

## Administrative Guidance

### San Francisco Health Care Security Ordinance [L.E.C. Article 21](#)

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**Advisory: In any instance where the Administrative Guidance, or the Rules, conflict with the HCSO, the HCSO provisions govern and should be followed instead.**

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## **A. Overview**

### **1. Q: What is the Health Care Security Ordinance?**

**A:** The Health Care Security Ordinance (HCSO) is a San Francisco law that:

- established several employer health care-related obligations enforced by the Office of Labor Standards Enforcement (OLSE); and
- created a Health Access Program, including [Healthy San Francisco](#) and [Medical Reimbursement Accounts](#), administered by the [San Francisco Department of Public Health](#).

### **2. Q: What does the HCSO require employers to do?**

**A:** Under the HCSO, all [Covered Employers](#) must meet the following obligations:

- Satisfy the Employer Spending Requirement (ESR) by [calculating](#) and [making](#) Required Health Care Expenditures on behalf of all [Covered Employees](#).
- [Maintain records](#) sufficient to establish compliance with the ESR.
- [Post](#) an HCSO Notice in all workplaces with Covered Employees.
- [Submit](#) an HCSO Annual Reporting Form to the OLSE by April 30<sup>th</sup> of each year.

### **3. Q: What types of expenditures can employers make to comply with the HCSO Employer Spending Requirement?**

**A:** Employers choose how to make the Required Health Care Expenditures for their Covered Employees. Common Health Care Expenditures include:

- Payments for medical, dental, and/or vision insurance;
- Payments to the [SF City Option](#);
- Contributions to programs that reimburse employees for out-of-pocket health care costs, subject to the limitations described in [Administrative Guidance Section F](#).

*Updated February 21, 2018*

## **B. Covered Employers**

### **1. Q: Which employers are “Covered Employers”?**

**A:** An employer is covered by the HCSO for any calendar quarter if it meets the following three conditions:

- employs one or more workers within the geographic boundaries of the City and County of San Francisco;
- is required to obtain a valid [San Francisco business registration certificate](#) pursuant to Article 12 of the Business and Tax Regulations Code, and
- is a for-profit business with 20 or more persons performing work or a nonprofit organization with 50 or more persons performing work. This includes all persons working for the entity, regardless of whether they are located in San Francisco or outside of the city.

### **2. Q: Who should be counted in determining employer size?**

**A:** All persons performing work for compensation for the employer should be counted (not just Covered Employees). This includes:

- persons who work in San Francisco and those who work outside of San Francisco.
- all employees, regardless of their status or classification as seasonal, permanent or temporary, full-time or part-time, contracted (whether employed directly by the employer or through a temporary staffing agency, leasing company, professional employer organization, or other entity) or commissioned.
- owners who perform work for compensation.
- “Compensation” includes money, benefits, or in-kind compensation, such as room and board, etc.

*Updated January 6, 2016*

### **3. Q: Are owners counted for the purpose of determining employer size?**

**A:** Owners who perform work for compensation for the business are considered “persons performing work” and must be counted as such in determining whether the business is a Covered Employer.

**4. Q: Does it matter if the employer is based or headquartered outside of San Francisco?**

**A:** No, the employer is covered by the HCSO – regardless of its location – if it meets the criteria as a Covered Employer.

**5. Q: What if the number of persons performing work changes from week to week?**

**A:** For businesses employing a fluctuating number of persons performing work during a quarter (13 weeks), employer size is based on the weekly average number of persons performing work for compensation during that quarter.

Thus, a business that employs 5 persons during the first 6 weeks of the quarter and 20 persons during the last 7 weeks of the quarter would not be covered because it has employed an average of only 13 persons per week during that quarter:

$$[(5 \text{ persons/week} \times 6 \text{ weeks}) + (20 \text{ persons/week} \times 7 \text{ weeks})] / 13 \text{ weeks} = 13 \text{ persons/week.}$$

**6. Q: If an employer operates one business with three separate stores or locations in San Francisco, each with seven employees, is it a Covered Employer?**

**A:** Yes. For the purpose of calculating employer size, employees performing work in different locations operated by the same employer are employees of that employer. The seven employees at each of the three stores total 21 persons performing work for this employer; thus, it is covered under the HCSO.

**7. Q: What if an employer owns and operates three unrelated businesses, such as a book store, a laundromat, and a pizzeria, each with seven employees?**

**A:** It depends on the ownership structure of the business. Businesses that are a “controlled group of corporations”, as defined in Section 1563(a) of the United States Internal Revenue Code, are considered to be a single employer under the HCSO, and all employees of each entity would be counted to determine the size of the employer. If the businesses are incorporated and not members of a “controlled group of corporations”, as defined in Section 1563(a) of the United States Internal Revenue Code, then each is considered a separate business, and the employees of each separate entity will be counted to determine the size of each employer.

Employees of businesses that are not incorporated are counted as working for one employer if the businesses are under common control. For purposes of the

HCSO, “under common control” means either (a) one person (individual, estate, or trust) has at least an 80 percent ownership interest in each of the businesses, or (b) the same two to five persons hold more than a 50 percent ownership interest in each of the businesses.

The same analysis applies if one or more of the businesses is incorporated, but others are not. Note that while some corporations may be excluded from the “controlled group of corporations” analysis for income tax purposes, they are not excluded from the definition of “employer” under L.E.C. Art. 21.1(b)(4).

*Updated January 6, 2016*

**8. Q: Are public sector employers covered by the HCSO?**

**A:** No. The HCSO applies only to medium and large size businesses or nonprofits that are required to register with the San Francisco Office of the Treasurer & Tax Collector to do business in the City. Public sector employers, such as the City and County of San Francisco, the San Francisco Unified School District, the University of California, or other agencies of the state or federal government are not required to register.

*Updated January 6, 2016*

**9. Q: Are employers who contract with the City and County of San Francisco, including those with existing City contracts, covered by the HCSO?**

**A:** Yes, City contractors are subject to the HCSO and must comply with its requirements if they meet the definition of a Covered Employer.

Note that the HCSO exempts employees who are covered by the San Francisco Health Care Accountability Ordinance (HCAO); thus, City contractors who are also subject to the HCAO need not make HCSO expenditures for those employees who receive health care benefits under the HCAO (typically those working 20 or more hours per week).

