

[Administrative Code - Irrevocable Employer Health Care Expenditure Requirement and Establishment of Health Care Access Assistance Program]

Ordinance revising the Health Care Security Ordinance to phase in over a three-year period requirement that all health care expenditures to be made irrevocably; to permit waiver of unused portions of certain revocable expenditures; to clarify that the existing establish a City public benefit program known as the Health Care Access Assistance Program (HCAAP) has two ; ~~to describe the public benefits available under each of HCAAP's three component programs, Healthy San Francisco, Covered San Francisco, and Medical Reimbursement Health Care Access Accounts; and to charge the~~ Department of Public Health with creating a plan to maximize HAP participants' enrollment in the State health insurance exchange, Covered California, by plan year 2016 ~~set certain eligibility requirements for program participants; and to set an operative date of October 1, 2014.~~

NOTE: **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 14.1 through 14.78 of Chapter 14, and deleting Sections 14.1.5 and 14.8, to read as follows:

SEC. 14.1. SHORT TITLE; DEFINITIONS.

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

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

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

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

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

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

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

(2D) The term "Covered ~~E~~employee" shall not include persons who are managerial, supervisory, or confidential employees, unless such employees earn annually under ~~\$88,21272,450.00~~ ~~or~~ in 2014~~2007~~ and, for subsequent years, the figure as set by the administering agency;

(3E) The term "Covered ~~E~~employee" shall not include those persons who are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

(4F) The term "Ccovered ~~E~~employees" shall not include those persons who are "Ccovered ~~E~~employees" as defined in Section 12Q.2.9 of the Health Care Accountability Ordinance, Chapter 12Q of the ~~San Francisco~~ Administrative Code, if the ~~E~~Employer meets the requirements set forth in Section 12Q.3 for those employees; and

1 (5G) The term "~~C~~covered ~~E~~employees" shall not include those persons
2 who are employed by a nonprofit corporation for up to one year as trainees in a bona fide
3 training program consistent with Federal law, which training program enables the trainee to
4 advance into a permanent position, provided that the trainee does not replace, displace, or
5 lower the wage or benefits of any existing position or employee.

6 (6H) Nor shall the term "~~C~~covered ~~E~~employees" include those persons
7 whose ~~e~~Employers verify that they are receiving ~~h~~Health ~~e~~Care ~~s~~Services through another
8 ~~e~~Employer, either as an employee or by virtue of being the spouse, domestic partner, ~~or~~ child,
9 or other dependent of another person; provided that the ~~e~~Employer obtains from those persons
10 a voluntary written waiver of the ~~h~~Health ~~e~~Care ~~e~~Expenditure requirements of this Chapter and
11 that such waiver is revocable by those persons at any time.

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

19 ~~"Covered San Francisco" means a public benefit program administered by the~~
20 ~~Department of Public Health, funded in whole or in part by Health Care Expenditures made by~~
21 ~~Covered Employers to the City under Section 14.3, to make health insurance purchased~~
22 ~~through Covered California, or similar state-administered exchanges, more affordable for San~~
23 ~~Francisco employees and residents.~~

24 (4) "Employer" means an employing unit as defined in Section 135 of the
25 California Unemployment Insurance Code or any ~~p~~Person defined in Section 18 of the

1 California Labor Code. "Employer" shall include all members of a "controlled group of
2 corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and
3 the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of
4 the Internal Revenue Code.

5 "Employer Spending Requirement" means the sum total of Required Health
6 Care Expenditures that a Covered Employer must make for all of its Covered Employees.

7 ~~"Health Care Access Account" means a public health benefit administered by~~
8 ~~the Department of Public Health, funded in whole or in part by Health Care Expenditures~~
9 ~~made by Covered Employers to the City under Section 14.3, from which eligible Covered~~
10 ~~Employees may obtain reimbursement for Health Care Services.~~

11 "Health Care Access Assistance Program" means a public health benefit program
12 administered by the Department of Public Health; comprised of Healthy San Francisco, Covered San
13 Francisco, and Medical Reimbursement Health Care Access Accounts; and intended to
14 maximize enrollment in Covered California plans and increase every participant's access to
15 Health Care Services.

