

**STATUS REPORT ON THE IMPLEMENTATION OF THE
SAN FRANCISCO
HEALTH CARE SECURITY ORDINANCE**

**A Joint Report of
the Department of Public Health and
the Office of Labor Standards Enforcement**

**Submitted to the
San Francisco Board of Supervisors**

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EXECUTIVE SUMMARY

In June 2006, the San Francisco Board of Supervisors adopted the San Francisco Health Care Security Ordinance (Ordinance No. 218-06) which creates two new City and County programs, the Employer Spending Requirement (ESR) and the Health Access Program. In April 2007, the San Francisco Board of Supervisors amended the Ordinance (via Ordinance No. 69-07) to address certain programmatic issues. In April 2007, the Health Access Program name was changed to Healthy San Francisco (HSF).

Both program components of the Ordinance work in tandem and are designed to address the health needs of San Francisco's uninsured residents and workers. The Office of Labor Standards Enforcement (OLSE) oversees the implementation of the ESR while the Department of Public Health (DPH) oversees the implementation of HSF.

The Ordinance states that submission of periodic reports on the implementation of the Ordinance shall begin on a quarterly basis starting July 1, 2007, and continue through June 30, 2008. This report meets this mandated reporting requirement. In addition to DPH and OLSE, the Ordinance specifies that the City Controller's Office coordinate with both entities to prepare periodic reports.

Since the submission of the January 2008 status report, the following has occurred:

- The Employer Spending Requirement went into effect on January 9, 2008 after the U.S. Ninth Circuit Court of Appeals granted the City and County of San Francisco's petition to implement the Health Care Security Ordinance pending appeal of the United State's District Court ruling baring implementation.
- OLSE conducted significant outreach with employers and mailed the 2008 Notice to Employers/Annual Reporting Form to affected employers.
- DPH expanded Healthy San Francisco eligibility to those with incomes between 101% and 300% of the federal poverty level. It also opened an additional eligibility determination and enrollment site at the San Francisco Health Plan.
- Participation in Healthy San Francisco has grown to approximately 16,000 since its debut in July 2007.

While the Employer Spending Requirement went into effect on January 9, 2008, under the regulations the health care expenditure must be made by the 30th day of the month following the end of each quarter. For this report period, the first quarter is defined as the period from January 9, 2008 through March 31, 2008. As a result, April 30, 2008 is the deadline for employer health care expenditures for those employers with 50 or more employees. DPH and OLSE will work with the City Controller's Office on the development of the July 2008 report to provide available information on employer participation.

I. GOLDEN GATE RESTAURANT ASSOCIATION LAWSUIT

In November 2006, the Golden Gate Restaurant Association filed a lawsuit against the City and County of San Francisco challenging the Health Care Security Ordinance on the grounds that it conflicted with the Employee Retirement Income Security Act (ERISA) which, among other things, establishes national standards for pension and health plans in private industry.

On December 26, 2007, federal Judge White issued his order granting the motion for summary judgment filed by the Golden Gate Restaurant Association. The United States District Court ruled that the City and County San Francisco could not implement the Employer Spending Requirement provisions of the Ordinance because of ERISA preemption. On December 27, 2007, the San Francisco City Attorney filed a petition with the U.S. Ninth Circuit Court of Appeals asking for an emergency stay pending appeal of the lower court's decision. The City Attorney asked that the Ninth Circuit Court of Appeals consider the petition by December 31, 2007. The Ninth Circuit Court of Appeals held a hearing on the emergency stay January 3, 2008.

On January 9, 2008, the Ninth Circuit Court of Appeals granted the City and County of San Francisco's petition which allowed the Health Care Security Ordinance to go into effect on January 9, 2008, pending the City and County's appeal of the United States District Court's decision. As a result of the Ninth Circuit Court of Appeals' ruling, the effective date of the Employer Spending Requirement became January 9, 2008 for employers with 50 or more employees. The effective date for for-profit employers with 20-49 employees is April 1, 2008.

On February 7, 2008, the Golden Gate Restaurant Association (GGRA) filed an application to the United States Supreme Court, seeking to lift the Court of Appeals' ruling. On February 21, 2008, Justice Kennedy denied the GGRA's application. Therefore, the Employer Spending Requirement continues to be in effect pending the City and County's appeal of the United States District Court's decision. Oral argument in the appeal has been scheduled for April 17, 2008 before the Ninth Circuit Court of Appeals.

