

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

**A Report of
the Department of Public Health
the Office of Labor Standards Enforcement and
the City Controller's Office**

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

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EXECUTIVE SUMMARY

In July 2006, the San Francisco Board of Supervisors adopted the San Francisco Health Care Security Ordinance (Ordinance No. 218-06) and further amended it in April 2007 (Ordinance No. 69-07). The Ordinance created two City and County programs, the Employer Spending Requirement (ESR) and 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 enforcement of the ESR while the Department of Public Health (DPH) oversees HSF.

This report provides an update on the implementation and operation of the Ordinance since submission of the July 2009 status report. Specifically, the following activities have occurred:

- The Office of Labor Standards Enforcement (OLSE):
 - As of early December 2009, OLSE had opened 278 cases regarding employer compliance with the Employer Spending Requirement. Of those, 73 have been closed and 205 are still open.
 - Retained the assistance of graduate students at the University of California at Berkeley to analyze data from the 2008 Annual HSCO Reporting Form and to determine whether Health Reimbursement Accounts (HRAs) meet the goal of "providing access to affordable health care" to those who work in San Francisco.

- The Department of Public Health (DPH):
 - Reached enrollment of over 49,000 uninsured San Francisco adult residents in Healthy San Francisco (82% of estimated 60,000 uninsured adults).
 - Expanded the program's provider network to include a national, non-profit health maintenance organization (Kaiser Permanente) on July 1, 2009.
 - Worked with Kaiser Family Foundation which released the independent *Survey of Healthy San Francisco Participants* in August 2009.
 - Launched several evaluation activities with the selection of Mathematica Policy Research, Inc. as the independent evaluator in August 2009
 - Delivered the *2008-09 Healthy San Francisco Annual Report* to the San Francisco Health Commission in September 2009.

DPH's and OLSE's work on their respective programs continued while the Golden Gate Restaurant Association's lawsuit challenging the Employer Spending Requirement remained under legal review in the federal courts.

I. INTRODUCTION

An estimated 60,000 adult San Francisco residents are uninsured.¹ These residents have limited access to routine preventative care, delay seeking treatment when ill, suffer from poorer health outcomes and ultimately rely on more costly episodic or emergency care for health conditions that could have been treated in primary care settings.

In July 2006, the San Francisco Board of Supervisors adopted the San Francisco Health Care Security Ordinance (Ordinance No. 218-06) which created two new City and County programs, the Employer Spending Requirement (ESR) and Healthy San Francisco (HSF). The programs work in tandem and are designed to address the health needs of San Francisco's uninsured residents and workers.

The ESR requires medium and large businesses to spend a minimum amount on health care for their employees. Employers have flexibility in how they make their required expenditure, as long as it used for health care for their employees. In order to provide affordable health care options, the Ordinance also created HSF. HSF provides universal, comprehensive, affordable health care to uninsured adults irrespective of the person's income level, employment status, immigration status or pre-existing medical conditions. It integrates public and private providers into a single system to provide universal care without relying on health insurance.

HSF became operational on July 2, 2007. The ESR went into effect on January 9, 2008 for San Francisco employers with 50 or more employees and on April 1, 2008 for for-profit employers with 20-49 employees.

The Ordinance specifies the roles and responsibilities of various City and County agencies in the development and maintenance of this Ordinance. They are:

- Office of Labor Standards Enforcement (OLSE) – Enforces the ESR provisions.
- Department of Public Health (DPH) – Administers the HSF program.
- Controller's Office – Ensures that any required health care expenditures made by an employer to the City are kept separate and apart from general funds and limits use of these funds to HSF.
- Office of Treasurer and Tax Collector – Provides to OLSE all non-financial information necessary for OLSE to fulfill its responsibilities.

The Ordinance requires regular reporting to the Board of Supervisors on the status of both programs. Quarterly reports were required during the period from July 1, 2007 through June 30, 2008. From July 1, 2008 through June 30, 2010 reports are submitted on a bi-annual basis. This report meets the mandated reporting requirement to provide a report on January 1, 2010.

