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ITUP Draft Recommenations for the
San Francisco Universal Health Council

November 27, 2013

To: Barbara Garcia and Sandra Hernandez, Co Chairs, San Francisco Universal Health Care Council
From: Lucien Wulsin, ITUP
Re: Suggestions on Revising San Francisco Health Care Security Ordinance's Employer Health Spending Obligations in Light of the Passage of the Affordable Care Act

ITUP's recommendations are summarized as follows:
For those employers with over 50 FTE employees:

1. For full time (over 30 hours) employees where the employer offers coverage, there should be a "safe harbor" if the offer complies with the ACA.
2. For full time employees where the employer does not offer coverage, the San Francisco ordinance should apply and the employer can offset any "ACA" penalties that it paid.
3. For part time employees where the employer offers them coverage, there should be a safe harbor if the offer complies with the ACA.
4. For part time employees where their employer does not offer them coverage, the San Francisco ordinance should apply.

For those employers with under 50 employees:

5. Where the small employer offers coverage for full time employees, that is ACA compliant, there should be a safe harbor.
6. Where the small employer does not offer coverage for full time employees, the San Francisco ordinance should apply.
7. Where the small employer offers coverage for part time employees, that is ACA compliant, there should be a safe harbor.
8. Where the small employer does not offer coverage for part time employees, the San Francisco ordinance should apply.

Recommended priorities for the funding available under the Ordinance.

- The Medical Resource Account (MRA) program would be rechristened as the San Francisco Premium Assistance program.
- The MRA would help pay for Healthy San Francisco for employed individuals not eligible for Covered California or full scope Medi-Cal.
- The MRA program funding would help pay Covered California premiums for employed individuals eligible for that program at employee option.
- The MRA would be available to upgrade coverage from bronze or catastrophic to silver through Covered California at the employee's option.

Background: We will not know how many remaining uninsured will persist in San Francisco until the ACA's coverage expansions have been in effect for several years and consumers, plans, providers and employers have adjusted to the new realities.[1] The remaining uninsured will fall into three groups: 1) those ineligible due to immigration status; 2) those who cannot afford the Covered California premiums and 3) those eligible but not enrolled in Medi-Cal. The numbers should be roughly equal: i.e. 1/3rd in each.[2] Those ineligible for Medi-Cal or Covered California due to immigration status are nearly all low wage workers and will need coverage either through their employer or through Healthy San Francisco; Emergency (limited scope) Medi-Cal will be of some assistance to public and private hospital emergency departments, but it is not a program that helps workers stay healthy, productive and on the job. Those individuals eligible but not enrolled in Medi-Cal can enroll at any time with up to three months retroactive coverage, which assures payment for their public or private providers, but not timely access to primary and preventive care.[3] The challenge for this subset of the uninsured is community-wide education and enrollment, not financing their care. The affordability challenges for employees and family members eligible for Covered California are most serious in a high cost of living city like San Francisco. [4]

The affordability challenges in Covered California/the Exchange are baked into the design of the ACA at the federal level. Premium assistance phases out very quickly between 133 and 400% of FPL and cost sharing assistance phases out even more quickly between 133% and 250% of FPL.[5] Affordability challenges may be most severe in the income levels between 250 and 500% of FPL, and they are aggravated depending on family composition, and age.[6] Healthy younger workers may choose bronze, or catastrophic coverage to cut their monthly costs, or they may choose to stay uninsured and pay the rather modest fee/tax of $95 or 1% of wages.[7] The ACA permits state and local governments and employers to offer additional premium assistance to help individuals pay their share of Exchange/Covered California premiums.[8] We urge San Francisco to explore this option.

The Medical Resource Accounts could be the best way to help assure that employees with family incomes between 138 and 500% of FPL can afford and will enroll in coverage through Covered California. The ACA was not as well-designed as is the San Francisco ordinance to help pay for coverage of the flex workforce of part time, part year, temp, contract and provisional employees. We urge close coordination of the two programs to get as many uninsured San Franciscans covered as possible.

Explanation of recommendations:

1. *For full time (over 30 hours) employees where the large employer offers coverage, there should be a "safe harbor" if the employer's offer complies with the ACA.*

   As long as the large employer offers coverage, there does not seem to be any reason to subject them to two tests: the ACA requirements (a benefit and financing requirement) and the San Francisco ordinance (a dollar spending test).[9] 94% of large employers offer coverage and 98% of their full time employees are covered.[10] The coverage they typically offer is equivalent to the gold plans and the employer typically pays over 80% of the employee only coverage and about 75% of dependent coverage.[11]

   There is an affordability challenge with the design of employment-based coverage particularly for low wage working families who may end paying two to three times as much as single employees.[12] The ideal solution would switch employee shares from a percent of premiums to a percent of wages.[13] Families with incomes below 250% of FPL can already switch their children to Medi-Cal although there is little evidence that occurs. There is no option to switch family members into Covered California with premium assistance due to the "Kid Glitch/Family Glitch" when a large employer offers coverage for the entire family, as the ACA requires.