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

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

22 ~~(A)~~ "Health Care Expenditure" means an amount irrevocably paid by a Covered
23 Employer to a Covered Employee or a trustee or a third party on behalf of a Covered Employee for the
24 purpose of providing or reimbursing the cost of Health Care Services for Covered Employees and/or
25 their spouses, domestic partners, children, or other dependents. "Health Care Expenditure" also

1 means an amount paid by a Covered Employer to the City on behalf of a Covered Employee to
2 establish his or her eligibility to participate in the Health ~~Care Access Assistance Program~~ in the
3 manner and according to the terms set by the Department of Public Health. "Health Care
4 Expenditure" shall not include ~~any amount that has been allocated for use by a Covered~~
5 ~~Employee but retained by the Employer, nor any amount that has been paid to a trustee or~~
6 ~~third party but that may at any time be covered by or returned to the Employer, nor~~ any amount
7 otherwise required to be paid by Federal, State, or local law. "Health care expenditure" means any
8 amount paid by a covered employer to its covered employees or to a third party on behalf of its covered
9 employees for the purpose of providing health care services for covered employees or reimbursing the
10 cost of such services for its covered employees, including, but not limited to: (i) contributions
11 designated or paid by such employer on behalf of its covered employees to a health savings account as
12 defined under section 223 of the United States Internal Revenue Code or to any other account having
13 substantially the same purpose or effect without regard to whether such contributions qualify for a tax
14 deduction or are excludable from employee income; (ii) reimbursement by such covered employer to its
15 covered employees for expenses incurred in the purchase of health care services; (iii) payments by a
16 covered employer to a third party for the purpose of providing health care services for covered
17 employees; (iv) costs incurred by a covered employer in the direct delivery of health care services to its
18 covered employees; and (v) payments by a covered employer to the City to be used on behalf of covered
19 employees. The City may use these payments to fund membership in the Health Access Program for
20 uninsured San Francisco residents, and establish and maintain reimbursement accounts for covered
21 employees, whether or not those covered employees are San Francisco residents.

22 ~~(B) Prior to October 1, 2014, a A contribution designated or paid to a health~~
23 ~~savings account or to any other account having substantially the same purpose or effect which is not~~
24 ~~irrevocably paid to a third party on behalf of a covered employee, shall not constitute a "health care~~
25 ~~expenditure" unless all of the following conditions are met:~~

1 ~~(i) The contribution is reasonably calculated to benefit the employee;~~
2 ~~(ii) Except as provided in clause (v)(a), the contribution remains~~
3 ~~available to the employee (and any other person eligible for reimbursement for health care expenses~~
4 ~~through the employee) for a minimum of twenty four (24) months from the date of the contribution.~~

5 ~~(iii) On January 1, 2012, the account contains an amount equal to the~~
6 ~~balance in the account at the close of business on December 31, 2011, if any.~~

7 ~~(iv) The employee receives a written summary of the contribution, within~~
8 ~~15 days of the contribution which shall include: (a) the name, address, and telephone number of any~~
9 ~~third party to whom the contribution was made; (b) the date and amount of the contribution; (c) the~~
10 ~~date and amount of any other debits or credits to the account since the most recent written summary~~
11 ~~provided to the employee; (d) the balance in the account; and, (e) any applicable expiration dates for~~
12 ~~the funds in the account.~~

13 ~~(v) If the employee separates from employment with a positive balance~~
14 ~~in a reimbursement account: (a) the balance in the account shall remain available to the employee (and~~
15 ~~any other person eligible for reimbursement for health care expenses through the employee) for a~~
16 ~~minimum of ninety days from the date of separation, and, (b) the employee shall receive, within three~~
17 ~~days following the separation, a written notice, which shall include the balance in the account and any~~
18 ~~applicable expiration dates for the funds in the account.~~

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

21 ~~(8) "Health eCare eExpenditure rRate" means the amount of hHealth eCare~~
22 ~~eExpenditure that a Cecovered Eemployer shall be required to make for each hHour Payable~~
23 ~~pPaid for each of its Cecovered Eemployees each quarter. The "health care expenditure rate" shall~~
24 ~~be computed as follows:~~

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

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

7 (C) ~~From January 1, 2010 and each year thereafter, t~~The "hHealth Care
8 Expenditure Rate" shall be determined annually based on the "average contribution" for a
9 full-time employee to the City Health Service System pursuant to Section A8.423 of the San
10 Francisco Charter based on the annual ten county survey amount for the applicable fiscal
11 year, with such average contribution prorated on an hourly basis by dividing the monthly
12 average contribution by one hundred seventy-two (172) (the number of hours worked in a
13 month by a full-time employee). The ~~"h~~Health ~~e~~Care ~~e~~Expenditure ~~r~~Rate" shall be seventy-five
14 percent (75%) of the annual ten county survey amount for the applicable calendar fiscal year for
15 Large bBusinesses and fifty percent (50%) for ~~m~~Medium-sized bBusinesses.

