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		Board Item No.	

COMMITTEE/BOARD OF SUPERVISORS

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Completed by: Alisa Somera Date October 31, 2014 Completed by: Date				

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[Administrative Code - Catastrophic Illness Programs]

Ordinance amending the Administrative Code to authorize the Department of Public Health to designate another City department to carry out various functions in the administration of the Catastrophic Illness Program for City employees and the Catastrophic Illness Program for family members of City employees.

Unchanged Code text and uncodified text are in plain Arial font.

Additions to Codes are in single-underline italics Times New Roman font.

Deletions to Codes are in strikethrough italics Times New Roman font.

Board amendment additions are in double-underlined Arial font.

Board amendment deletions are in strikethrough Arial font.

Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Administrative Code is hereby amended by revising Sections 16.9-29A and 16.9-29B, to read as follows:

SEC. 16.9-29A. T. J. ANTHONY EMPLOYEE CATASTROPHIC ILLNESS

PROGRAM – TRANSFER OF SICK LEAVE AND VACATION CREDITS TO INDIVIDUAL

CATASTROPHICALLY ILL EMPLOYEES OR TO A POOL OF CATASTROPHICALLY ILL

EMPLOYEES.

- (a) **Purpose.** To enable catastrophically-ill employees to continue to be paid through donations of sick leave and vacation hours from other employees, as authorized by Charter Sections A8.364 and A8.441. This program shall be known as the Catastrophically Illness Program, or "CIP." This Section only provides for receipt of such credits as are donated and does not provide for an absolute right of continued paid leave.
- (b) **Establishment of Pool; Administration and Rule-Making Authority.** There is hereby established a pool into which employees may donate sick leave and/or vacation

credits to benefit catastrophically-ill employees. The Controller shall have authority to administer the CIP program, including the authority to make and enforce rules not inconsistent with this Section, with consultation from the Director of Health <u>or his or her designee</u>.

(c) **Definitions**.

- (1) A "catastrophic illness" shall mean a life-threatening illness or injury, as determined by the Department of Public Health *or its designee*.
- (2) An "active participant" in the CIP is defined as a City employee who has applied for Catastrophic Illness Status and been notified of his or her acceptance in the CIP by the Department of Public Health or its designee and whose participation in the CIP has not terminated, regardless of whether or not the employee has actually received or used any donated sick leave and/or vacation credits.
- (d) Eligibility of Employees To Participate in CIP. Any employee of the City and County of San Francisco may participate in the CIP if the employee meets all of the following conditions:
- (1) The employee is eligible to accumulate and use sick leave and vacation credits;
 - (2) The employee is catastrophically ill;
 - (3) The employee has exhausted all of his/her available paid leave; and
- (4) The employee does not participate in a short or long-term disability program for which the City pays in whole, directly or indirectly, or if the employee participates in such a program, the employee agrees to, and does, apply for disability benefits immediately upon becoming eligible for such benefits. Any employee who participates in a short or long-term disability program for which the City pays in whole, directly or indirectly, may participate in the CIP program until the employee receives or is qualified to receive benefits under the terms of a short or long-term disability program for which the City pays in whole, directly or indirectly.

Any employee who is receiving or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, may not participate in the CIP program until and unless the employee's disability benefits terminate. Any employee who, while or after participating in the CIP program, retroactively receives or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, must reimburse the City for the CIP payments received during the period which the short or long term disability program applies. Failure to do so will result in the City's placing a lien for the unreimbursed amount on the employee's future wages and benefits (not including workers' compensation or retirement.). This paragraph does not apply to employees who are active participants in the CIP as of *April 29, 2002 the effective date of this Amendment* and have been active participants since March 29, 2002.

(e) Procedure for Applying for Catastrophic Illness Status.

