

1 [Amendments to Health Care Security Ordinance.]

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3 **Ordinance amending the San Francisco Administrative Code by amending Sections**
4 **14.1 through 14.4 and 14.8, to: (1) authorize the Department of Public Health to**
5 **establish and maintain reimbursement accounts from which employees covered by the**
6 **San Francisco Health Care Security Ordinance ("HCSO") may seek reimbursement for**
7 **health care expenses; (2) extend to 2008 the operative date of the portion of the HCSO**
8 **requiring minimum employer health care expenditures; (3) clarify remedies for**
9 **violations of the HCSO; and (4) make other technical changes and findings.**

10 Note: Additions are *single-underline italics Times New Roman*;
11 deletions are *strikethrough italics Times New Roman*.
12 Board amendment additions are double underlined.
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.** With the passage of
15 Ordinance 218-06, the City and County of San Francisco ("City") enacted the San Francisco
16 Health Care Security Ordinance ("HCSO"), the findings of which are incorporated herein by
17 reference. The HCSO mandates the creation of a comprehensive health care reform program
18 to address the current health care crisis in San Francisco. The HCSO seeks to ensure that all
19 San Francisco residents, and all non-San Francisco residents who work in San Francisco,
20 have access to affordable health care. The reforms required by the HCSO are further
21 intended to alleviate the demands placed on San Francisco's emergency health care system
22 by its 82,000 uninsured residents, as well as the uninsured non-San Francisco residents who
23 work in San Francisco and utilize emergency health care services in San Francisco. Essential
24 to the successful operation of this system is the HCSO's requirement that employers make
25 minimum health care expenditures on behalf of employees covered by the Ordinance,

1 whether the employers choose to satisfy the requirement by providing for health care benefits
2 themselves in a manner of their choosing, or by making payments to the City and County of
3 San Francisco, so that the City may provide for the health care needs of the employees who
4 have not been provided benefits by their employers.

5 During the initial implementation phases of this program, the Department of Public
6 Health determined that it would be better equipped to administer a comprehensive health care
7 delivery system for uninsured San Francisco residents and uninsured nonresidents who work
8 in San Francisco if it were authorized to use employer expenditures directed to the City to
9 establish and maintain reimbursement accounts from which employees covered by the
10 Ordinance, including employees who are not San Francisco residents, could obtain
11 reimbursement for health care expenditures. The Department of Public Health has further
12 determined that compliance with the expenditure mandate would be made easier for
13 employers if they were permitted to make payments to the City and County of San Francisco
14 on behalf of their employees who live outside of San Francisco, rather than merely on behalf
15 of their employees who are San Francisco residents. The Board finds that these
16 amendments, by making compliance easier for employers, and by improving the ability of the
17 Department of Public Health to create and administer an effective, comprehensive health care
18 system, will further effectuate the purposes of the Health Care Security Ordinance.

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Section 2. The San Francisco Administrative Code is hereby amended by amending
Sections 14.1 through 14.4 and 14.8, to read as follows:

SEC. 14.1. SHORT TITLE; DEFINITIONS.

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

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

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

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

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

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

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

18 (d) The term "employee" shall not include persons who are managerial,
19 supervisory, or confidential employees, unless such employees earn annually under \$72,450
20 or in 2007 and for subsequent years, the figure as set by the administering agency;

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

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

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

8 (h) Nor shall "covered employees" include those persons whose employers verify
9 that they are receiving health care services through another employer, either as an employee
10 or by virtue of being the spouse, domestic partner, or child of another person; provided that
11 the employer obtains from those persons a voluntary written waiver of the health care
12 expenditure requirements of this Chapter and that such waiver is revocable by those persons
13 at any time.