16 ~~(9)~~ "Health Care Services" means medical care, services, or goods that may
17 qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue
18 Code, or medical care, services, or goods having substantially the same purpose or effect as
19 such deductible expenses.

20 "Healthy San Francisco" means a Department of Public Health program to provide
21 health care for uninsured San Francisco residents who meet the eligibility criteria established by the
22 Department of Public Health.

23 ~~(10)~~ "Hour Payable paid" or "~~h~~Hours Payable paid" means a work hour or
24 work hours for which a person is paid wages or is entitled to be paid wages for work
25 performed within the City, including paid vacation hours and paid sick leave hours, but not

1 exceeding 172 hours in a single month, and without regard to the date such wages are
2 actually paid. For salaried persons, "Hhours Payable Ppaid" shall be calculated based on a
3 40-hour work week for a full-time employee. "Hours Payable" does not include hours worked
4 prior to the first day of the calendar month that begins on or after the date that is ninety (90)
5 calendar days after the date of hire.

6 "Irrevocable Health Care Expenditure" or "Irrevocable Expenditure" means any
7 amount of Health Care Expenditure that has not been retained by and cannot at any time be
8 recovered by or returned to the Covered Employer.

9 ~~(H)~~ "Large ~~b~~Business" means an ~~e~~Employer for which an average of one
10 hundred (100) or more persons per week perform work for compensation during a quarter.

11 "Medical Reimbursement Account" means a public health benefit administered
12 by the Department of Public Health, funded in whole or in part by Health Care Expenditures
13 made by Covered Employers to the City under Section 14.3, from which eligible Covered
14 Employees may obtain reimbursement for Health Care Services as determined by the
15 Department of Public Health.

16 ~~(I2)~~ "Medium-sized ~~b~~Business" means an ~~e~~Employer for which an average of
17 between twenty (20) and ninety-nine (99) persons per week perform work for compensation
18 during a quarter.

19 "OLSE" means the Office of Labor Standards Enforcement or any successor
20 City entity charged with enforcing the obligations of Employers under this Chapter.

21 ~~(I3)~~ "Person" means any natural person, corporation, sole proprietorship,
22 partnership, association, joint venture, limited liability company, or other legal entity.

23 ~~(I4)~~ "Required ~~h~~HHealth ~~C~~eare ~~e~~Expenditure" means the ~~total h~~total HHealth ~~e~~Care
24 eExpenditure that a Covered Employer is required to make to or on behalf of a every quarter
25 ~~for all its C~~covered Employees.

1 "Revocable Health Care Expenditure" or "Revocable Expenditure" means any
2 amount of Health Care Expenditure that has been allocated for use by a Covered Employee
3 but retained by the Covered Employer, or any amount that has been paid to a trustee or third
4 party but that may at some time be recovered by or returned to the Covered Employer.

5 (15) "Small ~~b~~Business" means an ~~e~~Employer for which an average of fewer than
6 twenty (20) persons per week perform work for compensation during a quarter.

7 ~~SEC. 14.1.5. ALTERNATE PROVISIONS.~~

8 ~~(a) If the City Attorney certifies to the Mayor and the Board of Supervisors that a court of~~
9 ~~competent jurisdiction in a lawsuit brought by or on behalf of a Covered Employer has struck down the~~
10 ~~provisions of Section 14.1.5, or permanently enjoined their enforcement, then the following provisions~~
11 ~~shall become operative on the first day of the next calendar quarter following the City Attorney's~~
12 ~~certification.~~

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

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

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

4 (B) ~~The covered employee has died.~~

5 (b) ~~If the City Attorney subsequently certifies to the Mayor and the Board of Supervisors that~~
6 ~~an order enjoining enforcement of the provisions of Section 14.1.5 has been lifted, then the original~~
7 ~~provisions shall again become operative on the first day of the next calendar quarter following the City~~
8 ~~Attorney's certification.~~

9 **SEC. 14.2. SAN FRANCISCO HEALTH CARE ACCESS ASSISTANCE PROGRAM**
10 **~~AND REIMBURSEMENT ACCOUNTS.~~**

11 (a) The San Francisco Department of Public Health shall administer the Health Care
12 Access Assistance Program, comprised of Healthy San Francisco and Medical Reimbursement
13 Accounts, Covered San Francisco, and Health Care Access Accounts. The Department shall
14 determine eligibility and benefits under each program component to maximize participants' overall
15 access to Health Care Services.