- (1) An employee must complete a prescribed application form and return it to the Department of Public Health *or its designee*, together with supporting medical documentation. The Department of Public Health *or its designee* shall produce and maintain sufficient quantities of the prescribed application for employee access and distribution.
- (2) The Department of Public Health or its designee shall examine the documentation supporting the application. The Department of Public Health or its designee may ask the applicant to submit further documentation and/or to submit to examination by a physician that it designates to determine in fact that the applicant does suffer from a catastrophic illness within the meaning of this Section. An applicant's failure to comply with these requirements may be grounds for rejection of the application.
- (3) In order to continue to qualify as catastrophically ill, a CIP employee may from time to time be required to submit to specified examination, or to supply further

documentation of current medical status, as is necessary in the opinion of the Department of Public Health or its designee; provided, however, that such requests shall not be made for the purpose of harassing said employee. In addition, an employee may be required to submit documentation of application for and/or status of disability benefits.

employee is not catastrophically ill, the employee shall have a right to appeal the decision through an administrative appeal process to be established by the Health Commission, which shall include the right to a review by the Director of Health and, finally, a hearing before the Health Commission. The Department of Public Health or its designee shall provide the employee with a written letter setting forth the reasons for denial and the procedure for filing an administrative appeal. The Health Commission shall promulgate and post the administrative appeal rules within 60 days of the effective date of this ordinance. The administrative appeal process in its entirety shall not exceed 60 days. An employee whose application has been disapproved is not obligated to exhaust the administrative appeals process before reapplying. Instead, the employee may reapply after observing a 30-day waiting period from the date of the initial denial.

(f) Posting of Eligible Recipients.

- (1) The Department of Public Health <u>or its designee</u> shall assign an exclusive number to each catastrophically ill employee deemed eligible to participate in the CIP.
- (2) The Department of Public Health <u>or its designee</u> shall maintain, reproduce and post a running list of CIP employees, to be identified only by their exclusive numbers, in order to let transferring employees designate a recipient.
- (3) The list may include the amounts of sick leave and vacation credits already transferred or on reserve to each CIP employee.

- (4) In all cases, the Department of Public Health and its designees shall shield and protect the true identities of CIP employees.
- (g) Eligibility to Transfer Sick Leave and/or Vacation Credits. Any employee of the City and County of San Francisco who is eligible to accumulate and use vacation credits and sick leave may transfer sick leave and/or vacation credits to the CIP pool or to an individual CIP employee, subject to the following conditions:
- (1) The transferring employee must retain a minimum sick leave balance of 64 hours.
 - (2) Transfers must be in units of eight hours.
 - (3) All transfers are irrevocable.
- (4) The transferring employee may transfer hours to the CIP (pool or individual) only once per pay period.
- (5) The transferring employee may transfer a maximum of 160 hours per pay period, of which no more than 80 hours may be to individual CIP employees.
- (6) The transferring employee may transfer a maximum of 480 hours per fiscal year to the pool and to individual CIP employees combined.
- (7) Neither a transferring employee nor a CIP employee may be in violation of Subsection (k).
 - (h) Use of Transferred Sick Leave and Vacation Credits.
- (1) All hours transferred shall be credited as sick leave for the CIP employee. As they are used, they shall be treated as the employee's own sick leave for all purposes, including for continued accrual of vacation credits, sick leave, and retirement service; service for pay increments; and eligibility for holiday pay.

- (2) At the beginning of each pay period, a CIP employee must use all sick leave and vacation credits accrued during the previous pay period before using any transferred hours.
- (3) A CIP employee may use transferred hours retroactively from the date of certification of eligibility back to the date of application.
- (4) A CIP employee may use transferred credits in a pay period to the extent that when combined with other compensation from the City and County and all other benefits from public sources, the total does not exceed the pay for 100 percent of the employee's regularly scheduled hours for such pay period (excluding regularly scheduled overtime and premium pay). A CIP employee may be required to provide financial records to prove compliance with this subsection. Failure to provide such records is grounds for exclusion from the CIP.
- (i) Redistribution of Transferred Hours Upon Termination of Participation In CIP. If a CIP employee dies, retires, resigns or begins receiving disability benefits before having used all hours transferred pursuant to this Section, the unused hours shall be transferred to the CIP pool. If a CIP employee's participation in the CIP expires or is terminated before the employee has used all hours transferred pursuant to this Section, all unused hours in excess of 64 hours shall be transferred to the CIP pool.

