

1 [Administrative Code - Health Care Security Ordinance]

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3 **Ordinance amending the San Francisco Administrative Code Sections 14.1, 14.3, and**  
4 **14.4 to: 1) clarify that only amounts actually paid to provide employee health care**  
5 **services shall satisfy the employer expenditure requirements of the Health Care**  
6 **Security Ordinance; 2) add an employee notification requirement; 3) modify penalty**  
7 **provisions; and 4) set an operative date.**

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NOTE: Additions are *single-underline italics Times New Roman*;  
9 deletions are ~~*strike-through italics Times New Roman*~~.  
Board amendment additions are double-underlined;  
10 Board amendment deletions are ~~strike-through normal~~.

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11 Section 1. The San Francisco Administrative Code is hereby amended by amending  
12 Sections 14.1, 14.3 and 14.4, to read as follows:

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

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

16 (b) **Definitions.** For purposes of this Chapter, the following terms shall have the  
17 following meanings:

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

19 (2) “Covered employee” means any person who works in the City where such  
20 person qualifies as an employee entitled to payment of a minimum wage from an employer  
21 under the Minimum Wage Ordinance as provided under Chapter 12R of the San Francisco  
22 Administrative Code and has performed work for compensation for his or her employer for  
23 ninety (90) days, provided, however, that:

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

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

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

9                    (D) ~~(d)~~ The term "employee" shall not include persons who are  
10 managerial, supervisory, or confidential employees, unless such employees earn annually  
11 under \$72,450.00 or in 2007 and for subsequent years, the figure as set by the administering  
12 agency;

13                    (E) ~~(e)~~ The term "employee" shall not include those persons who are  
14 eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

15                    (F) ~~(f)~~ The term "covered employees" shall not include those persons  
16 who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability  
17 Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the  
18 requirements set forth in Section 12Q.3 for those employees; and

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

24                    (H) ~~(h)~~ Nor shall "covered employees" include those persons whose  
25 employers verify that they are receiving health care services through another employer, either

1 as an employee or by virtue of being the spouse, domestic partner, or child of another person;  
2 provided that the employer obtains from those persons a voluntary written waiver of the health  
3 care expenditure requirements of this Chapter and that such waiver is revocable by those  
4 persons at any time.

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

11 (4) "Employer" means an employing unit as defined in Section 135 of the  
12 California Unemployment Insurance Code or any person defined in Section 18 of the  
13 California Labor Code. "Employer" shall include all members of a "controlled group of  
14 corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and  
15 the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of  
16 the Internal Revenue Code.

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

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

23 (7) "Health care expenditure" means any amount paid by a covered employer to  
24 its covered employees or to a third party on behalf of its covered employees for the purpose of  
25 providing health care services for covered employees or reimbursing the cost of such services

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

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

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

25

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

5                   (B) The covered employee has died.

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

9                   (8) "Health care expenditure rate" means the amount of health care expenditure  
10 that a covered employer shall be required to make for each hour paid for each of its covered  
11 employees each quarter. The "health care expenditure rate" shall be computed as follows:

12                   (A) ~~(a)~~ From the effective date of this Chapter through June 30, 2007,  
13 \$1.60 per hour for large businesses and \$1.06 per hour for medium-sized businesses;

14                   (B) ~~(b)~~ From July 1, 2007 through December 31, 2007, January 1, 2008  
15 through December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for  
16 large and medium-sized businesses shall increase five (5) percent over the expenditure rate  
17 calculated for the preceding year;

18                   (C) ~~(c)~~ From January 1, 2010 and each year thereafter, the "health care  
19 expenditure rate" shall be determined annually based on the "average contribution" for a full-  
20 time employee to the City Health Service System pursuant to Section A8.423 of the San  
21 Francisco Charter based on the annual ten county survey amount for the applicable fiscal  
22 year, with such average contribution prorated on an hourly basis by dividing the monthly  
23 average contribution by one hundred seventy-two (172) (the number of hours worked in a  
24 month by a full-time employee). The "health care expenditure rate" shall be seventy-five  
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1 percent (75%) of the annual ten county survey amount for the applicable fiscal year for large  
2 businesses and fifty percent (50%) for medium-sized businesses.

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

7 (10) "Hour paid" or "hours paid" means a work hour or work hours for which a  
8 person is paid wages or is entitled to be paid wages for work performed within the City,  
9 including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a  
10 single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work  
11 week for a full-time employee.

12 (11) "Large business" means an employer for which an average of one hundred  
13 (100) or more persons per week perform work for compensation during a quarter.

14 (12) "Medium-sized business" means an employer for which an average of  
15 between twenty (20) and ninety-nine (99) persons per week perform work for compensation  
16 during a quarter.

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

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

22 (15) "Small business" means an employer for which an average of fewer than  
23 twenty (20) persons per week perform work for compensation during a quarter.

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

2           (a) **Required Expenditures.** Covered employers shall make required health care  
3     expenditures to or on behalf of their covered employees each quarter. The required health  
4     care expenditure for a covered employer shall be calculated by multiplying the total number of  
5     hours paid for each of its covered employees during the quarter (including only hours starting  
6     on the first day of the calendar month following ninety (90) calendar days after a covered  
7     employee's date of hire) by the applicable health care expenditure rate. In determining  
8     whether a covered employer has made its required health care expenditures, payments to or  
9     on behalf of a covered employee shall not be considered if they exceed the following amount:  
10    the number of hours paid for the covered employee during the quarter multiplied by the  
11    applicable health care expenditure rate. The City's Office of Labor Standards Enforcement  
12    (OLSE) shall enforce the health expenditure requirements under this Section.

