, "health care expenditure" shall not include any
2 payment made directly or indirectly for workers' compensation or Medicare benefits.

3 (8) "Health care expenditure rate" means the amount of health care expenditure that a covered
4 employer shall be required to make for each hour paid for each of its covered employees each quarter.
5 The "health care expenditure rate" shall be determined based on the "average contribution" for a full-
6 time employee to the City Health Service System pursuant to Section A8.423 of the San Francisco
7 Charter based on the annual ten county survey amount for the applicable fiscal year, with such average
8 contribution prorated on an hourly basis by dividing the monthly average contribution by one hundred
9 seventy two (172) (the number of hours worked in a month by a full-time employee). The "health care
10 expenditure rate" shall be seventy five percent (75%) of the preceding hourly average contribution for
11 large businesses and fifty percent (50%) for medium-sized businesses.

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

15 (10) "Hour paid" or "hours paid" means a work hour or work hours for which a person is
16 paid wages or is entitled to be paid wages for work performed within the City, including paid vacation
17 hours and paid sick leave hours. For salaried persons, "hours paid" shall be calculated based on a
18 40-hour work week for a full-time employee.

19 (11) "Large business" means an employer for which an average of one hundred (100) or more
20 covered employees per week perform work for compensation during a quarter.

21 (12) "Medium-sized business" means an employer for which an average of between twenty
22 (20) and ninety nine (99) covered employees per week perform work for compensation during a
23 quarter.

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

(14) "Required health care expenditure" means the total health care expenditure that a
covered employer is required to make every quarter for all its covered employees.

1 (15) "Small business" means an employer for which an average of fewer than twenty (20)
2 covered employees per week perform work for compensation during a quarter.

3 **SEC. 14.2. SAN FRANCISCO HEALTH ACCESS PROGRAM.**

4 (a) The San Francisco Department of Public Health shall administer the Health Access
5 Program. Under the Health Access Program, uninsured San Francisco residents may obtain health
6 care from a network consisting of San Francisco General Hospital and the Department of Public
7 Health's clinics, and other community non-profit and private providers that meet the program's quality
8 and other criteria for participation. The Health Access Program is not an insurance plan for Health
9 Access Program participants.

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

13 (c) The Health Access Program shall be open to uninsured San Francisco residents, regardless
14 of employment status. Eligibility criteria shall be established by the Department of Public Health, but
15 no person shall be excluded from the Health Access Program based on a pre-existing condition.
16 Participants may be enrolled by their employers or may enroll themselves as individuals, with the terms
17 of enrollment to be determined pursuant to Section 14.4(a).

18 (d) The Health Access Program may be funded from a variety of sources, including payments
19 from covered employers pursuant to Section 14.3, from individuals, and from the City. Funding from
20 the City shall prioritize services for low and moderate income persons, with costs based on the Health
21 Access Program participant's ability to pay. Funding from the City shall subsidize employee
22 enrollment by medium-sized and small businesses.

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

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

12 (g) The Health Access Program shall offer the opportunity for employers to enroll their
13 employees and for individual enrollment by July 1, 2007.

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

15 (a) **Required Expenditures.** Covered employers shall make required health care expenditures
16 on behalf of their covered employees each quarter. The City Controller shall maintain any required
17 health care expenditures made by an employer to the City separate and apart from general funds and
18 limit use of the expenditures to the Health Access Program. The required health care expenditure for a
19 covered employer shall be calculated by multiplying the total number of hours paid for all of its
20 covered employees during the quarter (including only hours starting on the first day of the calendar
21 month following ninety (90) calendar days after a covered employee's date of hire) by the applicable
22 health care expenditure rate. In determining whether a covered employer has made its required health
23 care expenditures, payments to or on behalf of a covered employee shall not be considered if they
24 exceed the following amount: the number of hours paid for the covered employee during the quarter
25 multiplied by the applicable health care expenditure rate. The City's Office of Labor Standards
Enforcement (OLSE) shall enforce the health expenditure requirements under this Section.

1 (b) **Additional Employer Responsibilities.** A covered employer shall: (i) maintain accurate
2 records of health care expenditures, required health care expenditures, and proof of such expenditures
3 made each quarter each year, and allow OLSE reasonable access to such records, provided, however,
4 that covered employers shall not be required to maintain such records in any particular form; and (ii)
5 provide a report to the administering OLSE, or the OLSE's designee, on an annual basis containing
6 such other information as OLSE shall require, but OLSE may not require an employer to provide
7 information in violation of State or federal privacy laws. Where an employer does not maintain or
8 retain adequate records documenting the health expenditures made, or does not allow OLSE
9 reasonable access to such records, it shall be presumed that the employer did not make the required
10 health expenditures for the quarter for which records are lacking, absent clear and convincing
11 evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any
12 and all information to OLSE necessary to fulfill the OLSE's responsibilities as the enforcing agency
13 under this Ordinance. With regard to all such information provided by the Office of Treasurer and Tax
14 Collector, OLSE shall be subject to the confidentiality provisions of subsection (a) of Section 6.22-1 of
15 the San Francisco Business and Tax Regulations Code.