(j) Confidentiality.

- (1) All medical records submitted by an employee pursuant to this statute <u>shall</u> are to be kept confidential by the Department of Public Health or its designee.
- (2) Until the Department of Public Health <u>or its designee</u> has rendered its opinion pursuant to Subsection (d) that the employee is catastrophically ill, the fact of an employee's application <u>is to shall</u> be kept confidential by the parties processing the application and not shared with the employee's department head.

- (3) The names of employees donating hours pursuant to this provision *are to shall* remain confidential.
- (4) Violation of the provisions of this subsection <u>(j)</u> or any other provision relating to confidentiality protections shall be grounds for disciplinary action.

(k) No Selling or Coercion.

- (1) No individual shall directly or indirectly solicit the receipt of, or accept, any compensation in full or partial exchange, directly or indirectly, for sick leave or vacation credits to be transferred pursuant to this Section.
- (2) No individual shall solicit the receipt of, or accept, the transfer of any sick leave or vacation credits pursuant to this Section in full or partial exchange, directly or indirectly, for any compensation.
- (3) No individual shall threaten or in any way attempt to coerce an employee with respect to transfer of sick leave or vacation credits pursuant to this Section.
- (4) Violation of the provisions of this subsection (*k*) shall be grounds for termination of participation in the CIP and for disciplinary action.
- (I) **Notices.** The Civil Service Commission shall develop notices with relevant information about the CIP. These notices shall be distributed to all appointing officers, who shall then post them in public places where other notices advising employees of rights and benefits are posted.
- (m) **Termination of this Provision.** Unless otherwise specified by ordinance or Charter provision, the provisions of this Section shall expire upon the effective date of an ordinance or Charter section instituting, or upon the effective date of the last MOU through which all City employees are covered by, a long-term disability program.
- (n) **Limitation.** In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general

welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

SEC. 16.9-29B. PROGRAM FOR EMPLOYEES WITH CATASTROPHICALLY ILL FAMILY MEMBERS – TRANSFER OF VACATION CREDITS TO INDIVIDUAL EMPLOYEES WITH A CATASTROPHICALLY ILL FAMILY MEMBER.

- (a) **Purpose.** To create a program, as authorized by Charter Section A8.441, to allow employees with catastrophically ill family members to receive donations of vacation credits to take time off to care for their ill family member. This program shall be known as the Catastrophically Illness Program for Family Members, or "CIP-FM." This Section only provides for receipt of such credits as are donated and does not provide for an absolute right of continued paid leave.
- (b) Administration and Rule-Making Authority. The Controller shall have authority to administer the CIP-FM program, including the authority to make and enforce rules not inconsistent with this Section, with consultation from the Director of Health <u>or his or her</u> <u>designee</u>.

(c) **Definitions**.

- (1) A catastrophic illness shall mean a life-threatening illness or injury, as determined by the Department of Public Health *or its designee*.
- (2) "Family member" means a spouse, registered domestic partner, or another dependent as dependent is defined in the Internal Revenue Code (26 U.S.C. sec. 152, as amended from time to time).
- (d) Eligibility of Employee To Participate in CIP-FM Program. In order to participate in the CIP-FM, an employee must meet all of the following conditions:

- (1) The employee must be eligible to accumulate and use sick leave credits;
- (2) The employee must have exhausted all of his/her available paid leave;
- (3) The employee must have a catastrophically_-ill family member; and
- (4) The employee must need to take time off from work to care for the catastrophically ill family member.

(e) Procedure for Applying to Participate in CIP-FM.