¹ Estimate is based on the 2007 California Health Interview Survey (CHIS) which is the nation's largest state health survey. CHIS provides detailed data on the health and health care needs of California residents. It is conducted by the UCLA Center for Health Policy Research.

II. 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 Employer Spending Requirement (“ESR”) of the Health Care Security Ordinance (“Ordinance”) on the grounds that it conflicted with the federal Employee Retirement Income Security Act (“ERISA”). The lawsuit did not challenge the legality of the Healthy San Francisco program.

On December 26, 2007, the United States District Court (“Court”) issued an 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 ESR provisions of the Ordinance because of federal ERISA preemption. On December 27, 2007, the San Francisco City Attorney filed a petition with the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”) asking for an emergency stay pending appeal of the lower court’s decision.

On January 9, 2008, the Ninth Circuit granted the City Attorney’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 Court’s decision. As a result of the Ninth Circuit ruling, the ESR became effective on January 9, 2008 for employers with 50 or more employees. The effective date for for-profit employers with 20-49 employees was April 1, 2008.

On February 7, 2008, the Golden Gate Restaurant Association (GGRA) filed an application to the U. S. Supreme Court, seeking to lift the Court of Appeals’ ruling. On February 21, 2008, United States Supreme Court denied the GGRA’s application.

On April 17, 2008, Ninth Circuit heard oral arguments on the appeal. On September 30, 2008, a three-judge panel of the Ninth Circuit issued a unanimous ruling that the ESR enacted under the Ordinance was not pre-empted by federal law. The decision overturned the December 26, 2007 United States District Court decision and allowed for continued operation of the ESR.

On October 21, 2008, the GGRA filed a petition with the Ninth Circuit for “Rehearing En Banc.” The petition asks the full panel of judges in the Ninth Circuit to review the decision of the three-judge panel. On March 9, 2009, the Ninth Circuit denied GGRA’s request for a rehearing of the three-judge panel decision that the ESR was not pre-empted by federal law.

On June 8, 2009, GGRA filed a petition with the U.S. Supreme Court requesting that the Supreme Court rule on the legality of the ESR of the Health Care Security Ordinance. On October 5, 2009, the Supreme Court invited the U.S. Solicitor General to file a brief expressing the federal government’s views on the case. The Court will decide whether to hear the case after reviewing the Solicitor General’s brief. While the Supreme Court considers whether to hear the case, the Ninth Circuit’s September 30, 2008 decision upholding the ESR continues to be in effect for all covered businesses.

III. 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 Health Care Security Ordinance (HCSO).

The OLSE continues to respond to public inquiries regarding the Employer Spending Requirement and to review employer compliance with the ESR.

Month (2009)	HCSO E-mails	HCSO Calls
January	157	240
February	132	255
March	349	874
April	856	941
May	185	345
June	140	217
July	152	156
August	68	133
September	76	53
October	168	70
November	85	86
December (as of 12/10/09)	47	7
Total	2,415	3,377

As of December 10, 2009, the OLSE had opened 278 cases. Seventy-three (73) HCSO cases (26% of total cases) have been resolved/closed by the OLSE and 205 (74% of total cases) are open. While the percentage of closed cases has increased, the number of open cases has continued to grow. Of the 205 open cases, 80 cases (39%) were initiated by worker complaints and 17 cases (8%) were audits initiated by the OLSE, after the agency received evidence that the business was either not in compliance or experiencing difficulties coming into compliance. The remaining 108 cases (53%) were initiated by employers who voluntarily contacted the OLSE to seek assistance in coming into ESR compliance.