However, this exemption does not change the City contractor’s HCSO obligations with respect to any employees who are not covered by the HCAO. For more information regarding the HCAO, please email [HCAO@sfgov.org](mailto:HCAO@sfgov.org), call (415) 554-7903, or visit the OLSE’s [HCAO web page](#).

*Updated January 6, 2016*

**10. Q: Are employers who contract with public agencies other than the City and County of San Francisco covered by the HCSO?**

**A:** Generally, non-City public sector contractors, such as those that contract with the Federal government or the State of California, are covered by the HCSO unless they are “instrumentalities” of the public sector agency, in other words, are performing work that is a core function of the agency. If some, but not all, of a company’s employees are instrumentalities of a public sector agency, the employer is still a Covered Employer, and employees who do not function as instrumentalities of the government agency may be Covered Employees.

*Updated January 6, 2016*

**11. Q: Does the HCSO cover employees of private businesses operating on federal property within San Francisco?**

**A:** It depends. The HCSO does not cover private businesses located in “federal enclaves” such as the Presidio, Fort Mason, and the Golden Gate National Recreation Area (GGNRA). Otherwise, private businesses located on federal property that is not a federal enclave generally are subject to the “instrumentality” test discussed in Question 10 above.

*Updated January 6, 2016*

**12. Q: Are temporary staffing agencies or professional employer organizations (PEOs) responsible for making Health Care Expenditures under the HCSO?**

**A:** Both the client and the temporary staffing agency, professional employer organization (PEO), or similar entity may be considered a Covered Employer under the HCSO, and each Covered Employer shall have an obligation to ensure that the Employer Spending Requirement has been met. Whether such an entity is a Covered Employer depends on whether it is a “joint employer.” Under California law, a person or entity “employs” a worker if the person or entity: (1) exercises control over the worker's wages, hours or working conditions, (2) suffers or permits the worker to work, or (3) engages the worker (*i.e.*, creates a common law employment relationship). (Martinez v. Combs (2010) 49 Cal. 4th 35, 64). If a temp agency or PEO performs any of these functions, then it is considered a “joint employer,” along with the client for whom the employee performs the work. Whether a particular entity satisfies this legal test is a fact-specific inquiry.

If a temp agency or PEO performs any of these functions, then that entity is considered a “joint employer,” along with the client for whom the employee performs the work. If there is a joint-employment relationship:

- Both entities are responsible for the required health care expenditures. Either entity may make the expenditures, but both can be held liable if the expenditures are not made.
- The health care expenditure rate is determined by the size of the larger employer. For example, if a temp agency has 200 employees and the employer at the worksite has only 30, the health care expenditure rate for large employers applies. (See HCSO Admin. Guidance Question D2).

*Updated January 6, 2016*

### **C. Covered Employees**

#### **1. Q: Is an employer required to make minimum Health Care Expenditures for all of its employees?**

**A:** Covered Employers are only required to make Health Care Expenditures to or on behalf of their “Covered Employees.”

*Updated January 6, 2016*

#### **2. Q: Which employees are “Covered Employees”?**

**A:** An employee is covered by the HCSO if s/he works for a Covered Employer and:

- is entitled to be paid the minimum wage,
- has been employed by his or her employer for at least 90 calendar days,
- performs at least 8 hours of work per week within the geographic boundaries of San Francisco, and
- does not meet one of the five [exemption criteria](#) discussed below.

*Updated January 6, 2016*

#### **3. Q: What if the number of hours that an employee works in San Francisco changes over the quarter?**

**A:** An employee who regularly works eight or more hours per week in San Francisco is covered by the HCSO.

For employees whose work hours in San Francisco fluctuate below eight hours per week, Covered Employers are only required to make Health Care

Expenditures during those quarters in which the employee works an average of eight or more hours per week in San Francisco. For example, an employee who works an irregular schedule ranging from 5 to 11 hours per week during the quarter may be covered if the average of hours worked per week is 8 or more.

For an employee who is terminated before the end of the quarter, calculate the average by dividing the total number of hours worked during that quarter by the number of weeks employed during that quarter. An employee who averages one eight-hour day per week for the month of January is a Covered Employee for that month, even if she is not employed during the last two months of the quarter.

Note that the number of hours actually worked is relevant to determining whether an employee is covered by the HCSO, but “Hours Payable” (including paid time off) is used to calculate the minimum expenditure for each Covered Employee, as described in [Section E](#).

**4. Q: Can an employer provide health benefits to an employee before that individual has been employed for 90 days?**

**A:** Yes. Nothing in the HCSO prevents an employer from providing health care benefits or spending money on Health Care Services before the employee becomes a “Covered Employee” under the San Francisco law.

**5. Q: If an employee leaves the job and is re-hired at a later date, does the employee have to wait 90 days to be covered by the HCSO?**

**A:** It depends. If the employee is rehired within one year of the last day of previous employment, s/he is not required to complete a new 90-day eligibility period. In addition, the eligibility period need not be continuous – if the employee had only completed part of the 90-day eligibility period before leaving, the prior days of employment count towards the eligibility period when s/he returns.

If the employee is rehired more than one year after the last day of her previous employment, the employer may require him/her to complete a new 90-day eligibility period before s/he is covered by the HCSO.

*Updated January 6, 2016*

**6. Q: Are owners considered Covered Employees under the HCSO?**

**A:** Although owners who perform work for compensation must be counted for the purpose of determining employer size, owners are not considered Covered



Employees because they are not entitled to payment of the minimum wage. Thus, the business is not required to make Health Care Expenditures to or on behalf of the owner(s).

**7. Q: Does the HCSO cover undocumented employees?**

**A:** Yes. All employees who work in San Francisco who meet the definition of a Covered Employee – whether or not they are legally authorized to work in the United States – are covered by the law. The OLSE will process an employee’s claim without regard to his or her immigration status; employees filing a claim with the OLSE will not be questioned about their immigration status.

**8. Q: Does the HCSO require employers to make Health Care Expenditures for legitimate independent contractors?**

**A:** No. Employers are only obligated to make Health Care Expenditures on behalf of employees. However, merely labeling someone an “independent contractor”, or issuing a 1099 form, does not make him or her so. A fact-specific inquiry determines whether a person is an employee or an independent contractor. When making this determination, the OLSE relies on state law and on the factors outlined in *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), reh’g denied (June 20, 2018).