- (1) An employee must complete a prescribed application form and return it to the Department of Public Health <u>or its designee</u>, together with supporting medical documentation. The Department of Public Health <u>or its designee</u> shall produce and maintain sufficient quantities of the prescribed application for employee access and distribution.
- (2) The Department of Public Health or its designee shall examine the application and supporting documentation. The Department of Public Health or its designee may ask the employee to submit further documentation or the family member to submit to examination by a physician. Failure to comply with these requirements may be grounds for rejection of the application.
- (3) In order for the employee to continue to participate in the program, an employee may from time to time be required to supply further documentation, or the family member may be required to submit to specified examination, as is necessary in the opinion of the Department of Public Health or its designee; provided, however, that such requests shall not be made for the purpose of harassment.
- (4) If the Department of Public Health <u>or its designee</u> determines that an employee's family member is <u>determined</u> not <u>to be</u> catastrophically ill, the employee shall have a right to appeal the decision through an administrative appeal process to be established by the Health Commission, which shall include the right to a review by the Director of Health and, finally, a hearing before the Health Commission. The Department of Public Health <u>or its</u>

designee shall provide the employee with written notice setting forth the reasons for denial and the procedure for filing an administrative appeal. The Health Commission shall promulgate and post the administrative appeal rules within 60 days from the effective date of this ordinance. The administrative appeal process in its entirety shall not exceed 60 days. An employee whose application has been disapproved is not obligated to exhaust the administrative appeals process before reapplying. Instead, the employee may reapply after observing a 30-day waiting period from the date of the initial denial.

(f) Posting of Eligible Recipients.

- (1) The Department of Public Health <u>or its designee</u> shall assign an exclusive number to each employee deemed eligible to participate in the CIP-FM.
- (2) The Department of Public Health <u>or its designee</u> shall maintain, reproduce and post a running list of CIP-FM employees, to be identified only by their special numbers, in order to let transferring employees designate a recipient.
- (3) The list may include the amount of vacation credits already transferred or on reserve to each employee. *and*
- (4) In all cases, the Department of Public Health and its designees shall keep confidential the true identities of CIP-FM employees and their catastrophically ill family member.
- (g) Eligibility to Transfer Vacation Credits to Individual CIP-FM Employees. Any employee of the City and County of San Francisco who is eligible to accumulate and use vacation credits may transfer vacation credits to an individual CIP-FM employee, subject to the following conditions:
 - (1) Transfers must be in units of eight hours;
 - (2) All transfers are irrevocable;

- (3) The transferring employee may transfer hours to the CIP-FM only once per pay period;
- (4) The transferring employee may transfer a maximum of 80 hours per pay period;
- (5) The transferring employee may transfer a maximum of 480 hours per fiscal year to the CIP-FM program; and
- (6) Neither a transferring employee nor a recipient may be in violation of Subsection (k).
 - (h) Use of Transferred Vacation Credits By a CIP-FM Employee.
- (1) All hours transferred shall be credited as sick leave for the CIP-FM employee. As they are used, they shall be treated as use of the employee's own sick leave for all purposes, including for continued accrual of vacation credits, sick leave, and retirement service; service for pay increments; and eligibility for holiday pay.
- (2) At the beginning of each pay period, a CIP-FM employee must use all sick leave and vacation credits accrued during the previous pay period before using any transferred hours.
- (3) A CIP-FM employee may use transferred credits in a pay period to the extent that when combined with other compensation from the City and County and all other benefits from public sources, the total does not exceed the pay for 100 percent of the employee's regularly scheduled hours for such pay period (excluding regularly scheduled overtime and premium pay). A CIP-FM employee may be required to provide financial records to prove compliance with this subsection. Failure to provide such records is grounds for exclusion from the CIP-FM and disciplinary action.
- (i) Redistribution of Transferred Hours Upon Termination of Participation in CIP-FM. If a CIP-FM employee dies, retires, resigns, or otherwise ends participation in the CIP-FM

before having used all hours transferred pursuant to this provision, all unused hours in excess of 64 shall be redistributed to other CIP-FM employees.

