

**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.

Since the submission of the October 2007 status report, significant progress has been made towards implementation of the Health Care Security Ordinance, specifically the Employer Spending Requirement which had an effective date of January 1, 2008.

Specifically:

- OLSE published several documents designed to assist employers and others in understanding the requirements of the Ordinance, and
- DPH prepared for the January 2, 2008 expansion of Healthy San Francisco.

While DPH and OLSE worked diligently to ensure full implementation of the Employer Spending Requirement for January 2, 2008, this aspect of the Ordinance will not go into effect on that date. On December 26, 2007, federal Judge White issued his order granting summary judgment to the Golden Gate Restaurant Association (*Golden Gate Restaurant Association vs. City and County of San Francisco*). The Court ruled that the City and County San Francisco could not implement the Employer Spending Requirement provisions of the Health Care Security Ordinance because the provisions violated the federal Employee Retirement Income Security Act (ERISA). 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. As of the writing of this status report, the U.S. Ninth Circuit Court of Appeals had scheduled a hearing to consider the City and County's request for an emergency stay.

In addition to DPH and OLSE, the Ordinance specifies that the City Controller's Office coordinate with both entities to prepare periodic reports. Because the Employer Spending Requirement is not in effect, the City Controller's Office has received no required health care expenditures from employers and therefore did not have any reporting responsibility for this report period.

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 continuing through June 30, 2008. This report meets this mandated reporting requirement.

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 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 has ordered that a hearing on the emergency stay take place January 3, 2008.

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.

While the U.S. District Court's ruling does not close the HSF program, it does limit overall HSF program participation. As a result of the ruling, DPH will limit HSF program eligibility to uninsured residents with incomes at or below 300% of the federal poverty line (FPL) (\$30,630 for one person; \$61,950 for a family of four). DPH is not planning another enrollment expansion while this ruling is in effect. As originally designed, all uninsured, adult residents were eligible HSF, irrespective of their income. However, the Department will be unable to expand HSF enrollment beyond 300% FPL as a result of the Court's ruling.

There are an estimated 73,000 uninsured adults (based on more recent statewide data from the California Health Interview Survey). Of those 26,000 have incomes at or above 300% FPL. The individuals would be ineligible for HSF. This is the impact of the Court's ruling. These residents would have access to services, but via the differing, uncoordinated health care sliding scale programs that exist at non-profit hospitals, community clinics and DPH.

In addition, according to estimates by the City Controller's Office, roughly 20,000 San Francisco workers would have benefited from the employer mandate, which would have

required employers either to purchase health care for their workers or to make payments to the City so those workers can participate in Healthy San Francisco. Those workers will be denied the benefit of health care expenditures by their employers as long as the District Court's ruling remains in effect.

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.

The Office of Labor Standards Enforcement (OLSE) has been providing assistance to members of the public through a multi-lingual dedicated phone line (554-7892), an e-mail address (HCSO@sfgov.org), and a dedicated page on its website (<http://www.sfgov.org/olse/hcso>).

The OLSE has continued to make presentations on the employer spending requirement to human resources and benefits consultants, temporary staffing agencies and employers, nonprofits, the San Francisco Chamber of Commerce, and the Small Business Commission. During this quarter, the OLSE released several new documents to assist employers and others in understanding the requirements of the Ordinance: PowerPoint presentations providing an overview of the Ordinance, a *Frequently Asked Questions* document, the Annual Reporting Form (with the 2008 Notice to Employers on the reverse side), and a flowchart outlining *Steps to Calculate Health Care Expenditures*. All of the referenced documents are attached to this status report and are available from OLSE's website.

Although the mailing of the Annual Reporting Form/2008 Notice to Employers was scheduled for December 2007, the OLSE determined that it was advisable to delay the mailing, pending the U.S. District Court's decision in the Golden Gate Restaurant Association lawsuit, so that if the Ordinance was found invalid, the employer community would not be confused by the Notice outlining their obligations under the Ordinance. Given the Court's ruling on December 26, 2007, the OLSE believes its decision was successful in avoiding both confusion and unnecessary costs.

The OLSE is well prepared to begin enforcement of the Ordinance, if the Ninth Circuit grants the City and County's Emergency Motion for a Stay Pending Appeal.

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 October 2007 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 mid-December 2007, there were approximately 7,400 San Francisco residents enrolled in HSF (10% of the uninsured population).

Since HSF's debut on July 2, 2007, the program has focused on enrolling uninsured residents who have clinical appointments, have annual incomes at or below 100% federal poverty level (FPL) (for one person this is no more than \$10,200 and for a family of four it is no more than \$20,650) and who meet all other HSF eligibility requirements. The following is basic demographic information on the HSF participants:

Age	6% between 18 - 24; 28% between 25 - 44; 25% between 45 - 54; 41% between 55 - 64
Gender	52% female; 48% male
Income	100% at or below 100% of the federal poverty level
Ethnicity	48% Asian/Pacific Islander; 18% Latino; 12% Caucasian; 9% African American, 1% Other; less than 1% Native American; 12% Not Provided
Language	42% English; 40% Cantonese/Mandarin; 14% 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](#).

With respect to ethnicity, the significant enrollment among Asian/Pacific Islanders is a reflection of HSF's debut period which focused on enrolling eligible residents who resided in the Chinatown community and received services at either Chinatown Public Health Center or North East Medical Services. As enrollment has expanded city-wide, Asian/Pacific Islanders as a percentage of the overall enrollment has declined. Estimates are that Asian/Pacific Islanders are 33% of San Francisco's adult uninsured residents. Finally, HSF applicants are not required to provide their ethnicity to determine program eligibility and as a result, 12% of the participants have chosen not to provide this information. The Department is working to reduce the percentage of applicants who do not provide ethnicity information.

HSF affords applicants the ability to apply for the program at any of the participating medical homes or 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). 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, 55% of the participants have selected a DPH medical home and 45% have selected a San Francisco Community Clinic Consortium medical home.

B. HSF Expansion

On January 2, 2008, the program will begin enrolling HSF participants at higher income levels, namely those with incomes between 101% and 300% of the federal poverty level (FPL). Currently, program enrollment is limited to those with incomes at or below 100% FPL. There are an estimated 47,000 uninsured adults in San Francisco with incomes between 0% and 300% FPL.

Participants must 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). 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 the participating medical homes or at DPH's Eligibility and Enrollment Unit. In addition, effective January 2, 2008, the San Francisco Health Plan will serve as 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. If the Employer Spending Requirement goes into effect, the SFHP will serve as the sole enrollment site for individuals participating in the HSF program via this mechanism.

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.healthysanfrancisco.org) or by calling the City's 3-1-1 system.