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 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 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 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);

   (C) 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);

3. (2D) The term "Covered Employee" shall not include persons who are managerial, supervisory, or confidential employees, unless such employees earn annually under $88,212.72 in 2014 and in subsequent years, the figure as set by the administering agency;

4. (3E) The term "Covered Employee" shall not include those persons who are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

5. (4F) The term "Covered Employee" shall not include those persons who are "Covered Employees" as defined in Section 12Q.2.9 of the Health Care Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the Employer meets the requirements set forth in Section 12Q.3 for those employees; and
The term "Covered Employee" shall not include those persons who are employed by a nonprofit corporation for up to one year as trainees in a bona fide training program consistent with Federal law, which training program enables the trainee to advance into a permanent position, provided that the trainee does not replace, displace, or lower the wage or benefits of any existing position or employee.

Nor shall the term "Covered Employee" include those persons whose employers verify that they are receiving Health Care Services through another employer, either as an employee or by virtue of being the spouse, domestic partner, or child, or other dependent of another person; provided that the employer obtains from those persons a voluntary written waiver of the Health Care Expenditure requirements of this Chapter and that such waiver is revocable by those persons at any time.

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

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

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

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

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

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

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

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

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

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

(ii) Except as provided in clause (v)(a), the contribution remains available to the employee (and any other person eligible for reimbursement for health care expenses through the employee) for a minimum of twenty-four (24) months from the date of the contribution.

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

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

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

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

(8) "Health eCare eExpenditure eRate" means the amount of hHealth eCare eExpenditure that a Ccovered Eemployer shall be required to make for each hHour PPayable pPaid for each of its Ccovered Eemployees each quarter. The "health care expenditure rate" shall be computed as follows:
(A) From the effective date of this Chapter through June 30, 2007, $1.60 per hour for large businesses and $1.06 per hour for medium sized businesses;

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

(C) From January 1, 2010 and each year thereafter, the “Health Care Expenditure Rate” shall be determined annually based on the “average contribution” for a full-time employee to the City Health Service System pursuant to Section A8.423 of the San Francisco Charter based on the annual ten county survey amount for the applicable fiscal year, with such average contribution prorated on an hourly basis by dividing the monthly average contribution by one hundred seventy-two (172) (the number of hours worked in a month by a full-time employee). The “Health Care Expenditure Rate” shall be seventy-five percent (75%) of the annual ten county survey amount for the applicable calendar year for large businesses and fifty percent (50%) for medium sized businesses.

(D) “Health Care Services” means medical care, services, or goods that may qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or medical care, services, or goods having substantially the same purpose or effect as such deductible expenses.

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

(E) “Hour Payable or ‘Hours Payable” means a work hour or work hours for which a person is paid wages or is entitled to be paid wages for work performed within the City, including paid vacation hours and paid sick leave hours, but not...
exceeding 172 hours in a single month, and without regard to the date such wages are actually paid. For salaried persons, "Hours Payable" shall be calculated based on a 40-hour work week for a full-time employee. "Hours Payable" does not include hours worked prior to the first day of the calendar month that begins on or after the date that is ninety (90) calendar days after the date of hire.

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

(1) "Large Business" means an Employer for which an average of one hundred (100) or more persons per week perform work for compensation during a quarter.

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

(2) "Medium-sized Business" means an Employer for which an average of between twenty (20) and ninety-nine (99) persons per week perform work for compensation during a quarter.

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

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

(4) "Required Health Care Expenditure" means the total Health Care Expenditure that a Covered Employer is required to make to or on behalf of every quarter for all of its Covered Employees.
"Revocable Health Care Expenditure" or "Revocable Expenditure" means any amount of Health Care Expenditure that has been allocated for use by a Covered Employee but retained by the Covered Employer, or any amount that has been paid to a trustee or third party but that may at some time be recovered by or returned to the Covered Employer.

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

SEC. 14.1.5. ALTERNATE PROVISIONS.

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

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

Notwithstanding the above, an amount paid as a "health expenditure" may be recovered by or returned to the employer without losing its status as a "health care expenditure" in the following circumstances:
(A) A former employee has not made a claim for any of the remaining available funds for 18 months (including a claim made on behalf of any other person eligible for reimbursement from health care expenses from the former employee's remaining available funds); or,

(B) The covered employee has died.

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

SEC. 14.2. SAN FRANCISCO HEALTH CARE ACCESS ASSISTANCE PROGRAM AND REIMBURSEMENT ACCOUNTS.