*Updated September 8, 2018*

**9. Q: Are any employees exempted or excluded from eligibility under the HCSO?**

**A:** Yes, there are five categories of exempt employees:

- 1) Employees who [voluntarily waive](#) their right to have their employers make Health Care Expenditures for their benefit (see Question 10 below).
- 2) Employees who qualify as [managers, supervisors, or confidential employees](#) AND earn more than the applicable [salary exemption amount](#).
- 3) Employees who are eligible for [Medicare](#) or [TRICARE](#) (the health care program serving Uniformed Service members, retirees and their families). In order to claim these exemptions, an employer must be able to document employee eligibility.
- 4) Employees who are employed by a non-profit corporation for up to one year as trainees in a [bona fide training program](#) consistent with federal law.

- 5) Employees who receive health care benefits pursuant to the San Francisco [Health Care Accountability Ordinance](#) (HCAO).

**10. Q: How does an employee voluntarily waive the right to Health Care Expenditures?**

**A:** If an employee is receiving health care benefits through another employer, s/he is permitted to sign the OLSE [Employee Voluntary Waiver Form](#) (PDFs available in [English](#), [Chinese](#), [Spanish](#) and [Filipino/Tagalog](#)). The Waiver verifies that the employee is receiving health care benefits through another employer (such as a spouse's, domestic partner's or parent's employer, or this employee's second job) and that s/he knowingly and voluntarily waives the right to have his/her current employer make Health Care Expenditures on his/her behalf.

Coverage purchased by the employee for him or herself or that the employee is receiving through Medi-Cal or a county health program, is not "benefits received through another employer." A waiver form that states the employee only has such coverage is not a valid waiver.

Employers must use the OLSE [Employee Voluntary Waiver Form](#), which OLSE developed to ensure that the employee understands his/her rights under the HCSO, so that the waiver is a knowing and voluntary one. Employers may not alter the form in any manner. Other forms provided by third-party vendors or health insurance carriers cannot be used in lieu of the City's Employee Voluntary Waiver form.

*Links updated August 3, 2018*

**11. Q: What makes an Employee Voluntary Waiver Form valid?**

**A:** For an Employee Voluntary Waiver Form to be valid, the employee must fully understand his/her rights under the HCSO, and the Voluntary Waiver must be voluntarily completed by the employee without pressure or coercion from coworkers, the employer, or anyone connected to the employer.

If the employee fails to state on the form that he/she is receiving benefits through another employer, or leaves that section of the waiver form blank, the waiver form is not valid.

An employee voluntary waiver is effective on the date it is signed and is valid for one year or until revoked by the employee. Employees who wish to waive their rights for more than one year must sign a new waiver each year when the prior form expires. Employees cannot waive their rights retroactively.

Employees have the right to revoke their voluntary waiver at any time; the revocation must be submitted in writing. Employers must maintain documentation of waivers and revocations and provide employees with complete copies of such documentation.

An electronic signature is acceptable on the HCSO Employee Voluntary Waiver Form if all of the following conditions are met:

- 1) The form is an exact replica of the OLSE's official Employee Voluntary Waiver Form;
- 2) The employee can view the entirety of the form at the same time as they sign it (i.e., the signature is not on a separate page from the form itself);
- 3) No language on the website suggests the employee is required to sign the form.
- 4) The employer retains a copy of the signed form for its records and also gives the employee a printed copy of the entire signed form.

*Updated January 6, 2016*

**12. Q: Who qualifies as a Manager, Supervisor, or Confidential Employee?**

**A:** These terms are defined as follows:

- Managerial employee: an employee who has authority to formulate, determine, or effectuate employer policies by expressing and making operative the decisions of the employer and who has discretion in the performance of his/her job independent of the employer's established policies.
- Supervisory employee: an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend any such action, if the exercise of this authority or responsibility is not of a merely routine or clerical nature, but requires the use of independent judgment.
- Confidential employee: an employee who acts in a confidential capacity to formulate, determine, and effectuate management policies with regard to labor relations, or regularly substitutes for employees having such duties.

**13. Q: What is the earnings requirement that goes along with the Managerial, Supervisorial, or Confidential Employee exemption?**

**A:** If an employee is a Managerial, Supervisorial, or Confidential Employee *and also* earns the following annual or hourly rate or a higher rate for the applicable year, that employee is exempt from the HCSO:

Year	Annual Salary	Hourly Salary
2021	\$107,991	\$51.92
2022	\$109,643	\$52.71
2023	\$114,141	\$54.88
2024	\$121,372	\$58.35

The earnings figure represents “the regular rate of pay” as the term is defined and used by the California Labor Commissioner. In that context, the regular rate of pay includes commissions and piece rate wages, but does not include overtime wages, gifts, or most bonuses. Thus, an employee who is a manager and earns an annual base salary that is at or above this figure will be considered exempt from the HCSO even if she is not employed for the full year. Employees who are compensated on an hourly basis and fall into the managerial, supervisory, or confidential employee categories are also exempt from the HCSO if they earn more than the applicable hourly wage listed above.

*Updated January 5 2024*

**14. Q: What is the nonprofit trainee exemption?**

**A:** To be exempt trainees of a nonprofit for up to one year, employees must meet three criteria:

- 1) The trainee is participating in a bona fide training program consistent with Federal Law as defined in the Code of Federal Regulations, Title 29, Part 520:

*Bona fide vocational training program means a program authorized and approved by a state board of vocational education or other recognized educational body that provides for part-time employment training which may be scheduled for a part of the work day or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular*

*part of the student-learner's course by an accredited school, college, or university.*

- 2) That training program enables the trainee to advance into a permanent position.
- 3) The trainee does not replace, displace, or lower the wages or benefits of any existing position or employee.

#### **D. Calculating Required Health Care Expenditures**

##### **1. Q: How much is a Covered Employer required to spend on health care for its Covered Employees?**

**A:** The minimum Health Care Expenditure for each Covered Employee is determined quarterly by multiplying the total number of [Hours Payable](#) to the employee in the quarter by the applicable Health Care Expenditure Rate.