2. *For full time employees where the large employer does not offer coverage, the San Francisco ordinance should apply and the employer can offset any "ACA" penalties that it paid.*

   If the large employer does not offer coverage (a rare occurrence), the ACA has a penalty of $2,000 per full time employee minus the first 30 employees; this penalty does not take effect until 2015, and the federal regulations are not final. The San Francisco ordinance has a 2013 spending requirement of $3234 for full time full year employees at small and mid-sized employers and $4846 for full time full year employees at large employers; the penalty under San Francisco's ordinance is typically higher than the ACA.[14] There does not seem to be a good reason for cumulative penalties. We would recommend that employers paying under the San Francisco ordinance get credit for their ACA's fee/penalties when they occur. The Massachusetts' experience was that more employers began to offer coverage under the state's health reform efforts, making this occurrence even rarer.

3. *For part time employees where the large employer offers them coverage, there should be a safe harbor if the offer complies with the ACA.*

   A far smaller proportion (25%) of large employers offer coverage for part time employees, and when they do so offer, it is more likely that it is only offered only for the employee and not the entire family.[15] There are no complementary federal ACA penalties as the ACA does not require offers of coverage for part time employees or their family members. The San Francisco ordinance does apply pro rata spending requirements for part time employees.[16]

   We would suggest that where the large employer is going the extra step to offer coverage for part-timers and/or their families; there should be a safe harbor from the application of the San Francisco ordinance. Where the employer offers coverage to the employee but not the family members, the kid glitch/family glitch does not apply, and the family could use the employer's contribution to pay for dependent coverage in Covered California.

4. *For part time employees where the large employer does not offer coverage, the San Francisco ordinance should apply.*

   This is the most common reason for uninsured employees working for large employers as few offer coverage to part-time workforces.[17] While the ACA does not require them to do so, the San Francisco Ordinance does require large employers to pay pro rata pursuant to the spending requirement for their flex workforce.[18]

   The ACA's Exchanges (Covered California) are an ideal way to organize coverage for flex workforces, but there is no employer contribution to help defray the premiums. The San Francisco ordinance is an excellent way to resolve the affordability challenges facing uninsured flex workers and their families. We strongly recommend a coordination of the two programs to offer more affordable coverage for the uninsured and private individually insured flex workers. We summarized the intersections in the following chart.

Program Intersections

	Insured employee	Uninsured flex employees	Self employed	Laid off workers
Pre-tax purchasing	Yes	No	No	No
Tax deductibility of individual insurance premiums	No	No	Yes	No
Eligibility for Covered California	No, unless employer offer is unaffordable (i.e. employee only share exceeds 9.5% of family income)	Yes	Yes	Yes
Healthy San Francisco employer spending requirements	Yes	Yes	No	No
ACA employer offer requirements	Yes, for large employers' full time employees, but not for flex workers	No	No	No
Subject to individual mandate	Yes	Yes	Yes	Yes

We recommend the employer pro rata contributions under the San Francisco ordinance should be used as “premium assistance” to help pay Covered California premiums for flex workers.

5. *Where the small employer offers coverage for full time employees, that is ACA compliant, there should be a safe harbor.*

   The reasoning here is very much the same as under recommendation #1. There is no ACA requirement that small employers[19] offer coverage at all; however when they do so, there is no particularly good reason (at least in terms of covering the uninsured) to subject them to two tests of compliance.[20] Offering coverage such that their employees and/or families are insured ought to be sufficient.

   A more common occurrence is that the small employer offers coverage for the employee, but not for the dependents. The San Francisco ordinance appears to allow employer contributions that can then be used by the employee towards the costs of family coverage through Covered California. The kid glitch/family glitch in Covered California/the Exchange does not apply provided the employer does not offer family coverage, and the family could use the employer’s contribution under the San Francisco ordinance to help pay for dependent coverage in Covered California.

6. *Where the small employer does not offer coverage for full time employees, the San Francisco ordinance should apply.*

   This is the most common reason why employees of small businesses are uninsured.[21] There is no ACA requirement that small employers offer coverage; however the San Francisco ordinance does require spending for small employers down to 20 employees. We would recommend that the ordinance be continued for these smaller employers and that employees be afforded the option to use these funds towards the purchase of coverage through Covered California.

7. *Where the small employer offers coverage for part time employees, that is ACA compliant, there should be a safe harbor.*

   It is somewhat rare that a small employer offers coverage for part time employees. There is no requirement to do so under the ACA; however the San Francisco ordinance does apply and requires pro rata contributions.