16 (b) Under Healthy San Francisco ~~the Health Access Program~~, eligible uninsured San
17 Francisco residents may obtain health care from a network consisting of San Francisco
18 General Hospital and the Department of Public Health's clinics, and other community non-
19 profit and private providers that meet the program's quality and other criteria for participation.
20 Healthy San Francisco ~~The Health Access Program~~ is not an insurance plan for Healthy San
21 Francisco ~~Health Access Program~~ participants.

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

1 (c) Healthy San Francisco ~~The Health Access Program~~ shall be open to eligible, uninsured
2 San Francisco residents, ~~regardless of employment status~~. Eligibility criteria shall be established
3 by the Department of Public Health, ~~and shall include eligibility for persons (1) with family~~
4 ~~incomes up to 400% of the federal poverty level who are not eligible for subsidized health~~
5 ~~insurance coverage through Covered California or for Medicare or Medi-Cal; or (2) who are~~
6 ~~exempt, due to economic hardship or the cost of employer-sponsored coverage, from the~~
7 ~~mandate of the federal Affordable Care Act to carry health insurance; or (3) who do not have~~
8 ~~an affordable offer of insurance coverage as determined by the Department of Public Health.~~
9 ~~but not~~, but no person shall be excluded from Healthy San Francisco ~~The Health Access Program~~
10 based on employment or immigration status or a pre-existing condition. ~~Participants may enroll~~
11 ~~themselves as individuals, with the terms of enrollment to be determined pursuant to Section 14.4(a).~~

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

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

23 (f) Healthy San Francisco ~~The Health Access Program~~ shall provide medical services with
24 an emphasis on wellness, preventive care and innovative service delivery. The pProgram shall
25 provide medical services for the prevention, diagnosis, and treatment of medical conditions,

1 excluding vision, dental, infertility, and cosmetic services. The Department of Public Health
2 may further define the services to be provided, except that such services must, at a minimum,
3 include: professional medical services by doctors, nurse practitioners, physician assistants,
4 and other licensed health care providers, including preventive, primary, diagnostic and
5 specialty services; inpatient and outpatient hospital services, including acute inpatient mental
6 health services; diagnostic and laboratory services, including therapeutic radiological services;
7 prescription drugs, excluding drugs for excluded services; home health care; and emergency
8 care provided in San Francisco by contracted providers, including emergency medical
9 transportation if needed.

10 ~~(g) Covered San Francisco shall provide financial assistance to eligible participants to~~
11 ~~offset a portion of the cost of health insurance purchased through Covered California or~~
12 ~~similar state-administered exchanges as determined by the Department of Public Health.~~

13 ~~(h) Participation in Covered San Francisco shall be available to eligible Covered~~
14 ~~Employees whose Employers make health care expenditures to the City on their behalf, to~~
15 ~~their dependents, and to others as determined by the Department of Public Health.~~

16 ~~(i) The Department of Public Health shall annually determine the level of public~~
17 ~~benefits available to Covered San Francisco participants subject to the following:~~

18 ~~—— (1) That the costs of Covered San Francisco shall be met by Health Care~~
19 ~~Expenditures made by Covered Employers to the City pursuant to Section 14.3, in addition to~~
20 ~~any funds that may be made available by the Board, allocated at the discretion of the~~
21 ~~Department of Public Health, or received as grants.~~

22 ~~—— (2) That the design of the Covered San Francisco public benefit shall incentivize~~
23 ~~enrollment in Covered California health plans so as to maximize affordability for participants,~~
24 ~~taking into account both the individual share of premiums and other individual cost sharing~~
25 ~~under the terms of these plans.~~

1 (j) ~~The Department of Public Health shall coordinate with Covered California and other~~
2 ~~state or federal agencies as appropriate to create mechanisms for the efficient coordination of~~
3 ~~Covered San Francisco benefits and to minimize the administrative burden placed on~~
4 ~~Covered San Francisco participants and on the City.~~