There are two Health Care Expenditure Rates: one for medium-size employers (those with 20-99 [persons performing work](#)) and another for large employers (those with 100 or more [persons performing work](#)). The rates increase annually.

The two rates for the current and recent years are as follows:

##### **HCSO HEALTH CARE EXPENDITURE RATES**

Year	Medium-Sized Employers	Large Employers
2021	\$2.12 / hour	\$3.18 / hour
2022	\$2.20 / hour	\$3.30 / hour
2023	\$2.27 / hour	\$3.40 / hour
2024	\$2.34 / hour	\$3.51 / hour

*Updated January 5, 2024*

##### **2. Q: Which Health Care Expenditure rate applies in the context of a joint employment arrangement, such as a temporary staffing agency?**

**A:** When the employee is jointly employed by a client and another agency, such as in the context of a temporary staffing, leasing, professional employer, or other entity serving the same or similar function, the applicable Health Care

Expenditure rate will be determined by the size of the larger employer. (See question B.12 for the definition of “Joint Employment.”)

*Updated January 6, 2016*

**3. Q: When do Health Care Expenditures have to be made?**

**A:** Health Care Expenditures must be made each quarter, within 30 days of the end of the preceding quarter. The first quarter of the year is defined as the period from January 1 through March 31; the second quarter, from April 1 through June 30; the third quarter, from July 1 through September 30; and the fourth quarter, from October 1 through December 31.

**4. Q: How do I calculate the minimum Health Care Expenditure for a new Covered Employee?**

**A:** For a new Covered Employee, the quarterly minimum Health Care Expenditure is calculated by multiplying the total number of “Hours Payable” to that employee from the first day of the calendar month following 90 calendar days after his or her first day of work through the end of that quarter.

An employee whose first day of work is January 15, 2023 will become covered by the HCSO on May 1, 2023. Thus, the required quarterly minimum Health Care Expenditure is calculated by multiplying all Hours Payable to that employee from May 1, 2023 through June 30, 2023.

*Updated January 5, 2023*

**5. Q: What are Hours Payable?**

**A:** Hours Payable includes both the hours for which a person is paid wages for work performed within San Francisco and the hours for which a person is entitled to be paid wages, including, but not limited to, paid vacation hours, paid time off, and paid sick leave hours, but not exceeding 172 hours in a single month. “Hours Payable in a quarter” refers to when the payment is earned, rather than when it is actually paid out to the employee.

Note that Hours Payable is the figure used to calculate the expenditure required for each Covered Employee, but “[hours worked](#)” is used to determine whether an employee is covered by the HCSO.

*Updated January 6, 2016*

**6. Q: Do hours worked by employees outside of the San Francisco count for purposes of calculating expenditures?**

**A:** No. Under the HCSO, Hours Payable includes only those hours during which the employee is working within the geographic boundaries of the City and County of San Francisco.

For Covered Employees who perform some work outside of San Francisco, Hours Payable that are not hours actually worked (e.g., paid vacation hours, paid time off, and paid sick leave hours) should be calculated on a pro rata basis.

*Updated January 6, 2016*

**7. Q: Do Hours Payable include overtime hours? How are Hours Payable calculated for employees exempt from overtime law?**

**A:** For employees who are not exempt from the overtime provisions of the federal Fair Labor Standards Act (FLSA) and California law, the Health Care Expenditures are calculated based on all hours worked, including overtime hours worked. Keep in mind that Hours Payable for each employee is capped at 172 hours per month.

For employees who are exempt from the overtime provisions of the FLSA and California law, OLSE will assume that the minimum Health Care Expenditures should be calculated based upon a 40-hour work week, capped at 172 hours per month, unless there is evidence that the exempt employee's regular work week is less than 40 hours. In instances where there is evidence that the exempt employee's regular work week is less than 40 hours, that figure shall be used in calculating the minimum Health Care Expenditures.

*Updated January 6, 2016*

**8. Q: Must minimum Health Care Expenditures be calculated separately for each employee?**

**A:** Yes, subject to certain exceptions described below in [Questions 9 and 10](#). The employer must make minimum Health Care Expenditures to or on behalf of each Covered Employee. Payments to or on behalf of one Covered Employee that exceed the required minimum Health Care Expenditure for that employee will not be considered in determining whether an employer has met its total

required minimum Health Care Expenditures for all employees.

Note the exceptions that apply to plans providing [uniform coverage](#) to Covered Employees and [self-funded plans](#).

**9. Q: How does an employer that provides uniform coverage to its Covered Employees determine if its expenditures meet or exceed the minimum Health Care Expenditure rate?**

**A:** A Covered Employer that provides uniform health care coverage (i.e., an HMO or PPO) to some or all of its Covered Employees will be deemed to comply with the spending requirement of the HCSO as to those employees who receive uniform coverage if the average hourly expenditure rate per employee meets or exceeds the [expenditure rate](#) required under the HCSO.

Employers shall calculate the average hourly expenditure rate by (a) dividing the total monthly premium paid for all employees covered by the uniform plan by the total number of employees covered by that plan, then (b) dividing that number by 172 hours paid (“hours paid” per employee is capped at 172 hours in a single month).

The employer has the option of including only Covered Employees in this calculation, or including all employees participating in the uniform plan, provided that all such employees receive the same health coverage or product.

The option of averaging expenditures is limited to plans with a uniform design, *i.e.*, the plans must have a uniform benefit design offered to all employees (same co-pay requirements, out-of-pocket maximums, deductibles, coverage tiers, eligibility criteria). An employer that offers an HMO and a PPO may average hourly expenditures for all of the employees covered by the HMO, and must calculate a separate hourly average expenditure for those covered by the PPO. Similarly, an employer that offers two HMO options may not average the expenditures between the two HMOs unless the benefit design for both HMOs is exactly the same.

Amounts paid for dependent coverage may be counted towards the minimum Health Care Expenditure required under the HCSO. Accordingly, contributions for employees with dependents can be averaged with contributions for employees without dependents. However, if differences in the employer’s contribution levels are based on other criteria, *i.e.*, in situations where the amount an employer spends varies depending on the number of hours worked



by employees, the employees' status as union/nonunion, the employees' salary, waiting periods, or work site/location, the expenditures cannot be averaged.