   We would suggest that where the small employer is going the extra step to offer coverage for part-timers and/or their families; there should be a safe harbor. Where the employer offers coverage to the employee but not the family members, there is no offer for dependents, the kid glitch/family glitch does not apply to bar use of premium assistance in Covered California and the family could use the employer’s contribution to help pay for dependent coverage in Covered California.

8. *For part time employees where the small employer does not offer them coverage, the San Francisco ordinance should apply.*

   Few small employers offer coverage to part-time workforces.[22] The ACA does not require them to do so, but the San Francisco does require small employers to pay pro rata pursuant to the spending requirement for the health costs of their flex workforce. Most of these employees and their family members will be eligible for coverage through Covered California. The employer contributions under the San Francisco ordinance should be available to be used as “premium assistance” to help pay Covered California premiums for flex workers.

Background on Health Resource Accounts: As we understand it, stand-alone Health Resource Accounts (HRAs)[23] are barred under the ACA, and there are still disputed legal questions on the part of some/many San Francisco employers as to whether the county's Medical Resource Accounts are barred as well. While that question is being researched and answered by competent tax counsel on all sides, we would suggest renaming the account to best position it for compliance and coordination with the new ACA program requirements.

Recommendations on Health Resource Accounts: The new program could be rechristened the San Francisco Premium Assistance Account. Its purposes could be dedicated as paying for those ineligible for coverage under the ACA for Healthy San Francisco coverage, and assuring that employed San Franciscans can afford the premiums and cost sharing requirements of the Exchange/Covered California. The employees covered by the ordinance's funding could be given the option to use the funds deposited on their account to either pay their premiums or upgrade their coverage or both.[24]

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[1] Lucia, Jacobs et al, After Millions of Californians Gain Health Coverage Under the Affordable Care Act, Who will Remain Uninsured.," September 2012, at *laborcenter.berkeley.edu/healthcare/aca_uninsured12.pdf*.

[2] Ibid. See also Yoo and Gupta, The Affordable Care Act and Providing Care to the Residually Uninsured in a Post-Reform World, ITUP, Sept. 5, 2013 at www.itup.org

[3] This is critically different from Covered California, where coverage is only available during the annual open enrollment period or during life changes, such as birth death, changing or losing a job that impacts one's continuity of coverage.

[4] The cost of living in San Francisco is estimated by one source to be roughly twice the national average. http://www.bestplaces.net/cost_of_living/city/california/san_francisco Another source referencing the Council for Community and Economic Research reports that San Francisco's cost of living is 60% more costly than the national average. http://www.huffingtonpost.com/2012/01/27/cities-high-cost-of-living_n_1236841.html#s644530&title=4_San_Francisco

[5] The federal contribution towards premium assistance is tied to federal caps that begin at 2% of family income just above the poverty level and escalate quite quickly to 9.5% of income at 400% of the federal poverty level. To put those in context, an individual earning $44,960 would pay the first $4,366 in premiums before federal premium assistance would kick in. And an individual earning $45,000 would be over 400% of the federal poverty level and thus qualify for no help at all. Premiums for the second lowest cost bronze and silver plans are $598 and $800 a month for a 60 year old in San Francisco, amounting respectively to 16% and 21% of his/her annual income of $45,000.
Similarly, cost sharing assistance is quite generous, equaling 94% of the expected actuarial value for lower income individuals but quickly phases down and out at 250% of FPL or $28,725 for an individual (about $13.80 an hour).
Affordability of premiums becomes increasingly problematic as family size increases; for example the poverty level for a family of four is twice that of an individual, but the premiums for a family of four cost three times as much.
The same affordability calculus means that older employees' premiums are three times as high as the premiums for younger workers in Covered California. This is largely offset by the federal premium assistance up to 400% of FPL, but above 400% of FPL federal premium assistance is no longer available.

[6] Ibid.

[7] The lowest cost bronze in San Francisco is $184 for a 25 year old or $2208 annually, just under 5% of an annual income of $45,000. Paying the penalty, by contrast, would cost only $450. Paying the penalty does not serve the best interests of either the health system or the individual.

[8] This is a long-standing Medicaid policy that is still evolving in its application to the Exchanges. The state of California in its recent expansion of Medicaid for new legal permanent resident MIAs is seeking to use premium assistance to purchase coverage through Covered California. A similar approach may make some sense for pregnant women where there is an overlap between Medi-Cal and Covered California. CMS (Center for Medicare and Medicaid Services) has recently warned that hospitals seeking to use premium assistance to pay to enroll their patients in the Exchanges might find themselves in violation of federal anti-kickback regulations; CMS is concerned about adverse selection – i.e. turning the Exchanges into bad risk pools to pay for hospital uncompensated care.