(j) Confidentiality.

- (1) All medical records submitted pursuant to this statute *are to shall* be kept confidential by the Department of Public Health or its designee;
- (2) Until the Department of Public Health <u>or its designee</u> has rendered its opinion pursuant to Subsection (d) that an employee's family member is catastrophically ill, the fact of an employee's application <u>is to shall</u> be kept confidential by the parties processing the application and not shared with the employee's department head.
- (3) The names of employees donating hours pursuant to this provision *are to shall* remain confidential.
- (4) Violation of the provisions of this subsection *(j)* or any other *provision* relating to confidentiality protections shall be grounds for disciplinary action.

(k) No Selling or Coercion.

- (1) No individual shall directly or indirectly solicit the receipt of, or accept, any compensation in full or partial exchange, directly or indirectly, for vacation credits to be transferred pursuant to this Section.
- (2) No individual shall solicit the receipt of, or accept, the transfer of any vacation credits pursuant to this Section in full or partial exchange, directly or indirectly, for any compensation.
- (3) No individual shall threaten or in any way attempt to coerce an employee with respect to transfer of vacation credits pursuant to this Section.
- (4) Violation of the provisions of this subsection (*k*) shall be grounds for termination of participation in the CIP-FM and for disciplinary action.

- (I) **Notices.** The Civil Service Commission shall develop notices with relevant information about the CIP-FM. These notices shall be distributed to all appointing officers who shall then post them in public places where other notices advising employees of rights and benefits are posted.
- (m) **Limitation.** In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

Deputy City Attorney

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LEGISLATIVE DIGEST

[Administrative Code - Catastrophic Illness Programs]

Ordinance amending the Administrative Code to authorize the Department of Public Health to designate another City department to carry out various functions in the administration of the Catastrophic Illness Program for City employees and the Catastrophic Illness Program for family members of City employees.

Existing Law

The City's Catastrophic Illness Program allows catastrophically ill City employees who are unable to work to continue to be paid through donations of sick leave and vacation hours from other City employees. The separate Catastrophic Illness Program for Family Members similarly allows City employees caring for catastrophically ill family members to be paid through donations of sick leave and vacation hours from other City employees. Both programs are administered by the Department of Public Health. Under existing law, the Department of Public Health may delegate some but not all responsibilities for the administration of the programs to another City department, such as the Department of Human Resources.

Amendments to Current Law

The proposed ordinance would allow the Department of Public Health to delegate responsibility for administering any part of the Catastrophic Illness Program or the Catastrophic Illness Program for Family Members to another City department. The Director of Public Health and the Health Commission would retain the non-delegable responsibility to consider appeals from employees whose applications to participate in the programs have been denied by the City.

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Edwin M. Lee Mayor Barbara A. Garcia, MPA
Director of Health

August 29, 2014

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

Dear Ms. Calvillo:

Attached please find an original and four copies of a proposed ordinance for Board of Supervisors approval, which is intended to amend the Administrative Code to authorize the Department of Public Health to designate another City department to carry out various functions of the Catastrophic Illness Program.

The following is a list of accompanying documents (five sets):

- Ordinance amending the Administrative Code to authorize the Department of Public Health to designate another City department to carry out various functions in the administration of the Catastrophic Illness Program for City employees and the Catastrophic Illness Program for family members of City employees.
- Legislative Digest for Ordinance amending the Administrative Code to authorize the
 Department of Public Health to designate another City department to carry out
 various functions in the administration of the Catastrophic Illness Program for City
 employees and the Catastrophic Illness Program for family members of City
 employees..

There is no requirement for a special timeline for these items.

The following persons may be contacted regarding this matter: Colleen Chawla, Deputy Director of Health and Director of Policy and Planning at 554-2769.

Sincerely,

Barbara A. Garcia, MPA

Director of Health

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