If the Covered Employer's expenditure rate fails to meet or exceed the minimum expenditure rate set forth by the HCSO, that employer must spend the difference (or shortfall) within 30 days of the end of the quarter.

*Updated January 6, 2016*

**10. Q: How does an employer with a self-funded plan determine if its expenditures meet or exceed the required Health Care Expenditure rate?**

*Please note that new HCSO Rules took effect on October 29, 2017 that affect how employers calculate expenditures made for self-insured plans. Please see the Rules on the [HCSO website](#). OLSE began enforcing the new requirements for calendar year 2018.*

OLSE can offer the following clarity regarding the language of Rule 5.9(b). The Rule states that:

“A Covered Employer may comply with the HCSO by providing a self-funded or self-insured uniform health plan to some or all of its Covered Employees, so long as that plan satisfies one of the following conditions... (b) The employer pays claims as they are incurred, and the preceding year's average hourly expenditures meet or exceeds that year's expenditure rate for that employer.” (emphasis added).

OLSE interprets Rule 5.9(b) to mean that a self-funded or self-insured uniform health plan may comply when the employer pays claims as they are incurred, and **that calendar year's** average hourly expenditures meet or exceed **that calendar year's** expenditure rate for that employer.

For example, in early 2024, when an employer is assessing the cost of its 2023 health plan, the employer must determine whether the 2023 average hourly expenditures meet or exceed the 2023 expenditure rate.

*Updated January 5, 2023*

**11. Q: What if the health insurance premiums that I currently pay for my employee do not reach the minimum amount required by the HCSO?**

**A:** Employers must make the full expenditure required by law; thus, if the monthly premium paid by the employer does not meet the minimum expenditure

amount, it must make up the shortfall. It is up to the employer to decide how to make up the shortfall; it may do so by reducing the employees' share of the premiums for the existing plan, choosing a more generous plan with higher premiums, complementing the existing plan with a health spending or medical reimbursement account, making payments to the [SF City Option](#) (which will then be used to set up a Medical Reimbursement Account for the Covered Employee), or making other expenditures that qualify as Health Care Expenditures according to the HCSO.

**12. Q: What if the premiums I pay for my employees' medical, dental, and/or vision insurance are greater than the minimum amount required by law?**

**A:** Covered Employers that are spending at or above the Required Health Care Expenditure rates have no further spending obligations under the HCSO.

**13. Q: What if I am already paying my employees health and welfare benefits pursuant to a Prevailing Wage or Public Works Contract, or other Collective Bargaining Agreement?**

**A:** If the health and welfare benefit payments required under your contract are at or above the expenditure rate required under the HCSO, you will have no further spending obligations under the HCSO. However, payment of the prevailing wage fringe benefit requirement in cash (as part of the Covered Employee's paycheck or otherwise) shall not satisfy the Employer Spending Requirement of the HCSO because the employer must ensure that the Health Care Expenditure is spent on [Health Care Services](#) for the Covered Employee.

Note that any portion of the health and welfare benefit payment that is for life insurance, death benefits, or disability payments shall not count towards the employer's minimum expenditure because such payments do not constitute Health Care Services under the Ordinance.

**14. Q: May I deduct the Health Care Expenditures from my employee's paycheck?**

**A:** No, the minimum Health Care Expenditure must be paid by the employer; thus, a deduction from the employee's earned wages for deposit in the employee's health savings or flexible spending account, for example, do not satisfy the employer's Employer Spending Requirement. Likewise, an employee's contribution towards his/her health insurance premium will not be credited towards the employer's minimum Health Care Expenditure.

## **E. Making Required Health Care Expenditures**

### **1. Q: What is a Health Care Expenditure?**

**A:** The Ordinance defines a Health Care Expenditure as 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 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 City's Health Access Program (the [SF City Option](#)).

Amounts paid by employees shall not count towards the Covered Employer's minimum Health Care Expenditure.

*Updated February 21, 2018*

### **2. Q: What are some examples of Health Care Expenditures that meet the requirements of the HCSO?**

- A:** All of the following examples meet the requirements of the HCSO:
- Payments to a third party to provide health care services for the Covered Employee, such as payments for medical, dental, or vision insurance, or payments to a health care provider;
  - Payments on behalf of the Covered Employee to the [SF City Option](#);
  - Contributions on behalf of the Covered Employee to a reimbursement program (subject to the limitations in [Section F](#));
  - Costs incurred by the employer in the direct delivery of Health Care Services for the Covered Employee.
  - Any of the above made on behalf of a Covered Employee's spouse domestic partners, children, or other dependents.

Payments made directly or indirectly for workers' compensation or Medicare benefits do not qualify as Health Care Expenditures.

*Updated February 21, 2018*

**3. Q. Can an employer comply with the Employer Spending Requirement by increasing the employees' pay or salary by the amount of the expenditure requirement?**

A: No. Increasing hourly wages, or otherwise giving employees extra money in their paychecks, is not a valid Health Care Expenditure and does not satisfy the Employer Spending Requirement.

*Updated January 6, 2016*

**4. Q: What qualifies as “Health Care Services”?**

A: 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.

Examples of qualifying expenditures include medical, vision and dental coverage; nonprescription drugs, including, but not limited to, antacids, allergy medicines, pain relievers, and cold medicines; doctor's fees; and necessary hospital services not paid for by insurance. Qualifying medical expenses include dental treatments and fees paid to dentists for x-rays, fillings, braces, extractions, dentures, and the like; eyeglasses and contact lenses needed for medical reasons; and fees for eye examinations and eye surgery to treat defective vision.

*Updated January 6, 2016*

**5. Q: As an employer, do I have to choose only one of the options listed above for making Health Care Expenditures?**

A: No, an employer may choose more than one option to satisfy its obligations. An employer may, for example, pay for health insurance for its full-time employees while making contributions to the [SF City Option](#) for its part-time employees.

*Updated February 21, 2018*

**6. Q: Does the HCSO require employers that already provide health insurance to their employees to spend more money on their employees?**

**A:** It depends. The premiums that a Covered Employer pays for medical insurance for its Covered Employees count toward its Required Health Care Expenditures, so if that amount meets the minimum required under the HCSO, the Covered Employer will have no further obligations.

