San Francisco Health Care Security Ordinance

Ken Jacobs
UC Berkeley Center for Labor Research and Education
February 2009

The Ordinance

The San Francisco Health Care Security Ordinance has two central elements. First, it establishes a new health program, *Healthy San Francisco,* to provide comprehensive health services to uninsured San Francisco residents with a focus on prevention. Second, it sets a minimum health spending requirement for firms with 20 or more workers.

This is a shared responsibility plan. *Healthy San Francisco* is funded by the public, individuals and employers. It also receives in-kind contributions from non-profit hospitals. Individuals pay on a sliding scale based on income, and employers who do not cover health services on the job may meet the minimum health spending requirement by paying into the public program. In exchange the city has created an affordable health care option for small employers that cannot otherwise afford to cover their employees.

Healthy San Francisco

Healthy San Francisco is a comprehensive medical care program for uninsured San Francisco adults operated by the San Francisco Department of Public Health. The program is open to uninsured San Francisco residents regardless of health, employment or immigration status on a sliding scale based on income. Applicants must have been uninsured for a minimum of 90 days and be ineligible for public insurance programs.

The program restructured the county indigent health system in order to encourage preventive care and continuity in primary care. Enrollees are assigned a medical home and a primary care physician. Services include preventive care, primary care, specialty care, urgent and emergency care, behavioral health, laboratory, inpatient hospitalization, x-ray and pharmaceuticals. *Healthy San Francisco* is a health access program, not insurance. Health services are not available outside the city or outside of the local network.

Primary care homes include the city's 14 public health clinics, eight private non-profit community clinics, one private hospital-based clinic and one private physicians association. The primary hospital is San Francisco General, with additional services provided by five non-profit hospitals that are linked with primary care homes and UCSF hospital. The combination of a medical home and centralized records is designed to reduce duplication and improve coordination of care.

Healthy San Francisco is financed by a combination of individual participant fees, employer contributions, and city, county and state funding. The participant fee is paid <u>quarterly</u> based on a “sliding scale.” The fee is both predictable and affordable for individuals. Point of service fees are also on a sliding scale based on income, with little or no cost sharing for individuals in families below 100 percent of the federal poverty level (FPL). By using a centralized eligibility system, the city is able to maximize access to public funding streams.

Quarterly Fees for Healthy San Francisco

Percent of Federal Poverty Level	2-100%	101-200%	201-300%	301-400%	401-500%	500%+
Quarterly Fee	0	$60	$150	$300	$450	$675
Fees as a percent of income	0	2.3%	2.9%	3.9%	4.4%	5.2%

Source: San Francisco Department of Public Health

Project Finances, annual (in millions)

Individual contribution	6
Employer contribution	20
Redirecting of existing county funds for uninsured	123
Federal health care expansion award	24
Federal/State sources	14
Total	**$187**

Source: San Francisco Department of Public Health

Of the 73,000 uninsured San Francisco residents, to date 33,000 have enrolled in *Healthy San Francisco*. The Department of Public Health projects that this will grow to 60,000 by the end of 2009. [1]

Employer Health Spending Requirement

The minimum health spending requirement was designed to level the playing field for firms that already provide coverage, discourage firms from dropping coverage and placing a greater burden on the new public program, and to help reduce the taxpayer cost of caring for uninsured workers.

Firms with 20 or more employees are required to spend a minimum hourly amount per worker on health services. This may include contributions toward health benefits, health savings accounts, direct reimbursement of health care costs or payment into the city program.

Businesses with 20 to 99 workers are required to spend a minimum of $1.23 an hour per employee on health services. For a full-time employee, this is equivalent to 50 percent of the average amount that the 10 largest counties in California (other than San Francisco) spend on individual health coverage for their employees. Businesses with 100 or more workers are required to spend a minimum of $1.85 an hour per employee on health services. For a full-time employee, this is equivalent to 75 percent of the average amount that the 10 largest counties in California (other than San Francisco) spend on individual health coverage for their employees. Workers of firms who pay into the program receive a 75 percent discount on enrollment fees. There is currently no enrollment fee for any worker with a household income of less than 300 percent of the Federal Poverty Level whose employer pays into the program. [2]