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

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

(b) The Department of Public Health shall coordinate with a third party vendor to administer program operations, including basic customer services, enrollment, tracking service utilization, billing, and communication with the participants.
(c) Healthy San Francisco The Health Access Program shall be open to eligible uninsured San Francisco residents, regardless of employment status. Eligibility criteria shall be established by the Department of Public Health, and shall include eligibility for persons (1) with family incomes up to 400% of the federal poverty level who are not eligible for subsidized health insurance coverage through Covered California or for Medicare or Medi-Cal; or (2) who are exempt, due to economic hardship or the cost of employer-sponsored coverage, from the mandate of the federal Affordable Care Act to carry health insurance; or (3) who do not have an affordable offer of insurance coverage as determined by the Department of Public Health, but no person shall be excluded from Healthy San Francisco The Health Access Program based on employment or immigration status or a pre-existing condition. Participants may enroll themselves as individuals, with the terms of enrollment to be determined pursuant to Section 14.4(a).

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

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

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

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

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

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

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

(2) That the design of the Covered San Francisco public benefit shall incentivize enrollment in Covered California health plans so as to maximize affordability for participants; taking into account both the individual share of premiums and other individual cost sharing under the terms of these plans.
(j) The Department of Public Health shall coordinate with Covered California and other
state or federal agencies as appropriate to create mechanisms for the efficient coordination of
Covered San Francisco benefits and to minimize the administrative burden placed on
Covered San Francisco participants and on the City.

(gk) The Department of Public Health shall also be authorized to use payments made
to the City by Covered Employers to satisfy their Health Care Expenditure requirements as set
forth in Section 14.3 to establish and maintain Medical Reimbursement Health Care Access
reimbursement Accounts from which eligible Covered Employees may obtain reimbursement
of Health Care Expenditures in the amount and under the terms set by the Department of Public
Health. Such Health Care Access Accounts shall be made available to Covered Employees
who are not eligible for Healthy San Francisco or Covered San Francisco, including Medi-Cal
enrollees and others as determined by the Department of Public Health.

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

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

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

(lo) The City Controller shall ensure that any required Health Care Expenditures
made by a Covered Employer to the City pursuant to Section 14.3 are kept separate and apart
from general funds and shall limit use of the expenditures to support the Health Care Access
Assistance Program, or to the establishment and maintenance of reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures. If any covered employee fails to enroll in the Health Access Program or establish a reimbursement account with the Department of Public Health within a reasonable time, as determined by the Department of Public Health, the City may use the funds paid to the City and County of San Francisco on behalf of that employee for the benefit of the health care programs created by this Ordinance, but the City may not transfer these funds to the City’s general fund.

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

SEC. 14.3. EMPLOYER REQUIREMENTS REQUIRED HEALTH CARE EXPENDITURES.

(a) Required Expenditures. Covered Employers shall make Required Health Care Expenditures to or on behalf of each their Covered Employees each quarter. The quarterly Required Health Care Expenditure for a Covered Employer shall be calculated by...
multiplying the total number of Hours Payable paid to the Covered Employee during the quarter for each of its Covered Employees during the quarter (including only hours starting on the first day of the calendar month following ninety (90) calendar days after a Covered Employee's date of hire) by the applicable Health Care Expenditure Rate. In determining whether a Covered Employer has made its Required Health Care Expenditures, payments to or on behalf of a Covered Employee shall not be considered if they exceed the following amount: that exceed the number of hours paid Required Health Care Expenditure for the Covered Employee shall not be counted toward the Employer Spending Requirement except as expressly permitted by OLSE during the quarter multiplied by the applicable Health Care Expenditure Rate. The City's Office of Labor Standards Enforcement (OLSE) shall enforce the Health Care Expenditure requirements under this Section 14.3.

(b) Irrevocable Expenditures.

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

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

(3) For Hours Payable on and after January 1, 2017, only Irrevocable Health Care Expenditures shall be counted toward the Employer Spending Requirement.
(c) Revocable Expenditures. Subject to the limitations in subsection (b), Revocable Health Care Expenditures shall be counted toward the Employer Spending Requirement, provided that:

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

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

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

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

(d) Effect of Court Order. If the City Attorney certifies to the Mayor and the Board of Supervisors that a court of competent jurisdiction has struck down any provision of Section 14.3(c), or permanently enjoined its enforcement, then only Irrevocable Expenditures shall
count toward the Employer Spending Requirement as of the first day of the next calendar
quarter following the City Attorney's certification.

(eb) Employer Notice to Employees.

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

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

(fe) Additional Employer Responsibilities. A Covered Employer shall:

(i) maintain accurate records of Health Care Expenditures, required Health Care
Expenditures, and proof of such expenditures made each quarter each year, and allow
OLSE reasonable access to such records, provided, however, that Covered Employers shall
not be required to maintain such records in any particular form; and

(ii) provide information to the OLSE, or the OLSE’s designee, on an annual basis
containing such other information as OLSE shall require, including information on the
Employer's compliance with this Chapter, but OLSE may not require an Employer to provide
information in violation of State or federal privacy laws. In the event the information required
by OLSE is comingled with information protected by privacy laws, the Employer shall redact
the private information. If a Covered Employer uses a Revocable Expenditure to satisfy its
obligation to make Required Health Care Expenditures for any of its Covered Employees, the Employer shall also report to OLSE any conditions or restrictions on the Covered Employee’s use of the expenditure, and the condition or conditions that permit any portion of the expenditure to be revoked by or returned to the Covered Employer. If a Covered Employer uses a health reimbursement account to satisfy its obligation to make health care expenditures for any of its Covered Employees, the Employer shall also report to OLSE the terms of such accounts, including what costs are eligible for reimbursement.