The City and County is prohibited from implementing the Employer Spending Requirement on January 2, 2008 because of the U.S. District Court ruling is still in force. If the Ninth Circuit grants the emergency stay, then the City and County will proceed with implementing the ESR, if the Court denies the emergency stay, then the City and County will not implement the ESR. Irrespective of the decision on the emergency stay, the San Francisco City Attorney will appeal the U.S. District Court's decision to the U.S. Ninth Circuit Court of Appeals. The City anticipates that the appeal could be decided in the later part of 2008.

II. EMPLOYER SPENDING REQUIREMENT

Pursuant to Section 14.4(h) of the Ordinance, this section provides an update on the enforcement and administration of the employer obligations under the HCSO.

On January 9, 2008, the Ninth Circuit granted the City and County's Emergency Motion for a Stay Pending Appeal in the lawsuit brought by the Golden Gate Restaurant Association (GGRA), allowing implementation of the Employer Spending Requirement (ESR) to go forward.

The Office of Labor Standards Enforcement (OLSE) quickly moved forward with the mailing of the 2008 Notice to Employers/Annual Reporting Form. The Notice generated a dramatic increase in the number of calls to the HCSO telephone line, dedicated e-mail address, and hits to OLSE's HCSO web page (www.sfgov.org/olse/hcso). The number of calls, emails, and hits on the website has remained high. Although a number of the initial calls and emails came from registered businesses who were not covered by the HCSO (because they employ fewer than 20 employees), there are, increasingly, more calls from employers who are covered by the HCSO, many of whom learned of the ESR through the mailing.

Walking employers through the Annual Reporting Form was an extremely helpful exercise that helped educate Covered Employers about their obligations under this Ordinance. However, in late February 2008, the OLSE determined that submission of the initial Annual Reporting Form would be voluntary, so that Covered Employers could focus on how they will be complying with the ESR, rather than how to complete the form.

The initial Annual Reporting Form was intended to collect data on Covered Employers' health care expenditures in 2007, before the ESR went into effect, in order to determine a baseline to assess the impact of the ESR. Because the data will be helpful for the OLSE to evaluate the effect of the Health Care Security Ordinance, the OLSE has encouraged Covered Employers to submit the form voluntarily.

The OLSE has dedicated significant resources in this first quarter of implementation of the HCSO to responding to public inquiries, as described above. In addition, the OLSE has made over thirty presentations on the ESR to employers, human resources and benefits consultants, employers (both for-profit and nonprofit), and the San Francisco Chamber of Commerce in the first quarter. These presentations have provided an extremely valuable opportunity for the OLSE to educate employers about the ESR. Because implementation of the ESR for employers with 20-49 employees begins April 1, 2008, the OLSE believes that continued outreach efforts will be necessary in the coming quarter.

Recognizing the many low-wage workers, particularly those from minority and immigrant communities, are unaware of their basic rights under San Francisco's labor laws and/or

are afraid to complain to a government agency, the OLSE has entered into a contract with La Raza Centro Legal, Inc. to provide outreach and education to San Francisco workers on the City's labor laws. La Raza Centro Legal, Inc. and its subcontractors, Chinese Progressive Association, Filipino Community Center, and Pride at Work, are providing culturally competent, multi-lingual outreach to low-wage San Francisco workers under the direction of OLSE staff.

In addition, the OLSE has partnered with the Mayor's Office of Economic and Workforce Development to enter into a contract with Barbary Coast Consulting to conduct a general public outreach and employer outreach campaign on San Francisco labor laws. The general public and employer outreach under the Barbary Coast contract will complement the worker outreach under the La Raza Centro Legal, Inc. contract, providing an unprecedented campaign to educate San Francisco's employers, employees, and residents regarding the city's labor laws.

Subject to the Ninth Circuit Court of Appeal's decision in the GGRA suit, the OLSE will continue to focus its efforts on educating the public about the ESR during the second quarter.

III. HEALTHY SAN FRANCISCO

This section provides an update on Healthy San Francisco (HSF) component of the Health Care Security Ordinance. The Department of Public Health (DPH) is responsible for implementing and administering this provision.