Minimum Health Spending Requirement

<table>
<tr><th colspan="2">Business Size</th><th>January 9 2008</th><th>April 1 2008</th><th>January 1 2009</th></tr>
<tr><td>Large {</td><td>100+ Employees</td><td colspan="2">$1.76/hour</td><td>$1.85/hour</td></tr>
<tr><td rowspan="2">Medium {</td><td>50-99 Employees</td><td colspan="2">$1.17/hour</td><td rowspan="2">$1.23/hour</td></tr>
<tr><td>20-49 Employees *</td><td>Not Applicable</td><td>$1.17/hour</td></tr>
<tr><td>Small {</td><td>1-19 Employees</td><td colspan="3">Not Applicable</td></tr>
</table>

** Non-profits with less than 50 employees are exempt from the spending requirement.*
Source: San Francisco Office of Labor Standards Enforcement

Nearly half of those who work in San Francisco do not live in the city and are thus not eligible for *Healthy San Francisco*, which is only available to San Francisco residents. Focus groups of employers found strong reluctance to elect to pay into the city program if the business could only do so for part of their workforce and would need to find another option for those workers who lived outside of the city. To resolve this problem, the Department of Public Health proposed to use the funds paid on workers who do not live in the city to established Medical Reimbursement Accounts in their names. The ordinance was amended by the Board of Supervisors accordingly.

<u>The Legal Case</u>

The Golden Gate Restaurant Association (GGRA) immediately sought an injunction against the employer minimum health spending requirement on the grounds of ERISA preemption. Under ERISA, states and local governments may not impose mandates with respect to health and retirement plans covered under the act. In January 2007, the Fourth Circuit Court upheld a District Court ruling overturning a Maryland law requiring very large employers (Wal-Mart) that did not spend at least 8 percent of payroll on health services to pay a fee to the State to cover the cost of health care for the uninsured. In the Maryland ruling, the Court found that since the workers received no benefit if the employer chose to pay in, no rational employer would choose to do so; therefore the law effectively forced employers to alter their existing ERISA plans.[3]

On December 26, 2007, the District Court granted the injunction. The City immediately appealed for a stay along with the San Francisco Labor Council, the Service Employees International Union Local 1021, SEIU United Health Care Workers West and UNITE HERE Local 2. On January 9, 2008, a three judge panel from the Ninth Circuit Court of Appeals granted the stay and allowed the law to go into effect. In September 2008, the panel ruled in favor of the city.

The core of the case rotates around the question of whether or not employers have a means of compliance that leaves their ERISA plans “intact and unaltered.” The panel agreed with the city that by including the public option, employers have a rational means of compliance with the law that does not involve an ERISA plan. They also rejected the argument that the city’s health access plan is itself an ERISA plan, since it receives funds from employers. The panel noted that the plan is available to low- and moderate-income San Franciscans without regard to employment status and that it is primarily funded by taxpayers.[4] The GGRA has sought review by the full Ninth Circuit and the request for review is pending.

The employer spending requirement went into effect on January 9, 2008, for employers with 50 or more workers and on April 1, 2008, for employers with 20 to 49 employees.[5] Over 700 employers had chosen to pay into the city plan in 2008, contributing $26 million on behalf of 31,000 workers. This represents nine months for large employers and six months for medium sized employers. Half the workers were eligible for *Healthy San Francisco*, the other half received Medical Reimbursement Accounts. Employers have largely opted to leave their current benefit programs intact, while paying into the city program for those workers who do not have health coverage. A number of restaurants have adapted to the ordinance by adding surcharges to the cost of dinning, ranging from one dollar an entrée to 5 percent of the bill.

---

[1] Katz, Mitchell, Director of Public Health, City and County of San Francisco, "Providing Universal Access to Care: Healthy San Francisco," Robert Wood Johnson Foundation Web Seminar, January 2009. Available at: http://www.nashp.org/files/ERISAwebcast_020609.pdf

[2] Healthcare Security Ordinance, San Francisco Administrative Code, Chapter 14.

[3] RILA v. Fielder, No. 06-1840 (4th Cir. Jan. 17, 2007)

[4] Golden Gate Restaurant Ass'n v. City and County of San Francisco, 546 F.3d 639 (9th Cir. 2008)

[5] Joannie Chang, San Francosco Office of Labor Standards Enforcement personal communiication