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

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

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

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

9 (7) "Health care expenditure" means any amount paid by a covered employer to its
10 covered employees or to a third party on behalf of its covered employees for the purpose of
11 providing health care services for covered employees or reimbursing the cost of such services
12 for its covered employees, including, but not limited to (a) contributions by such employer on
13 behalf of its covered employees to a health savings account as defined under section 223 of
14 the United States Internal Revenue Code or to any other account having substantially the
15 same purpose or effect without regard to whether such contributions qualify for a tax
16 deduction or are excludable from employee income; (b) reimbursement by such covered
17 employer to its covered employees for expenses incurred in the purchase of health care
18 services; (c) payments by a covered employer to a third party for the purpose of providing
19 health care services for covered employees; (d) costs incurred by a covered employer in the
20 direct delivery of health care services to its covered employees; and (e) payments by a
21 covered employer to the City to be used on behalf of covered employees. The City may use these
22 payments to: (i) fund membership in the Health Access Program for uninsured San Francisco
23 residents; and (ii) establish and maintain reimbursement accounts for covered employees, whether or
24 not those covered employees are San Francisco residents. ~~to fund the Health Access Program for~~
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1 ~~uninsured San Francisco residents, including employees.~~ Notwithstanding any other provision of
2 this subsection, "health care expenditure" shall not include any payment made directly or
3 indirectly for workers' compensation or Medicare benefits.

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

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

9 (b) From July 1, 2007 through December 31, 2007, January 1, 2008 through
10 December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for large and
11 medium-sized businesses shall increase five (5) percent over the expenditure rate calculated
12 for the preceding year;

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

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

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

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

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

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

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

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

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20 **SEC. 14.2. SAN FRANCISCO HEALTH ACCESS PROGRAM AND REIMBURSEMENT**

21 **ACCOUNTS.**

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

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

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

13 (d) The Health Access Program may be funded from a variety of sources, including
14 payments from covered employers pursuant to Section 14.3, from individuals, and from the
15 City. Funding from the City shall prioritize services for low and moderate income persons, with
16 costs based on the Health Access Program participant's ability to pay.

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

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

11 (g) The Department of Public Health shall also be authorized to use payments made to the
12 City by employers to satisfy their expenditure requirements as set forth in Section 14.3 to establish and
13 maintain reimbursement accounts from which covered employees may obtain reimbursement of health
14 care expenditures. The Health Access Program shall offer the opportunity for employers to enroll their
15 employees and for individual enrollment by July 1, 2007.

16 (h) The City Controller shall ensure any required health care expenditures made by an
17 employer to the City are kept separate and apart from general funds and shall limit use of the
18 expenditures to the Health Access Program or to the establishment and maintenance of reimbursement
19 accounts from which covered employees may obtain reimbursement of health care expenditures. If any
20 covered employee fails to enroll in the Health Access Program or establish a reimbursement account
21 with the Department of Public Health within a reasonable time, as determined by the Department of
22 Public Health, the City may use the funds paid to the City and County of San Francisco on behalf of
23 that employee for the benefit of the health care programs created by this Ordinance, but the City may
24 not transfer these funds to the City's general fund.

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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 City Controller shall*
4 *ensure any required health care expenditures made by an employer to the City are kept separate and*
5 *apart from general funds and limit use of the expenditures to the Health Access Program.* The
6 required health care expenditure for a covered employer shall be calculated by multiplying the
7 total number of hours paid for all of its covered employees during the quarter (including only
8 hours starting on the first day of the calendar month following ninety (90) calendar days after a
9 covered employee's date of hire) by the applicable health care expenditure rate. In
10 determining whether a covered employer has made its required health care expenditures,
11 payments to or on behalf of a covered employee shall not be considered if they exceed the
12 following amount: the number of hours paid for the covered employee during the quarter
13 multiplied by the applicable health care expenditure rate. The City's Office of Labor Standards
14 Enforcement (OLSE) shall enforce the health expenditure requirements under this Section.

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

1 quarter for which records are lacking, absent clear and convincing evidence otherwise. The
2 Office of Treasurer and Tax Collector shall have the authority to provide any and all
3 nonfinancial information to OLSE necessary to fulfill the OLSE's responsibilities as the
4 enforcing agency under this Ordinance. With regard to all such information provided by the
5 Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions
6 of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.
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8 **SEC. 14.4 ADMINISTRATION AND ENFORCEMENT.**