	12/19/08	1/22/09	6/12/09	12/10/09
Total Cases Ever Opened	115	138	230	278
Closed Cases	21 (18%)	24 (17%)	43 (19%)	73 (26%)
Open Cases/Backlog	94 (82%)	114 (83%)	187 (81%)	205 (74%)

Source of Open Cases	94	114	187	205
Initiated by Worker Complaint	58 (62%)	69 (61%)	76 (41%)	80 (39%)
Initiated by OLSE Audit	14 (15%)	14 (12%)	13 (7%)	17 (8%)
Initiated by Voluntary Compliance	22 (23%)	31 (27%)	98 (52%)	108 (53%)

As noted in the July 2009 report, OLSE compliance reviews have resulted in over \$2 million in payments to Healthy San Francisco. In addition, the OLSE has assessed

penalties of approximately \$4,000 against those who have not made efforts towards compliance.

The OLSE continues to collect and analyze data from the 2008 Annual Reporting Forms, has secured the assistance of a graduate student from the University of California at Berkeley to complete the analysis for the data, and anticipates having a final report available by the end of the first quarter of 2010.

The City Hall Fellow assigned to HCSO compliance concluded her employment at the end of August 2009. Since then, only one full-time staff member has been assigned to HCSO education and enforcement. Other OLSE staff has provided assistance to the HCSO compliance officer by handling incoming HCSO calls on the dedicated HCSO telephone line and assisting in a handful of investigations. In November 2009, the OLSE posted a job announcement for a second HCSO compliance officer and anticipates conducting interviews and making a new hire in the first quarter of 2010.

In the academic spring semester (January to May 2010), the OLSE will be working with a student from UC Berkeley's Goldman School of Public Policy (GSPP) to determine whether Health Reimbursement Accounts (HRAs), one of the options employers may choose to satisfy the Employer Spending Requirement, adequately meet the goal of "providing access to affordable health care" to those who work in San Francisco. Anecdotal data suggests that the usage rate of HRAs selected by employers complying with the HCSO may be as low as 5 to 10 percent. Unused funds, or funds that are not reimbursed to employees, revert back to the employer. While it is our hope that the GSPP student will collect data from third party sources to confirm or deny the anecdotal data regarding HRA usage rates, we expect the bulk of the GSPP's student to focus on analysis, rather than data gathering. The GSPP student may also consider conducting focus groups with employees whose employers have chosen to comply with the HCSO by setting up HRAs.

IV. HEALTHY SAN FRANCISCO

This section provides a summary of Healthy San Francisco and Medical Reimbursement Account components of the Health Care Security Ordinance. The Department of Public Health (DPH) is responsible for implementing and administering these components.

A. Major Activities since Submission of July 2009 Status Report

Since the July 2009 status report to the Board of Supervisors, DPH has:

1. Reached enrollment of over 49,000 uninsured San Francisco adult residents into Healthy San Francisco. Based on an estimated 60,000 uninsured adults, to date, the program has enrolled 82% of the population.
2. Expanded the program's provider network to include a national, non-profit health maintenance organization (Kaiser Permanente) on July 1, 2009.
3. Launched several evaluation activities with the selection of Mathematica Policy Research, Inc. as the independent evaluator in July 2009.
4. Worked with Kaiser Family Foundation which released the independent *Survey of Healthy San Francisco Participants* in August 2009.
5. Delivered the 2008-09 Healthy San Francisco Annual Report to the San Francisco Health Commission in September 2009.

B. Healthy San Francisco Enrollment

As of late December 2009, there were 49,359 participant residents enrolled in HSF. This represents 82% of the estimated HSF enrollment of 60,000 participants.²

The following chart provides basic demographic information based on the participants:

Age	10% are 18 - 24; 42% are 25 - 44; 24% are 45 - 54; 24% are 55 - 64
Ethnicity	39% Asian/Pacific Islander; 24% Latino; 19% Caucasian; 9% African-American, 3% Other; less than 1% Native American; 5% Not Provided
Gender	47% female; 53% male
Income	69% at/below 100% FPL; 23% between 101 – 200% FPL; 7% between 201 – 300% FPL; 1% at/above 301% FPL
Language	52% English; 27% Cantonese/Mandarin; 18% Spanish; 1% Vietnamese; 1% Filipino (Tagalog and Ilocano); 3% Other

Twenty-six percent (26%) of Healthy San Francisco participants reside in the Excelsior or Mission districts. Homeless individuals comprise 15% of all HSF participants.