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

**(gd) Surcharges.** If a Covered Employer imposes a surcharge on its customers to cover in whole or in part the costs of the Health Care Expenditure requirement under this Chapter, the Covered Employer shall provide to OLSE on an annual basis the amount collected during the 12-month reporting period from the surcharge for employee health care and the amount spent on employee health care. If the amount collected from the surcharge is greater than the amount spent on employee health care, the Covered Employer must make additional Irrevocable Health Care Expenditures to or on behalf of its Covered Employees irrevocably pay or designate in an amount equal to that difference for Health Care.
Expenditures for its Covered Employees under this Chapter. OLSE may refer any potential
cases of consumer fraud to appropriate authorities.

SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.

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

(b) During implementation of this Chapter and on an ongoing basis thereafter, the City
OLSE shall maintain an education and advice program to assist Employers with meeting the
requirements of this Chapter.
(c) Any *employer* that reduces the number of employees below the number that
would have resulted in the *employer* being considered a "Covered *employer,*" or below the
number that would have resulted in the *employer* being considered a *medium-sized or
large business*, shall demonstrate that such reduction was not done for the purpose of
evading the obligations of this Chapter or shall be in violation of this Chapter.

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

(e) (1) The City OLSE shall enforce the obligations of Covered *employers* under
this Chapter, including requiring restitution to employees where appropriate, and shall impose
administrative penalties upon Covered *employers* who fail to make Required Health Care
Expenditures on behalf of their Covered Employees within five business days of the
quarterly due date. Failure to make a Required Health Care Expenditure shall include making
a purported expenditure that OLSE determines is not reasonably calculated to benefit the
employee. Failure to make a required health care expenditure shall include making a purported
expenditure that is determined by OLSE not to be reasonably calculated to benefit the employee. The
amount of the penalty shall be up to one-and-one-half times the total expenditures that a
Covered *employer* failed to make, but in any event the total penalty for this violation shall
not exceed $100 for each Covered Employee for each quarter that the required expenditures
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 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
include recommendations for improvement where needed, in which case the Board of Supervisors or a committee thereof shall hold a hearing within thirty (30) days of receiving the report to consider responsive action.

(g) The Director of Public Health shall convene an advisory Health Access Working Group to provide the Department of Public Health and the Health Access Program with expert consultation and direction, with input on members from the Mayor and the Board of Supervisors. The Health Access Working Group shall be advisory in nature and may provide the Health Access Program with input on matters including: setting membership rates; designing the range of benefits and health care services for participants; and researching utilization, actuaries, and costs.

(h) The Department of Public Health and the OLSE shall report to the Board of Supervisors by July 1, 2007, on the development of rules for the Health Access Program and for the enforcement and administration of the employer obligations under this Chapter. The Board of Supervisors or a committee thereof shall hold a hearing on the proposed rules to ensure that participants in the Health Access Program shall have access to high-quality and culturally competent services.

SEC. 14.5. SEVERABILITY.

If any section, subsection, clause, phrase, or wordportion of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court or Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding decision shall not affect the validity of the remaining portions of this Chapterthereof. The Board of Supervisors hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter would be subsequently declared invalid or unconstitutional. To this end, the provisions of this ordinance shall be deemed severable.
SEC. 14.6. **NO CONFLICT WITH FEDERAL OR STATE LAW PREEMPTION.**

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

SEC. 14.7. **GENERAL WELFARE.**

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

SEC. 14.8. **OPERATIVE DATE.**

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

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

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

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

By: Sherr Sokeland Kaiser
Deputy City Attorney

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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 City public benefit program known as the Health Access Program (HAP) has two component programs, Healthy San Francisco and Medical Reimbursement Accounts; 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.

May 15, 2014 Neighborhood Services and Safety Committee - CONTINUED TO CALL OF THE CHAIR

May 29, 2014 Neighborhood Services and Safety Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE

May 29, 2014 Neighborhood Services and Safety Committee - RECOMMENDED AS AMENDED

June 10, 2014 Board of Supervisors - AMENDED, AN AMENDMENT OF THE WHOLE BEARING NEW TITLE
   Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

June 10, 2014 Board of Supervisors - PASSED ON FIRST READING AS AMENDED
   Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

June 17, 2014 Board of Supervisors - FINALLY PASSED
   Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee
I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/17/2014 by the Board of Supervisors of the City and County of San Francisco.

[Signature]
Angela Calvillo
Clerk of the Board

[Signature]
Mayor

06/26/2014
Date Approved