13           **(b) Employer Notice to Employees.** *Each covered employer shall provide its covered*  
14    *employees with a written notice of the employer's obligation under this Chapter to make health care*  
15    *expenditures and how the employer is meeting this obligation. The City shall develop and promulgate*  
16    *rules regarding the content and timing of the required notice.*

17           **(c) ~~(b)~~ Additional Employer Responsibilities.** A covered employer shall: (i) maintain  
18    accurate records of health care expenditures, required health care expenditures, and proof of  
19    such expenditures made each quarter each year, and allow OLSE reasonable access to such  
20    records, provided, however, that covered employers shall not be required to maintain such  
21    records in any particular form; and (ii) provide information to the OLSE, or the OLSE's  
22    designee, on an annual basis containing such other information as OLSE shall require, but  
23    OLSE may not require an employer to provide information in violation of State or federal  
24    privacy laws. Where an employer does not maintain or retain adequate records documenting  
25    the health expenditures made, or does not allow OLSE reasonable access to such records, it

1 shall be presumed that the employer did not make the required health expenditures for the  
2 quarter for which records are lacking, absent clear and convincing evidence otherwise. The  
3 Office of Treasurer and Tax Collector shall have the authority to provide any and all  
4 nonfinancial information to OLSE necessary to fulfill the OLSE's responsibilities as the  
5 enforcing agency under this Ordinance. With regard to all such information provided by the  
6 Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions  
7 of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.  
8

9 **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

10 (a) The City shall develop and promulgate rules to govern the operation of this  
11 Chapter. The regulations shall include specific rules by the Department of Public Health on  
12 the operation of both the Health Access Program and the reimbursement accounts identified  
13 in Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access  
14 Program and establishment of reimbursement accounts and rules by the OLSE for  
15 enforcement of the obligations of the employers under this Chapter. The rules shall also  
16 establish procedures for covered employers to maintain accurate records of health care  
17 expenditures and required health care expenditures and provide a report to the City without  
18 requiring any disclosures of information that would violate State or Federal privacy laws. The  
19 rules shall further establish procedures for providing employers notice that they may have  
20 violated this Chapter, a right to respond to the notice, a procedure for notification of the final  
21 determination of a violation, and an appeal procedure before a hearing officer appointed by  
22 the City Controller. The sole means of review of the hearing officer's decision shall be by  
23 filing in the San Francisco Superior Court a petition for a writ of mandate under Section  
24 1094.5 of the California Code of Civil Procedure. No rules shall be adopted finally until after a  
25 public hearing.



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

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

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

17 (e) (1) The City shall enforce the obligations of ~~employers and~~ covered employers  
18 under this Chapter, and shall ~~may~~ impose administrative penalties upon ~~employers and~~ covered  
19 employers who fail to make required health care expenditures on behalf of their employees  
20 within five days of the quarterly due date. The amount of the penalty shall be equal to ~~up to one-~~  
21 ~~and one-half times~~ the total expenditures that a covered employer failed to make plus simple  
22 annual interest of up to ten (10) percent from the date payment should have been made, but in any  
23 event the total penalty for this violation shall not exceed \$100 ~~\$1,000.00~~ for each employee for  
24 each quarter ~~week~~ that the required such expenditures were ~~are~~ not made within five days of the  
25 quarterly due date. The \$100 penalty shall increase by an amount corresponding to the prior year's

1 increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San  
2 Francisco-Oakland-San Jose, CA metropolitan statistical area.

3 (2) For other violations of this Chapter by employers and covered employers,  
4 the administrative penalties shall be as follows: For refusing to allow access to records,  
5 pursuant to Section 14.3(b), \$25.00 as to each worker whose records are in issue for each  
6 day that the violation occurs; for the failure to maintain or retain accurate and adequate  
7 records pursuant to Section 14.3(b) and for the failure to make the annual report of  
8 information required by OLSE pursuant to Section 14.3(b). \$500.00; for violation of Section  
9 14.4(d) (retaliation), \$100.00 as to each person who is the target of the prohibited action for  
10 each day that the violation occurs; and for any other violation not specified in this subsection  
11 (e)(2), \$25.00 per day for each day that the violation occurs.

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

15 (4) Amounts recovered under this Section shall be deposited in the City's  
16 General Fund.

17 (f) The City Controller shall coordinate with the Department of Public Health and OLSE  
18 to prepare periodic reports on the implementation of this Chapter including participant rates,  
19 any effect on services provided by the Department of Public Health, the cost of providing  
20 services to the Health Access Program participants and the economic impact of the Chapter's  
21 provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for  
22 quarters beginning July 1, 2007 through June 30, 2008, then every six months through June  
23 30, 2010. Reports shall include specific information on any significant event affecting the  
24 implementation of this Chapter and also include recommendations for improvement where  
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1 needed, in which case the Board of Supervisors or a committee thereof shall hold a hearing  
2 within thirty (30) days of receiving the report to consider responsive action.

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

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

16  
17 Section 2. **Effective Date; Operative Date.** This ordinance shall become effective  
18 30 days from the date of passage. This ordinance shall become operative January 1, 2012.

19  
20 APPROVED AS TO FORM:  
21 DENNIS J. HERRERA, City Attorney

22 By: \_\_\_\_\_  
23 THOMAS J. OWEN  
24 Deputy City Attorney