Since the January 2008 status report, DPH and its Third-Party Administrator, the San Francisco Health Plan, finalized processes and procedures that would enable employers subject to the Employer Spending Requirement (ESR) to choose the City Option for their employees. Given the status of the Golden Gate Restaurant Association lawsuit, these procedures will not be put into place on January 2, 2008. DPH is prepared to begin implementation of the ESR if the Ninth Circuit Court of Appeals grants the City and County's emergency stay.

A. Healthy San Francisco Enrollment

There are an estimated 73,000 uninsured adults (based on more statewide data from the California Health Interview Survey).¹ As of March 22, 2008, there were approximately 15,905 San Francisco residents enrolled in HSF (22% of the uninsured population).

In January 2008, HSF expanded its income eligibility (see below) to include persons with annual incomes at or below 300% of the federal poverty level (for one person this is no more than \$30,600 and for a family of four it is no more than \$61,950) and who meet all other HSF eligibility requirements. The following is basic demographic information on the HSF participants:

Age	6% between 18 - 24; 35% between 25 - 44; 26% between 45 - 54; 32% between 55 - 64
Gender	50% female; 50% male
Income	83% with incomes at or below 100% of the federal poverty level 17% with incomes between 101% and 300% of the federal poverty level
Ethnicity	39% Asian/Pacific Islander; 22% Latino; 15% Caucasian; 9% African American, 2% Other; less than 1% Native American; 12% Not Provided
Language	47% English; 31% Cantonese/Mandarin; 18% Spanish; 1% Vietnamese; 3% Other Languages; less than 1% Not Provided

¹ The California Health Interview Survey is conducted by the [UCLA Center for Health Policy Research](#) in collaboration with the [California Department of Public Health](#), the [Department of Health Care Services](#) and the [Public Health Institute](#). It is funded by [public agencies and private organizations](#).

HSF affords applicants the ability to apply for the program at any of the participating medical homes, at the DPH's Eligibility and Enrollment Unit (which focuses on transition clients on the DPH's existing sliding scale program to HSF as the person's eligibility for sliding scale expires) or at the San Francisco Health Plan. Since the September 2007 expansion of HSF to 22 primary care medical homes (at 27 different sites), all of the sites have participated in HSF eligibility and enrollment activities. Under HSF, participants select their own primary care medical home. In general, 60% of the participants have selected a DPH medical home and 40% have selected a San Francisco Community Clinic Consortium medical home.

B. HSF Expansion

On January 2, 2008, Healthy San Francisco expanded in three critical ways:

1. The program began enrolling HSF participants at higher income levels, namely those with incomes between 101% and 300% of the federal poverty level (FPL).
2. The San Francisco Health Plan (SFHP) became an enrollment site.
3. The employer component of the Healthy San Francisco website became operational.

With respect to the first component of the expansion, participants must continue to meet all HSF eligibility criteria (i.e., be uninsured, live in San Francisco, between the ages of 18 – 64, and be willing to apply for publicly-funded health insurance). There are an estimated 47,000 uninsured adults in San Francisco with incomes between 0% and 300% FPL. HSF participants with incomes between 101% and 300% FPL are subject to program participation and point-of-service fees. HSF applicants with clinical appointments will continue to enroll into the program at a participating medical home or at DPH's Eligibility and Enrollment Unit.

With respect to the second component of the expansion, the SFHP became an enrollment site for those uninsured residents interested in enrolling in HSF who do not have a clinical appointment with one of the participating medical homes. The SFHP also serves as the sole enrollment site for individuals participating in the HSF program via the Employer Spending Requirement.

With respect to the third component of the expansion, after the ruling by the Ninth Circuit Court of Appeals, Healthy San Francisco launched the employer feature of its website. The employer feature fully describes the City Option that employers can use to meet the Employer Spending Requirement. The City Option is just one of several options available to employers. This new website feature complements the various presentations that HSF and OLSE staff has given on the Health Care Security Ordinance. It provides employers with: (a) various fact sheets on HSF, (b) a frequently asked questions section and (c) the ability to open a City Option employer account and register employees for the City Option via a secure website portal. Attachment A provides the fact sheets.

It is important to stress that employers do not enroll their employees into the City Option. The enrollment process must be completed by the employee.

The Department still anticipates that it will take 18 – 24 months to enroll all eligible uninsured adults into Healthy San Francisco. The public may obtain information on the program and on the enrollment process via the program's website ([www.healthysanfranciso.org](http://www.healthysanfrancisco.org)) or by calling the City's 3-1-1 system.

ATTACHMENT A