5 (g) ~~The Department of Public Health shall also be authorized to use payments made~~
6 ~~to the City by Covered ~~e~~Employers to satisfy their Health Care ~~E~~expenditure requirements as set~~
7 ~~forth in Section 14.3 to establish and maintain Medical Reimbursement ~~Health Care Access~~~~
8 ~~reimbursement ~~A~~ccounts from which eligible ~~C~~overed ~~E~~mployees may obtain reimbursement~~
9 ~~of ~~h~~Health ~~e~~Care ~~e~~Expenditures in the amount and under the terms set by the Department of Public~~
10 ~~Health. Such Health Care Access Accounts shall be made available to Covered Employees~~
11 ~~who are not eligible for Healthy San Francisco or Covered San Francisco, including Medi-Cal~~
12 ~~enrollees and others as determined by the Department of Public Health.~~

13 (i) ~~The Department of Public Health shall promulgate information about the Health~~
14 ~~Care Access Assistance Program and each of its components to maximize awareness of~~
15 ~~these public health benefits and to maximize enrollment in Covered California or other forms~~
16 ~~of health insurance.~~

17 (h) ~~The Department of Public Health may coordinate with a third party vendor to administer~~
18 ~~program operations, including enrollment, tracking service utilization, billing, and communication with~~
19 ~~the participants.~~

20 (n) ~~The Department of Public Health shall establish a procedure by which participants~~
21 ~~in the Health Care Access Assistance Program may appeal their placement in the Healthy~~
22 ~~San Francisco, Covered San Francisco, or Health Care Access Account programs.~~

23 (i) ~~h~~ The City Controller shall ensure that any ~~required~~ ~~h~~Health ~~e~~Care ~~e~~Expenditures
24 made by an Covered ~~e~~Employer to the City pursuant to Section 14.3 are kept separate and apart
25 from general funds and shall limit use of the expenditures to support the Health Care Access

1 Assistance Program. ~~or to the establishment and maintenance of reimbursement accounts from which~~
2 ~~covered employees may obtain reimbursement of health care expenditures. If any covered employee~~
3 ~~fails to enroll in the Health Access Program or establish a reimbursement account with the Department~~
4 ~~of Public Health within a reasonable time, as determined by the Department of Public Health, the City~~
5 ~~may use the funds paid to the City and County of San Francisco on behalf of that employee for the~~
6 ~~benefit of the health care programs created by this Ordinance, but the City may not transfer these funds~~
7 ~~to the City's general fund.~~

8 (j) In accordance with the guiding principles and key findings of the 2013 Universal
9 Healthcare Council Final Report, the Department of Public Health shall develop a plan to
10 ensure that Employer Health Care Expenditures made to the City pursuant to Section 14.3
11 can be used to maximize enrollment in health insurance through Covered California and
12 include possible options for incenting employers to provide quality, affordable health
13 insurance directly to employees. This plan shall be presented to the Health Commission no
14 later than August 1, 2015, so that it may be considered and approved by the Health
15 Commission and by the Board of Supervisors in time for full implementation beginning in the
16 2016 Covered California plan year. Unless and until the plan is approved by the Board of
17 Supervisors, the Department of Public Health shall continue to administer the Health Access
18 Program, which includes Healthy San Francisco and Medical Reimbursement Accounts, in a
19 manner that is consistent with the guiding principles and key findings of the 2013 Universal
20 Healthcare Council Final Report.

21 **SEC. 14.3. EMPLOYER REQUIREMENTS REQUIRED HEALTH CARE**
22 **EXPENDITURES.**

23 **(a) Required Expenditures.** Covered ~~E~~employers shall make ~~R~~required ~~h~~Health ~~e~~Care
24 ~~e~~Expenditures to or on behalf of each their ~~C~~ecovered ~~E~~employees each quarter. The quarterly
25 ~~R~~required ~~h~~Health ~~e~~Care ~~e~~Expenditure for a ~~C~~ecovered ~~E~~mployer shall be calculated by

1 multiplying the total number of Hours Payable paid to the Covered Employee during the
2 quarter for each of its Covered Employees during the quarter (including only hours starting
3 on the first day of the calendar month following ninety (90) calendar days after a Covered
4 Employee's date of hire) by the applicable hHealth eCare eExpenditure rRate. In determining
5 whether a Covered Employer has made its Required hHealth eCare eExpenditures,
6 payments to or on behalf of a Covered Employee shall not be considered if they exceed the
7 following amount: that exceed the number of hours paid Required Health Care Expenditure for
8 the that Ccovered Eemployee shall not be counted toward the Employer Spending
9 Requirement except as expressly permitted by OLSE during the quarter multiplied by the
10 applicable hHealth eCare eExpenditure rRate. The City's Office of Labor Standards
11 Enforcement (OLSE) shall enforce the hHealth Care eExpenditure requirements under this
12 Section 14.3.