² The estimated number of uninsured is taken from data in the 2007 California Health Interview Survey which estimated 60,000 uninsured adults residing in San Francisco. Because HSF is a voluntary program, it is not anticipated that all uninsured residents will elect to enroll. As a result, the number of estimated participants is less than the number of estimated uninsured adults.

The HSF program has expanded access to care. The program routinely collects information on whether participants are existing clients or are new to the health care delivery system. Obtaining this information has been helpful in ascertaining the extent to which HSF serves an uninsured population that previously did not seek or receive services. To date, 24% of all those enrolled were not previous users of the health care delivery system (i.e., "new" -- defined as an individual who indicates that they have not received clinical services from the primary care medical home they selected within the last two years). The remaining 76% of program participants are existing safety net patients.

Providing program participants with a primary care medical home is a principal feature of HSF. The program is premised on the notion that primary care settings provide a more efficient mechanism to deliver preventive and primary care services, conduct disease management, and coordinate care across providers and service settings. HSF has five primary care medical home delivery systems. As of late December 2009, the distribution of participants across these systems is as follows:

- Chinese Community Health Care Association – 1.92% (949 participants)
- Department of Public Health – 50.23% (24,787 participants)
- Kaiser Permanente – 2.74% (1,354 participants)
- San Francisco Community Clinic Consortium – 42.83% (21,139 participants)
- Sister Mary Philippa Health Center – 2.29% (1,130 participants)

The Department regularly monitors and analyzes participant disenrollments from HSF. Disenrollments can occur because participants no longer meet the program eligibility criteria, no longer choose to remain in the program and voluntarily disenroll, do not pay the required quarterly participation fee, etc. Individuals who are disenrolled from the program have the option to re-enroll at any time.

In the area of disenrollment, DPH continues to focus its efforts on reducing the number of HSF participants who fail to renew in the program before their annual eligibility period ends. In early December 2009, 59% of all disenrollments were due to incomplete annual renewals. In addition, approximately 80% of the individuals disenrolled for not completing the annual renewal process had annual incomes at or below 100% of the Federal Poverty Level. Individuals at this income level pay no participation fees or point-of-service fees (with the exception of fees for emergency care, when appropriate). As a result, there should be no financial barriers to their program renewal. This fiscal year, DPH augmented its renewal activities by: (1) instituting an automated telephone call reminding participants to renew on time and (2) including renewal reminders in each issue of Heart Beat, the HSF participant newsletter. This was done in addition to the mailed renewal notices (90, 60, and 30 days prior to the end of their annual term) that participants receive. In the later part of this fiscal year, the Department will implement an incentive program that will encourage earlier and/or on-time renewal by program participants.

Individuals who are disenrolled from the program can re-enroll at any time, if eligible. The Department tracks the enrollment history of participants to determine enrollment

patterns. Re-enrollment into the program can be viewed as an indicator of continued interest in and value of the program to participants. As of early December 2009, there were 8,086 individuals who had voluntarily elected to re-enroll in the program after being disenrolled and were current HSF participants again. The data notes that the majority of the re-enrollments (74%) occur for those individuals who were originally disenrolled because they did not complete their annual renewal on time.

B. Provider Network Expansion

On July 1, 2009, Kaiser Permanente San Francisco Medical Center joined the Healthy San Francisco provider network. Kaiser, the first health plan to participate in HSF, provides primary, emergency, specialty, diagnostic, pharmacy and inpatient services. It serves as a medical home for HSF participants.

While Kaiser Permanente is a health insurance plan, it is not participating in HSF as a health insurer. HSF is not health insurance and any San Francisco resident who selects Kaiser as their medical home will not be provided health insurance even though their medical home is Kaiser. As with all HSF participants, their health services benefits under the program are confined to the City and County of San Francisco and cannot be used at Kaiser facilities in other counties.