[9] In 2013, San Francisco Health Care Security Ordinance's requirements will be $3234 for small and mid sized employers and $4846 for large employers. The ACA requirements will require large employers to offer to pay 60% of the cost of the lowest cost bronze plan for their employees and child dependents. The San Francisco Ordinance is primarily targeted to cover all types of employees while the ACA is targeted to full time employees and their dependents. The most recent data compiled by the California HealthCare Foundation for 2012 reports that the average premium in California for employee

only coverage was $6540 and the average premium for family coverage was $16,632 – far in excess of the requirements of the San Francisco Ordinance. California Health Care Almanac, California Health Benefits Survey (California HealthCare Foundation, April 2013) at www.chcf.org
[10] Ibid. See Wulsin, ITUP's Analysis of Employment-Based Coverage Under the Affordable Care Act (ITUP, August 30, 2013) at www.itup.org
[11] Ibid.
[12] ITUP's Analysis of Employment-Based Coverage Under the Affordable Care Act
[13] For example, if the average employee contribution is $1200 and the average wages are $50,000, then the average employee contribution would be 2.4% of wages. A worker earning $40,000 would contribute $960 while the higher paid employee making $60,000 would pay $1440 towards the cost of a $6,000 plan.
[14] The ACA penalty is only $2000 and only applies if one or more of the employer's full time workers uses the premium assistance available in the Exchange/Covered California.
[15] Kaiser Family Foundation, Employer health Benefits, 2013 Annual Survey at www.kff.org
[16] The ACA has a cut-off at 30 hours a week; whereas the San Francisco Ordinance applies pro rata to employees working as few as 8 hours a week.
[17] See n.15
[18] See n. 16
[19] The San Francisco ordinance applies to small employers between 20 and 50 employees, whereas the ACA's mandate applies only to large employers of 50 or more full time equivalent employees. The ACA offers tax credits to small (25 or less), low wage (less than $50,000 annual wages) employers.
[20] Premiums for small employers under the ACA are age rated; whereas, the spending requirements under the San Francisco Ordinance are based on an average composite rate. The difference in calculating health costs between the two serves as a real disadvantage to small employers with primarily young workers and does not provide any additional help to small employers with older workforces. To give an example, if the premium cost of the lowest cost silver is $3100 for a workforce averaging 25 years of age and the employer pays 80%, the employer would be required to pay an additional $800 per employee under the San Francisco ordinance. If the workforce averages 40 years of age and the small employer buys the lowest cost silver and pays 80%, the employer will be required to spend an additional $100 per employee under the San Francisco ordinance. If the workforce averages 60, and the employer pays 80% of the premium, the employer will have spent $3500 a year more than required by the San Francisco Ordinance for exactly the same level of coverage as the younger average age workers.
[21] 49% of very small (3-9 employees), 71% of small (10-49), 92% of mid-sized (50-199) and 98% of large (more than 200 employees) employers offer coverage. 28% of lower wage firms offer coverage as opposed to 64% of higher wage firms offer coverage; the dividing line is whether 35% earn less than $35,000 annually. California Health Care Almanac, California Employer Health Benefits Survey
[22] Ibid.
[23] The stand-alone HRA is a very poor way to pay for employee's health care costs. In any given year, 5% of the covered population uses 50% of the costs of health care, and 30% of the population use no health care at all. The stand-alone HRA approach provides little help to the employee who becomes seriously ill or to the employee who uses no care at all. On the other hand, the HRA combined with insurance coverage is a good approach to providing tax protected status to an employee's share of premiums, co-pays and deductibles; the primary benefit, however, may go to those employees in the higher income tax brackets.
[24] For example, some employees may prefer the lower premiums associated with bronze, catastrophic or silver coverage and might want further premium assistance to reduce their premiums while other employees may want to use the available funds to upgrade to gold or platinum coverage due to their concerns about medical and financial risk.
San Francisco might want to consider establishing its own premium assistance policy based on its high cost of living to supplement the ACA. For example a 2, 4, 6, and 8 policy could help improve residents' affordability and thus participation in Covered California. Employees with incomes less than 200% of FPL might get the benefit of a 2% premium cap when selecting a bronze or silver plan; under 300%, 4%; under 400% 6%; and under 500%, 8%.
Under the ACA the premium shares for individuals with incomes between 100 and 200% of FPL are linked to the second lowest cost silver and begin at 2% and end at 6.3%. Local premium assistance could be used to start subscriber premiums at 0% at 100% of FPL and increase to 2% at 200% of FPL. Similarly under the ACA, individuals over 400% of FPL receive no premium assistance at all, even though the cost of the second lowest cost bronze plan for a 60 year old would equal 15% of the individual's income, but under this proposal, local premium assistance could be pegged to 8% of the lowest cost bronze -- the percentage of premium that qualifies as a financial hardship exemption.