13 **(b) Irrevocable Expenditures.**

14 (1) At least sixty percent (60%) of each Required Health Care Expenditure for
15 Hours Payable in calendar year 2015 must consist of Irrevocable Expenditures. Revocable
16 Expenditures that exceed forty percent (40%) of Required Health Care Expenditures shall not
17 be counted toward the Employer Spending Requirement.

18 (2) At least eighty percent (80%) of each Required Health Care Expenditure for
19 Hours Payable in calendar year 2016 must consist of Irrevocable Expenditures. Revocable
20 Expenditures that exceed twenty percent (20%) of Required Health Care Expenditures shall
21 not be counted toward the Employer Spending Requirement.

22 (3) For Hours Payable on and after January 1, 2017, only Irrevocable Health
23 Care Expenditures shall be counted toward the Employer Spending Requirement.

1 **(c) Revocable Expenditures.** Subject to the limitations in subsection (b), Revocable
2 Health Care Expenditures shall be counted toward the Employer Spending Requirement,
3 provided that:

4 (1) The expenditure is reasonably calculated to benefit the employee; and

5 (2) No portion of the expenditure is revoked prior to the earliest of: (A) twenty-
6 four (24) months from the date of the expenditure; (B) ninety (90) days after separation from
7 employment; or, (C) for Revocable Expenditures made for Hours Payable prior to January 1,
8 2014, the date that the Covered Employee knowingly, voluntarily, and permanently waives in
9 writing the unused portion of such expenditure; and

10 (3) The Covered Employee receives from the Covered Employer or its agent a
11 written summary within 15 calendar days of the date of the expenditure that includes: (A) the
12 name, address, email address, and telephone number of any third party to whom the
13 expenditure was made; (B) the date and amount of the expenditure; (C) a summary of how
14 the benefit may be used, including types of health care services available; (D) restrictions on
15 the use of this benefit, including maximum dollar value of benefits or account balances; and
16 (E) the date on which any portion of this benefit will be revoked; and

17 (4) A Covered Employee who separates from employment with any amount of
18 unused Revocable Expenditures receives, within three business days following the
19 separation, (A) a written notice with a summary of how the benefit may be used, including
20 types of health care services available; (B) restrictions on the use of this benefit, including
21 maximum dollar value of benefits or account balances, and (C) the date on which the benefit
22 will be revoked.

23 **(d) Effect of Court Order.** If the City Attorney certifies to the Mayor and the Board of
24 Supervisors that a court of competent jurisdiction has struck down any provision of Section
25 14.3(c), or permanently enjoined its enforcement, then only Irrevocable Expenditures shall

1 count toward the Employer Spending Requirement as of the first day of the next calendar
2 quarter following the City Attorney's certification.

3
4 **(eb) Employer Notice to Employees.**

5 (1) By December 1 of each year, OLSE shall publish and make available to
6 Covered Employers, in all languages spoken by more than five percent of the San Francisco
7 work force, a notice suitable for posting by Covered Employers in the workplace informing
8 Covered Employees of their rights and the Covered Employer's obligations under this Chapter
9 ~~the Ordinance.~~

10 (2) Every Covered Employer shall post in a conspicuous place at any workplace
11 or job site where any Covered Employee works the notice published each year by OLSE.
12 Every Covered Employer shall post such notices in English, Spanish, Chinese and any other
13 language spoken by at least five percent of the Covered Employees at the workplace or job
14 site.

15 **(fe) Additional Employer Responsibilities.** A ~~C~~covered ~~E~~mployer shall:

16 (~~i~~1) maintain accurate records of ~~h~~Hhealth ~~e~~Care ~~e~~Expenditures, ~~R~~required ~~h~~Hhealth
17 ~~e~~Care ~~e~~Expenditures, and proof of such expenditures made each quarter each year, and allow
18 OLSE reasonable access to such records, provided, however, that ~~C~~covered ~~E~~mployers shall
19 not be required to maintain such records in any particular form; and

20 (~~i~~2) provide information to ~~the~~ OLSE, or the OLSE's designee, on an annual basis
21 containing such other information as OLSE shall require, including information on the
22 ~~e~~Employer's compliance with this Chapter, but OLSE may not require an ~~e~~Employer to provide
23 information in violation of State or federal privacy laws. In the event the information required
24 by OLSE is comingled with information protected by privacy laws, the Employer shall redact
25 the private information. If a Covered Employer uses a Revocable Expenditure to satisfy its