9 (a) The City shall develop and promulgate rules to govern the operation of this
10 Chapter. The regulations shall include specific rules by the Department of Public Health on
11 the operation of *both* the Health Access Program and the reimbursement accounts identified in
12 Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access Program and
13 establishment of reimbursement accounts and rules by the OLSE for enforcement of the
14 obligations of the employers under this Chapter. The rules shall also establish procedures for
15 covered employers to maintain accurate records of health care expenditures and required
16 health care expenditures and provide a report to the City without requiring any disclosures of
17 information that would violate State or Federal privacy laws. The rules shall further establish
18 procedures for providing employers notice that they may have violated this Chapter, a right to
19 respond to the notice, a procedure for notification of the final determination of a violation, and
20 an appeal procedure before a hearing officer appointed by the City Controller. The sole
21 means of review of the hearing officer's decision shall be by filing in the San Francisco
22 Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of
23 Civil Procedure. No rules shall be adopted finally until after a public hearing.
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1 (b) During implementation of this Chapter and on an ongoing basis thereafter, the
2 City 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
5 would have resulted in the employer being considered a "covered employer," or below the
6 number that would have resulted in the employer being considered a medium-sized or large
7 business, shall demonstrate that such reduction was not done for the purpose of evading the
8 obligations 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
10 to 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 may impose administrative penalties upon employers and covered
19 employers who fail to make required health care expenditures on behalf of their employees. The
20 amount of the penalty shall be \$1,000 for each employee for each week that such expenditures are not
21 made, provided that the total amount of penalties shall not exceed the following: ~~violate this Chapter,~~
22 including the requirements that businesses allow the City reasonable access to records of health
23 expenditures, as follows: the amount of up to one-and-one-half times the total expenditures that
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1 a covered employer failed to make plus simple annual interest of up to ten (10) percent from
2 the date payment should have been made.

3 (2) For other violations of this Chapter by employers and covered employers, the
4 administrative penalties shall be as follows: For refusing to allow access to records, pursuant to
5 Section 14.3(b), \$25 as to each worker whose records are in issue for each day that the violation
6 occurs; for the failure to maintain or retain accurate and adequate records pursuant to Section 14.3(b)
7 and for the failure to make the annual report of information required by OLSE pursuant to Section
8 14.3(b), \$500; for violation of Section 14.4(d) (retaliation), \$100 as to each person who is the target of
9 the prohibited action for each day that the violation occurs; and for any other violation not specified in
10 this subsection (e)(2), \$25 per day for each day that the violation occurs.

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

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

15 (f) The City Controller shall coordinate with the Department of Public Health and
16 OLSE to prepare periodic reports on the implementation of this Chapter including participant
17 rates, any effect on services provided by the Department of Public Health, the cost of
18 providing services to the Health Access Program participants and the economic impact of the
19 Chapter's provisions. Reports shall be provided to the Board of Supervisors on a quarterly
20 basis for quarters beginning July 1, 2007 through June 30, 2008, then every six months
21 through June 30, 2010. Reports shall include specific information on any significant event
22 affecting the implementation of this Chapter and also include recommendations for
23 improvement where needed, in which case the Board of Supervisors or a committee thereof
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1 shall hold a hearing within thirty (30) days of receiving the report to consider responsive
2 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 ~~January 31, 2007~~, on the development of rules for the Health
12 Access Program and for the enforcement and administration of the employer obligations
13 under this Chapter. The Board of Supervisors or a committee thereof shall hold a hearing on the
14 proposed rules to ensure that participants in the Health Access Program shall have access to
15 high quality and culturally competent services.

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17 **SEC. 14.8. OPERATIVE DATE.**

18 This Chapter shall become operative in three phases. The day this Chapter becomes
19 effective, implementation of the Chapter shall commence. The Health Access Program ~~and~~
20 ~~any requirements on employers for which an average of fifty (50) or more persons per week perform~~
21 ~~work for compensation during a quarter shall~~ become operative on July 1, 2007. Any requirements
22 on employers for which an average of fifty (50) or more persons per week perform work for
23 compensation during a quarter shall become operative on January 1, 2008. Any requirements on
24 employers for which an average of from twenty (20) to forty-nine (49) persons per week

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1 perform work for compensation during a quarter shall become operative on April 1, 2008.
2 ~~March 31, 2008~~. This Chapter is intended to have prospective effect only.

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

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6 By: _____
7 PAUL ZAREFSKY
8 Deputy City Attorney

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