However, if the amount spent does not meet the minimum expenditure amount set by the HCSO, the Covered Employer must decide how it will spend the difference. The employer could choose a health insurance plan that provides more comprehensive benefits, such as dental and visions benefits, or increase its contribution towards the health care premiums while decreasing the portion paid by the employee. Another way to spend the remainder of the minimum spending requirement is to contribute to the SF City Option.

*Updated February 21, 2018*

**7. Q: I currently provide benefits to all full-time employees, but only provide benefits to part-time employees who work more than 20 hours per week. Does the HCSO require me to do more?**

**A:** Yes, if your part-time employees work eight or more hours per week in San Francisco, you are required to make health care expenditures on their behalf.

*Updated January 6, 2016*

**8. Q: What if my employees have other insurance? Am I still required to make Health Care Expenditures for those employees?**

**A:** It depends. Covered Employees who already have health care benefits through another employer may voluntarily waive their right to Health Care Expenditures under the HCSO by signing the OLSE's [Employee Voluntary Waiver Form](#). If an employee who is receiving health care benefits from another employer chooses not to sign the waiver, the employer must make the minimum Health Care Expenditures for that employee. But an employer will not be required to make Health Care Expenditures for employees that choose to sign this form. Keep in mind, however, that the waiver will not be valid unless the health care benefits are provided either by another employer of the Covered Employee or by the employer of that Covered Employee's spouse, domestic partner, parent, or guardian. If a Covered Employee has health care benefits that are not provided by another employer (i. e., the employee is purchasing it themselves or receiving MediCal), the employee may not sign a waiver and the employer is still required to make the minimum Health Care Expenditures for that employee.

Updated January 6, 2016

**9. Q: What if my employees choose not to participate in the health plan that I offer?**

**A:** A Covered Employer that establishes or maintains a health insurance program that requires contributions by a Covered Employee must do more than offer the Covered Employee an opportunity to participate in such a program. If the employee declines to participate in such a program, the employer must satisfy its Employer Spending Requirement in some other manner.

**10. Q: If an employer makes payments to satisfy its obligations under the Employer Shared Responsibility provisions of the federal Affordable Care Act (ACA), do those payments also count toward the Employer Spending Requirement under the HCSO?**

**A:** The answer depends on whether the employer's payments also fall within the definition of Health Care Expenditures, which are generally amounts actually paid for Health Care Services for Covered Employees or their spouses or dependents. For example, if the employer satisfies its ACA obligations by offering health insurance, the premiums it pays for those employees who enroll in the insurance program are Health Care Expenditures that count toward the Employer Spending Requirement.

On the other hand, if the employer satisfies its ACA obligations by paying additional taxes (sometimes referred to as "penalties"), those payments do not count toward the Employer Spending Requirement because they are not Health Care Expenditures.

The amount paid for Health Care Expenditures that satisfy the ACA may not *fully* satisfy the Employer Spending Requirement of the HCSO. For example, if the amount actually spent on health insurance for a Covered Employee to satisfy the ACA is less than the Required Expenditures under the HCSO, the employer will have to make additional Health Care Expenditures to comply with the HCSO.

**11. Q: What should I do if a Covered Employee stops working for me before I've made the quarterly Health Care Expenditure?**

**A:** Covered Employers must comply with the Employer Spending Requirement for all Hours Payable to a Covered Employee, even if the employment relationship is terminated before the end of the quarter. Covered Employers

that have not yet made the quarterly Health Care Expenditure for a Covered Employee may make the expenditure in the same manner as was done in the immediately preceding quarter. Where an employer has chosen to purchase health insurance for its Covered Employees, COBRA payments to continue health insurance coverage shall also qualify as valid Health Care Expenditures. The Covered Employer may also comply by making payments to the SF City Option, even if the employer had previously complied with the Employer Spending Requirement in some other manner.

If a Covered Employer meets the Employer Spending Requirement by making “Revocable Expenditures,” as defined in [Section F](#), there are [additional rules](#) that apply when a Covered Employee leaves employment.

*Updated February 21, 2018*

## **F. Revocable & Irrevocable Health Care Expenditures**

### **1. Q: What is an Irrevocable Expenditure?**

**A:** An Irrevocable Health Care Expenditure is a Health Care Expenditure that has not been retained by and cannot at any time be recovered by or returned to the employer. This means that the employer cannot recover any portion of the funds, even if the employee leaves the job or if the business ceases to operate. Since 2017, only Irrevocable Expenditures have been permitted by the HCSO.

A few examples of Irrevocable Expenditures include:

- Payments to an insurance provider for medical, dental, or vision insurance premiums;
- Contributions to the SF City Option; and
- Contributions to Health Savings Accounts or Medical Savings Accounts, or other irrevocable reimbursement accounts

*Updated January 5, 2023*

**Q:** Do employer contributions to a Flexible Spending Arrangement count as Health Care Expenditures under the HCSO?

**A:** No. Funds contributed to a Flexible Spending Arrangement (also known as a Flexible Spending Account or FSA) only remain available to the employee for one calendar year. In order to qualify as a Health Care Expenditure under the HCSO, a Revocable Expenditure cannot be revoked for a minimum of twenty-four

months (if the Covered Employee remains employed).

## **G. Contributing to the SF City Option**

### **1. Q: What do my employees receive if I contribute to the [SF City Option](#) program on their behalf?**

**A:** Your employees will be offered a SF Medical Reimbursement Account (SF MRA). The employer's contribution is deposited in an irrevocable reimbursement account (SFMRA). Employees who enroll in the SFMRA can obtain reimbursements from their accounts for a full range of medical, dental, and vision expenses, including reimbursements for the cost of insurance premiums. Read more at <https://sfcityoption.org/employers/>

*Updated January 5, 2024*

### **2. Q: Are SF City Option contributions irrevocable?**

**A:** Yes, contributions to the SF City Option never return to the employer and are therefore irrevocable.

*Updated July 20, 2021*

### **3. Q: Are there any special notice requirements for employers that contribute to the SF City Option?**

**A:** Yes. A Covered Employer that satisfies its obligation to make the Required Health Care Expenditures by making payment to SF City Option must provide its Covered Employees with a Health Care Payment Confirmation notice. It is recommended that a Covered Employer display a [SF City Option poster](#) to increase Covered Employee awareness of the benefit. These materials are available in English, Chinese, Spanish, and Tagalog on the SF City Option website.