1 obligation to make Required Health Care Expenditures for any of its Covered Employees, the
2 Employer shall also report to OLSE any conditions or restrictions on the Covered Employee's
3 use of the expenditure, and the condition or conditions that permit any portion of the
4 expenditure to be revoked by or returned to the Covered Employer. *If a Covered Employer uses*
5 *a health reimbursement account to satisfy its obligation to make health care expenditures for any of its*
6 *Covered Employees, the Employer shall also report to OLSE the terms of such accounts, including*
7 *what costs are eligible for reimbursement.*

8 Where an ~~e~~Employer does not maintain or retain adequate records documenting the
9 ~~h~~Health ~~Care~~ ~~e~~Expenditures made, or does not allow OLSE reasonable access to such
10 records, it shall be presumed that the ~~e~~Employer did not make the ~~R~~required ~~h~~Health ~~Care~~
11 ~~e~~Expenditures for the quarter for which records are lacking, absent clear and convincing
12 evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to
13 provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's
14 responsibilities as the enforcing agency under this ~~Chapter~~Ordinance. With regard to all such
15 information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to
16 the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco
17 Business and Tax Regulations Code.

18 **(gd) Surcharges.** If a Covered Employer imposes a surcharge on its customers to
19 cover in whole or in part the costs of the ~~h~~Health ~~e~~Care ~~e~~Expenditure requirement under this
20 Chapter, the Covered Employer shall provide to OLSE on an annual basis the amount
21 collected during the 12-month reporting period from the surcharge for employee health care
22 and the amount spent on employee health care. If the amount collected from the surcharge is
23 greater than the amount spent on employee health care, the Covered Employer must make
24 additional Irrevocable Health Care Expenditures to or on behalf of its Covered Employees
25 ~~irrevocably pay or designate in~~ in an amount equal to that difference for ~~h~~Health ~~e~~Care

1 ~~eExpenditures for its Covered Employees under this Chapter.~~ OLSE may refer any potential
2 cases of consumer fraud to appropriate authorities.

4 **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

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

23 (b) ~~During implementation of this Chapter and on an ongoing basis thereafter, t~~The City
24 OLSE shall maintain an education and advice program to assist ~~e~~Employers with meeting the
25 requirements of this Chapter.

1 (c) Any ~~e~~Employer that reduces the number of employees below the number that
2 would have resulted in the ~~e~~Employer being considered a "~~C~~ecovered Employer," or below the
3 number that would have resulted in the ~~e~~Employer being considered a ~~m~~Medium-sized or
4 ~~L~~Large ~~b~~Business, shall demonstrate that such reduction was not done for the purpose of
5 evading the obligations of this Chapter or shall be in violation of this~~e~~ Chapter.

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

14 (e) (1) ~~The City~~ OLSE shall enforce the obligations of ~~C~~ecovered Employers under
15 this Chapter, including requiring restitution to employees where appropriate, and shall impose
16 administrative penalties ~~up~~on ~~C~~ecovered Employers who fail to make ~~R~~equired ~~h~~Health ~~e~~Care
17 ~~e~~Expenditures on behalf of their Covered Employees within five business days of the
18 quarterly due date. Failure to make a Required Health Care Expenditure shall include making
19 a purported expenditure that OLSE determines is not reasonably calculated to benefit the
20 employee. ~~Failure to make a required health care expenditure shall include making a purported~~
21 ~~expenditure that is determined by OLSE not to be reasonably calculated to benefit the employee.~~ The
22 amount of the penalty shall be up to one-and-one-half times the total expenditures that a
23 ~~C~~ecovered Employer failed to make, but in any event the total penalty for this violation shall
24 not exceed \$100 for each Covered Employee for each quarter that the required expenditures
25 were not made within five business days of the quarterly due date. ~~The \$100 penalty limit shall~~

~~increase each year by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.~~

(2) For other violations of this Chapter by ~~e~~Employers and Covered Employers, the maximum administrative penalties shall be as follows: For refusing to allow access to records, pursuant to Section 14.3(~~f~~e), \$25.00 as to each worker whose records are in issue for each day that the violation occurs; for the failure to maintain or retain accurate and adequate records pursuant to Section 14.3(~~f~~e) and for the failure to make the annual reports of information required by OLSE pursuant to Sections 14.3(~~f~~e) and 14.3(~~g~~d), \$500.00 for each quarter that the violation occurs; for violation of Section 14.4(~~g~~d) (retaliation), \$100.00 as to each Person who is the target of the prohibited action for each day that the violation occurs; and for any other violation not specified in this subsection (e)(2), \$25.00 per day for each day that the violation occurs.