Kaiser will be able to accommodate up to 3,000 HSF participants. In late December 2009, 1,354 HSF participants had selected Kaiser as their medical home.

C. Survey of Healthy San Francisco Participants

A Healthy San Francisco participant survey was conducted and generously funded by Kaiser Family Foundation, a non-profit, private operating foundation focusing on the major health care issues facing the United States. The Kaiser Family Foundation is not associated with Kaiser Permanente or Kaiser Industries.

This was a representative survey of enrolled HSF participants as of October 31, 2008 and who were still enrolled in the program on March 1, 2009. The survey was conducted via telephone and was designed to ascertain the experience of early HSF enrollees. Survey questions were in the areas of: enrollment process, knowledge and understanding of HSF, uninsured status, satisfaction with HSF, health status, access to care and health care utilization. The survey was administered during the month of March 2009. The survey results were released in August 2009. A copy of the survey is available on the Healthy San Francisco website at http://www.healthysanfrancisco.org/files/PDF/HSF_Satisfaction_Survey_Kaiser.pdf.

The survey findings were quite promising for a program that had been existence for less than two years when the survey was administered. The results suggest that HSF is meeting many of its program goals:

- 96% noted the helpful HSF enrollment process,
- 94% satisfaction with the program (92% would recommend program to a friend; 92% think other cities should create similar programs),

- 92% enrolled in HSF because could not afford health insurance,
- 90% saw improvements in health needs being met and
- 86% had a usual source of care.

At the same time, because HSF is still relatively new, there were some challenges that survey respondents identified which are more reflective of the start-up nature of the program. Specifically:

- Some program awareness/education challenges (e.g., not health insurance, services only in San Francisco, annual program renewal) for those in fair or poor health and those with lower levels of education.
- Non-English speakers report slightly more challenges with the enrollment process and written materials.
- Participants made recommendations on program improvements, most notably streamlining the medical appointment process to further ensure access to care.

The Department will work to address these challenges during the remainder of this fiscal year and next fiscal year.

D. Evaluation

As noted in the July 1, 2009 report, DPH selected Mathematica Policy Research, Inc. to conduct the independent program evaluation. The evaluation kick-off meeting between Mathematica and DPH was held in late July 2009. Since that time, the following evaluation activities have been conducted:

- Mathematica met with and made presentations on the evaluation framework to: the San Francisco Health Commission, Department of Public Health Integration Steering Committee, Healthy San Francisco Advisory Committee, Healthy San Francisco Evaluation Committee, Healthy San Francisco Provider Work Group and key staff providing administrative services for the HSF program (San Francisco Health Plan and Center to Promote Health Care Access).
- Mathematica conducted in-depth stakeholder interviews in October 2009.
- Mathematica participated in the HSF Evaluation Committee's quarterly meetings.

E. 2008-09 Healthy San Francisco Annual Report

On September 1, 2009, the Department presented the *2008-09 Healthy San Francisco Annual Report* to the San Francisco Health Commission. A copy of the report is attached as Attachment A.

The report provided an overview of major program accomplishments, discussed 2008-09 program activities, provided an outline of upcoming program activities for the 2009-10 fiscal year, highlighted HSF within the context of national health care reform and provided an overview of lessons that the Department has learned over the past three years of planning, implementing and operating this program. The report covered the following program components:

- Communications, Outreach, Applications and Enrollment
- Participant Demographics

- Delivery System
- Clinical Component/Services Utilization
- Customer Service
- Employer Spending Requirement
- Health Care Coverage Initiative
- Expenditures and Revenues
- Evaluation

Of particular interest, the report provides a comprehensive analysis of health care utilization among HSF participants. Highlights from this section reveal that:

- Most HSF clinical encounters are related to illness (82%) and not preventive care (18%) providing some perspective on the health status of HSF participants.
- In a 12-month period (April 2008 to March 2009), 78% of participants used primary care services.
- First to second year data indicates a 27% decrease in emergency department visits per 1,000 participants (216 to 157) based on data from San Francisco General Hospital
- Hospital utilization among HSF participants is lower than that found within Medi-Cal (Medicaid) [among adults enrolled with San Francisco Health Plan] based on data from San Francisco General Hospital.
- Only 7.9% of the emergency department visits by HSF participants were avoidable (i.e., the visit could have occurred in a primary care setting); rate is lower than that of a San Francisco public HMO serving adult Medi-Cal recipients (15%) based on data from San Francisco General Hospital.
- The analysis of quality and access measures for the program (benchmarking to the National Medicaid Average [NMA]) revealed that HSF exceeded the NMA in three diabetes measures [test of average sugar control, test of cholesterol and prevention of kidney failure]. HSF was near the NMA in use of controller medication of asthma and adult access to care.

F. HSF Estimated Department of Public Health 2008-09 Expenditures

Financial data indicated that for fiscal year 2008-09, estimated DPH expenditures for HSF were approximately \$126 million with revenues of \$36 million and a General Fund subsidy of \$90 million (the difference between expenditures and revenues). Based on estimated participant months, the monthly estimated per participant cost to DPH was \$298 (annually \$3,580). This cost represents on average the cost of utilized services by a participant on a monthly basis. This cost recognizes that some participants will not use services in any given month.

It is important to note that the costs reflect DPH's costs of operating HSF. HSF participants may receive services from other providers (e.g., health care at a hospital, other than San Francisco General Hospital, under that hospital's charity care program). The estimated costs noted above do not include the cost of such care. At present, DPH does not have access to the service utilization or costs of services provided to HSF participants that were rendered: (1) outside the HSF provider network or (2) by non-profit hospitals. At this time, DPH anticipates having data from non-profit hospitals for the third annual HSF report scheduled for release in late summer/early fall 2010.

G. Employer Selection of City Option to Meet Employer Spending Requirement

San Francisco employers are selecting the City Option to meet the Employer Spending Requirement (ESR) of the Health Care Security Ordinance. When an employer chooses the City Option, their employees will receive either Healthy San Francisco or a Medical Reimbursement Account depending upon the employee's eligibility.

If the employee is eligible for HSF, the employee will be notified and must complete the HSF application process to get enrolled in the program. An employer does not enroll an employee into HSF. If the employee is ineligible for HSF, then they will be given a Medical Reimbursement Account (MRA). All funds contributed on the employee's behalf by the employer are deposited into this account and the employee can access these funds to reimburse for out-of-pocket health care expenses.

Since implementation of the ESR (January 2008) to November 2009, roughly 1,040 employers have elected to use the City Option. These employers have committed \$62.8 million on behalf of 48,539 employees (eligible for either HSF or MRA). Of that amount, roughly half is for employees are potentially eligible for HSF (\$30.3 million) and the other half are potentially eligible for MRA (\$32.5 million). Of the total funds committed by employers, \$62.3 million in health care expenditures (99%) have been collected to date.

Employer payments are submitted to the HSF Third-Party Administrator (the San Francisco Health Plan) for processing. The Third-Party Administrator transfers the Healthy San Francisco component of the employer payments to DPH on a periodic basis. DPH then submits these funds to the City Controller's Office for processing and deposit. In accordance with the Health Care Security Ordinance, those funds are used for the HSF program. To date, \$29.8 million in funds have been transferred from the Third-Party Administrator to the City and County of San Francisco. The amount transferred includes any employer contributions and HSF program participation fees paid by enrollees on a quarterly basis.

Employer health care expenditures designated for a Medical Reimbursement Account are not transferred to the City and County of San Francisco. Participant eligibility and contribution information is forwarded to the Medical Reimbursement Account vendor and accounts are created for each employee to use for reimbursable health care expenses. Funds are transferred weekly to the MRA vendor for claims and monthly for administrative fees.

ATTACHMENT A