*Updated July 20, 2021*

### **4. Q: How do I obtain more information about the SF City Option?**

**A:** Please visit the [SF City Option website](#).

Employers may also contact SF City Option Program Management at [employerservices@sfcityoption.org](mailto:employerservices@sfcityoption.org) or (415) 615-4492.



Employees may contact the SF City Option at 1 (866) 697-6078 or [info@sfcityoption.org](mailto:info@sfcityoption.org).

*Updated January 5, 2024*

## **H. Employer Notice-Posting Requirement**

### **1. Q: What is the Notice-posting requirement?**

**A:** Every Covered Employer must post the [Official OLSE Notice](#) in a conspicuous place at any workplace or job site where any Covered Employee works.

For best results, print in color on legal size paper (8.5" x 14").

### **2. Q: Must a Covered Employer use the official OLSE Notice or may the employer draft and post a modified version?**

**A:** Covered Employers must post the Official OLSE Notice. Drafting and posting a different version will not satisfy the requirement of the law.

### **3. Q: Are there requirements to post the Notice in languages other than English?**

**A:** Yes. Every Covered Employer is required to post the Official Notice in English, Spanish, and Chinese. The front of the Official OLSE Notice includes these three languages. Every Covered Employer must also post the Official Notice in any other language spoken by at least five percent of the employees at the workplace or job site. For your convenience, the back of the Official OLSE Notice includes translations into Chinese and Filipino. If more than five percent of the workers at the workplace or job site speak any other language, the employer is responsible for translating and posting in that language.

### **4. Q: What if a Covered Employer has multiple workplaces?**

**A:** Covered Employers are required to post the Official Notice at every workplace where even a single Covered Employee works.

### **5. Q: What if an employer does not control the location where Covered Employees work (e.g. employees working from home, employees outsourced to a third party, etc.)?**

**A:** In the case where a Covered Employer does not control the work location of its Covered Employees, the employer must ensure that each employee working in locations outside the employer's control is provided a copy of the Official OLSE Notice.

**6. Q: What are the consequences of failing to post the Official Notice?**

**A.** The OLSE may impose administrative penalties of \$25 per day for each workplace or job site where a Covered Employer fails to post the Official Notice.

**I. Employer Recordkeeping Requirements**

**1. Q: What records do all employers need to retain to be in compliance with the HCSO?**

- A:** Covered Employers must keep, for a period of four years from each Covered Employee's dates of employment, the following records:
- a) itemized pay statements, as mandated by California Labor Code Section 226, which require the following: (a) gross wages earned, (b) total hours worked by the employee (unless salaried), (c) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (d) all deductions, aggregated, (e) net wages earned, (f) the inclusive dates of the period for which the employee is paid, (g) the name of the employee and his or her social security number/the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (h) the name and address of the legal entity that is the employer, and (i) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
  - b) the employee's address, telephone number, date of first day of work;
  - c) records of Health Care Expenditures made, including calculations of Health Care Expenditures required under the law for each Covered Employee and proof documenting that such expenditures were made each quarter of each year;
  - d) documentation supporting the exemption of an employee from coverage, such as a signed Employee Voluntary Waiver Form for each employee for whom the employer is claiming an exemption from the Employer Spending Requirement; and

- e) Covered Employers must also demonstrate that the Required Health Care Expenditures were made quarterly, unless they meet the requirements of the exception for [self-funded plans](#).

**2. Q: What additional records are required if an employer makes Health Care Expenditures by contributing to the SF City Option?**

**A:** The employer must retain copies of the [Employee Health Care Payment Confirmations](#) provided to employees.

*Updated February 21, 2018*

**J. Employer Reporting Requirements**

**1. Q: Are there any reporting requirements under the HCSO?**

**A:** Yes; Covered Employers must submit an Annual Reporting Form to the OLSE by April 30<sup>th</sup> of each year. This is a web-based form that must be submitted online. It is available on the HCSO website by April 1 each year. Covered Employers who fail to make a timely submission will be in violation of the HCSO and shall be subject to penalties.

Employers are strongly encouraged to review the Instructions for the Annual Reporting Form to ensure compliance with this reporting requirement. To receive an email notification each year when the Annual Reporting Form is available, please sign up for the [HCSO Email List](#).

*Updated January 6, 2016*

**K. Health Surcharges**

**1. Q: What is a health care surcharge?**

**A:** Some San Francisco businesses have elected to impose a surcharge (i.e. an extra fee or cost) on the goods or services they sell to customers to cover, in whole or in part, the expense of complying with the Health Care Security Ordinance.

**2. Q: Does the City of San Francisco require employers to impose surcharges? Or prohibit employers from doing so?**

**A:** Neither. Employers impose such surcharges at their discretion. The City neither requires nor prohibits them.

**3. Q: If an employer elects to impose such a surcharge, does the HCSO establish any standards or requirements?**

**A:** Yes. The surcharge provision applies to any [Covered Employer](#) who “imposes a surcharge on its customers to cover in whole or in part the costs of the Health Care Expenditure requirement” of the HCSO.

**B:** The provision has two parts.

First, any Covered Employer who “imposes a surcharge on its customers to cover in whole or in part the costs of the Health Care Expenditure requirement” must report two pieces of information to the OLSE on an annual basis:

- the amount collected from the surcharge for Covered Employee health care, and
- the amount spent on Covered Employee health care.

Employers submit this information to OLSE on the HCSO Annual Reporting Form, which all Covered Employers are required to submit by April 30th of each year.

Second, if the amount collected from the surcharge is greater than the amount spent on Covered Employee’s health care, the employer must irrevocably spend or the excess surcharges on health care for these Covered Employees.

*Updated January 5, 2024*

**4. Q: Is there a deadline by which employers must irrevocably spend surcharge funds for its Covered Employees?**

**A:** Yes. The OLSE allows employers a full calendar year to irrevocably spend excess surcharges collected. Be aware that an employer must spend the excess surcharge funds in the following year *in addition to spending any health care surcharge funds collected in that year.*

For example, if an employer collected \$50,000 in health care surcharges in 2022, but spent just \$40,000 on Covered Employee health care during the year, the employer is required to spend the \$10,000 difference on health care for Covered Employees (in addition to spending any health care surcharges collected in 2023) by December 31, 2023.