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

(4) Penalties ~~Amounts~~ recovered under this Section 14.4 shall be deposited in the City's General Fund.

~~—(f) The City Controller shall coordinate with the Department of Public Health and OLSE to prepare periodic reports on the implementation of this Chapter including participant rates, any effect on services provided by the Department of Public Health, the cost of providing services to the Health Care Access Assistance Program participants and the economic impact of the Chapter's provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for quarters beginning July 1, 2007 through June 30, 2008, then every six months through June 30, 2010. Reports shall include specific information on any significant event affecting the implementation of this Chapter and also~~

1 ~~include recommendations for improvement where needed, in which case the Board of Supervisors or a~~
2 ~~committee thereof shall hold a hearing within thirty (30) days of receiving the report to consider~~
3 ~~responsive action.~~

4 ~~—(g) The Director of Public Health shall convene an advisory Health Access Working Group~~
5 ~~to provide the Department of Public Health and the Health Access Program with expert consultation~~
6 ~~and 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 ~~—(h) The Department of Public Health and the OLSE shall report to the Board of Supervisors~~
11 ~~by July 1, 2007, on the development of rules for the Health Access Program and for the enforcement~~
12 ~~and administration of the employer obligations under this Chapter. The Board of Supervisors or a~~
13 ~~committee thereof shall hold a hearing on the proposed rules to ensure that participants in the Health~~
14 ~~Access Program shall have access to high quality and culturally competent services.~~

15 **SEC. 14.5. SEVERABILITY.**

16 If any section, subsection, clause, phrase, or word~~portion~~ of this Chapter is for any
17 reason held to be invalid or unconstitutional by a decision of any court ~~or Federal or State agency~~
18 of competent jurisdiction, such ~~portion shall be deemed a separate, distinct and independent~~
19 ~~provision and such holding~~ decision shall not affect the validity of the remaining portions of this
20 Chapter~~thereof~~. The Board of Supervisors hereby declares that it would have passed this Chapter and
21 each and every section, subsection, sentence, clause, phrase, and word not declared invalid or
22 unconstitutional without regard to whether any other portion of this Chapter would be subsequently
23 declared invalid or unconstitutional. ~~To this end, the provisions of this ordinance shall be deemed~~
24 ~~severable.~~

1 **SEC. 14.6. NO CONFLICT WITH FEDERAL OR STATE LAWPREEMPTION.**

2 Nothing in this Chapter shall be interpreted or applied so as to create any power, duty
3 or obligation in conflict with,~~or preempted by,~~ any Federal or State law.

4
5 **SEC. 14.7. GENERAL WELFARE.**

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

16 ~~SEC. 14.8. OPERATIVE DATE.~~

17 ~~The changes in this Chapter resulting from enactment of Ordinance No. _____ shall~~
18 ~~become operative on October 1, 2014 or the effective date of said ordinance, except as~~
19 ~~specified in Section 14.3(b) whichever is later. in three phases. The day this Chapter becomes~~
20 ~~effective, implementation of the Chapter shall commence. The Health Access Program shall~~
21 ~~become operative on July 1, 2007. Any requirements on employers for which an average of~~
22 ~~fifty (50) or more persons per week perform work for compensation during a quarter shall~~
23 ~~become operative on January 1, 2008. Any requirements on employers for which an average~~
24 ~~of from twenty (20) to forty nine (49) persons per week perform work for compensation during~~

1 ~~a quarter shall become operative on April 1, 2008. This Chapter is intended to have~~
2 ~~prospective effect only.~~

3
4 Section 2. Effective Date and Operative Date. This Chapter shall become effective 30
5 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
6 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
7 or the Board of Supervisors overrides the Mayor's veto of the ordinance. ~~As indicated in~~
8 ~~Section 14.8 of the Administrative Code, t~~This ordinance shall become operative on October
9 ~~1, 2014 or its effective date, whichever is later.~~

10
11 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
12 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
13 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
14 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
15 additions, and Board amendment deletions in accordance with the "Note" that appears under
16 the official title of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By: _____
21 Sherri Sokeland Kaiser
22 Deputy City Attorney

23
24
25
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