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

17 (a) The Department of Public Health shall develop and promulgate rules to govern the
18 operation of the Health Access Program. The OLSE shall develop and promulgate rules to provide for
19 the enforcement of the obligations of employers under this Chapter. The rules shall also establish
20 procedures for covered employers to maintain accurate records of health care expenditures and
21 required health care expenditures and provide a report to the City without requiring any disclosures of
22 information that would violate state or federal privacy laws. The rules shall further establish
23 procedures for providing employers notice that they may have violated this Chapter, a right to respond
24 to the notice, a procedure for notification of the final determination of a violation, and an appeal
25 procedure before a hearing officer appointed by the City Controller. The sole means of review of the
hearing officer's decision shall be by filing in the San Francisco Superior Court a petition for a writ of

1 mandate under Section 1094.5 of the California Code of Civil Procedure. No rules shall be adopted
2 finally until after a public hearing.

3 (c) During implementation of this Chapter and on an ongoing basis thereafter, the City shall
4 maintain an education and advice program to assist employers with meeting the requirements of this
5 Chapter.

6 (d) Any employer that reduces the number of covered employees below the number that would
7 have resulted in the employer being considered a “covered employer,” or below the number that would
8 have resulted in the employer being considered a medium-sized or large business, shall demonstrate
9 that such reduction was not done for the purpose of evading the obligations of this Chapter or shall be
10 in violation of the Chapter.

11 (e) It shall be unlawful for any employer or covered employer to deprive or threaten to deprive
12 any person of employment, take or threaten to take any reprisal or retaliatory action against any
13 person, or directly or indirectly intimidate, threaten, coerce, command or influence or attempt to
14 intimidate, threaten, coerce, command or influence any person because such person has cooperated or
15 otherwise participated in an action to enforce, inquire about, or inform others about the requirements
16 of this Chapter. Taking adverse action against a person within ninety (90) days of the person’s
17 exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so
18 in retaliation for the exercise of such rights.

19 (f) The City shall enforce the obligations of employers and covered employers under this
20 Chapter, and may impose administrative penalties upon employers and covered employers who violate
21 this Chapter, including the requirements that businesses allow the City reasonable access to records of
22 health expenditures, as follows: the amount of up to one-and-one-half times the total expenditures that
23 a covered employer failed to make plus simple annual interest of up to ten (10) percent from the date
24 payment should have been made.

25 (g) The City Controller shall report on implementation of the Health Access Program,
including participation rates, any effect on services provided by the Department of Public Health, and
costs of providing services to Health Access Program participants, and on the economic impact of this
Chapter, to the Board of Supervisors on a quarterly basis through the end of 2009 and on an annual

1 basis thereafter. The City Controller shall also report within sixty (60) days after any significant event
2 affecting the implementation of this Chapter, in which case the Board of Supervisors shall hold a
3 hearing within thirty (30) days of receiving the report to consider responsive action.

4 (h) The Director of Public Health shall convene an advisory Health Access Working Group to
5 provide the Department of Public Health and the Health Access Program with expert consultation and
6 direction, with input on members from the Mayor and the Board of Supervisors. The Health Access
7 Working Group shall be advisory in nature and may provide the Health Access Program with input on
8 matters including: setting membership rates; designing the range of benefits and health care services
9 for participants; and researching utilization, actuaries, and costs.

10 (i) The Department of Public Health and the OLSE shall report to the Board of
11 Supervisors by January 31, 2007, on the development of rules for the Health Access Program
12 and for the enforcement and administration of the employer obligations under this Chapter.
13 The Board of Supervisors shall hold a hearing on the proposed rules to ensure that
14 participants in the Health Access Program shall have access to high quality and culturally
15 competent services.

16 **SEC. 14.5. SEVERABILITY.**

17 If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held
18 invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such
19 portion shall be deemed a separate, distinct and independent provision and such holding shall not
20 affect the validity of the remaining portions thereof. To this end, the provisions of this ordinance shall
21 be deemed severable.

22 **SEC.14.6. PREEMPTION.**

23 Nothing in this Chapter shall be interpreted or applied so as to create any power, duty or
24 obligation in conflict with, or preempted by, any federal or state law.

25 **SEC.14.7. GENERAL WELFARE.**

1 By this Chapter, the City is assuming an undertaking only to promote the general welfare and
2 otherwise satisfy its obligations to provide health care under applicable law. This Chapter should in
3 no way be construed as an expansion of the City's existing obligations to provide health care under
4 state and federal law, and the City shall set all necessary criteria for enrollment consistent with its
5 legal obligations. The City is not assuming, nor is it imposing on its officers and employees, an
6 obligation for breach of which it is liable in money damages to any person who claims that such breach
7 proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability
8 whatsoever. To the fullest extent permitted by law, any actions taken by a public officer or employee
9 under the provisions of this Chapter shall not become a personal liability of any public officer or
10 employee of the City.

11 **SEC. 14.8. OPERATIVE DATE.**

12 This Chapter shall become operative in three phases. The day this Chapter becomes effective,
13 implementation of the Chapter shall commence. The Health Access Program and any requirements on
14 medium-sized or large businesses with fifty (50) or more covered employees shall become operative on
15 July 1, 2007. Any requirements on medium-sized businesses with twenty (20) or more covered
16 employees shall become operative on January 1, 2008. This Chapter is intended to have prospective
17 effect only.

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

22 By: ALEETA M. VAN RUNKLE
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