*Updated January 5, 2024*

**5. Q: Should my business stop collecting a health care surcharge?**

**A:** It remains at the discretion of any business to decide whether to impose a health care surcharge or not. However, if your business collected excess health care surcharges in a particular year, you may want to consider reducing or eliminating your health care surcharge in the following year to help ensure that you can irrevocably spend the excess surcharges collected in the prior year.

**6. Q: How will the OLSE determine whether my business satisfied the obligation to irrevocably spend excess surcharges for my Covered Employees in the following year?**

**A:** The OLSE will make this determination based on the information your business provides on the Annual Reporting Form you submit to our office by April 30<sup>th</sup> of each year plus any supplemental information we may request.

**7. Q: Are businesses supposed to charge sales tax on any such health surcharge?**

**A:** The OLSE does not enforce tax laws nor provide tax advice.

**L. Retaliation Prohibited**

**1. Q: Is it unlawful to discipline someone who refuses to sign an Employee Voluntary Waiver Form, even if that person is already receiving health insurance somewhere else?**

**A:** Yes, it is unlawful for an employer to discipline, discharge, demote, suspend, or take any other adverse action against an employee for exercising his/her rights under this law. One employer's obligation to make a Health Care Expenditure for its Covered Employee is not affected by any other employer's obligations; thus, it is illegal for an employer to fire an employee who does not wish to waive his or her right to the mandatory Health Care Expenditures, even if that employee is already receiving health insurance coverage from another employer.

*Updated January 6, 2016*

**2. Q: Is it illegal to refuse to hire someone who does not have health insurance?**

**A:** Yes, it is unlawful for any employer to refuse to hire, to fire, or to discriminate against a person based on whether s/he possesses health insurance coverage.

## **M. Filing a Complaint**

### **1. Q: What do I do if I think my employer has violated the HCSO?**

**A:** If you have any questions regarding your rights under the HCSO, call (415) 554-7892 or email [hcsosf@sfgov.org](mailto:hcsosf@sfgov.org).

If you believe that your employer has violated the HCSO, you may submit an [HCSO Complaint Form](#) (available in [English](#), [Chinese](#), and [Spanish](#)) and you will be contacted by an OLSE investigator.

### **2. Q: Will my complaint be kept confidential?**

**A:** Yes, the Office of Labor Standards Enforcement will keep your name and identity confidential to the maximum extent provided by law.

### **3. Q: What does the OLSE do upon receipt of a complaint?**

**A:** Upon receipt of a complaint, the OLSE shall determine if the allegations of the complaint are sufficient and either dismiss the complaint or proceed with an investigation.

If the OLSE proceeds with an investigation, the OLSE has the right to engage in random inspections of employment sites, to have access to workers and other witnesses, and to conduct audits of employer records. Employers are required to cooperate with OLSE investigations.

### **4. Q: What happens if the OLSE determines that an employer violated the HCSO?**

**A:** The OLSE may order employers who violate the HCSO to take appropriate corrective actions, and make restitution to employees where appropriate, including full payment of Required Health Care Expenditures that an employer failed to make. Where prompt compliance is not forthcoming, the OLSE may take any appropriate enforcement action to secure compliance, including initiating a civil action, and requesting that City agencies or departments revoke or suspend any registration certificates, permits, or licenses held or requested by the employer or person until such time as the violation is remedied.

The OLSE may also assess administrative penalties.

*Updated January 6, 2016*

## **N. Penalties**

### **1) Q: What are the administrative penalties for failing to comply with the HSCO?**

**A:** The maximum administrative penalties for failing to comply with the following HCSO provisions are:

Violation of the HCSO	Maximum Administrative Penalty
Failure to make the required minimum Health Care Expenditures within five business days of the quarterly due date (30 days after the conclusion of each quarter)	\$100.00 for each employee for each quarter that the violation occurred
Failure to submit the Annual Reporting Form	\$500.00 for each quarter that the violation occurs
Retaliation against employees	\$100.00 for each person who is the target of the prohibited action for each day the violation occurs
Refusing to allow OLSE access to employer records	\$25.00 for each worker whose records are not provided for each day the violation occurs
Failure to maintain or retain accurate and complete records	\$500.00 for each quarter that the violation occurs
Failure to post the Official HCSO Notice	\$25 per day for each workplace or job site where the Notice is not posted

*Updated January 6, 2016*

## **O. HCSO and the Affordable Care Act**

The Affordable Care Act (ACA) is a federal statute that went into effect in 2014. Here are the most common questions OLSE gets regarding the ACA's impact on the San Francisco Health Care Security Ordinance.

### **1. Questions from Employers**

**Q: Does the ACA affect my ability to contribute to the SF City Option as a means of complying with the Employer Spending Requirement?**

**A:** No. You can continue to contribute to the SF City Option as a means of complying with the Employer Spending Requirement, just as before. See [Section G](#) for more information

*Updated January 3, 2023*

### **2. Questions from Employees:**

**1) Q: Do the benefits provided by my employer under the HCSO satisfy my obligations to have “minimum essential health coverage” under the ACA?**

**A:** That depends on what benefits your employer provides. Employer-sponsored medical insurance generally constitutes minimum essential coverage and satisfies your individual responsibility under the ACA.

The following benefits do not satisfy your obligation to have “minimum essential coverage” under the ACA:

- the SF City Option
- excepted benefits Health Reimbursement Accounts (HRAs) –employer-sponsored accounts that reimburse you for your out-of-pocket costs for a limited range of expenses, including vision and dental expenses. (See Section O, Question 3(b) for more information);
- dental insurance; and
- vision insurance.

If your employer only provides you with the types of benefits above that do not constitute minimum essential coverage, you still need to get coverage elsewhere that satisfies the requirements of the ACA (or pay the penalty).



*Updated February 21, 2018*

**2) Q: Where can I get more information about obtaining affordable health insurance for myself and/or my family?**

**A:** For more information, please check the following resources:

[Medi-Cal | San Francisco Human Services Agency \(sfhsa.org\)](#)

[Covered California website;](#)

[Health Care Reform - Healthy San Francisco](#)