August 2002 *Health Care Accountability Ordinance* Update
San Francisco Department of Public Health

Overview

On July 1, 2001 San Francisco's Health Care Accountability Ordinance (HCAO) went into effect. This Ordinance is the first of its kind nationwide, mandating that employers doing business with the City provide health care coverage for their employees. This historic legislation is one more step in decreasing the number of uninsured City residents and grew out of the Living Wage movement and the Minimum Compensation Ordinance (MCO). The MCO mandates a specific hourly wage that businesses contracting with the City and County of San Francisco must pay their employees. Both the HCAO and the MCO were the result of recommendations made by the Living Wage task force commissioned by the Board of Supervisors in 1998.

The HCAO adds a new section to the San Francisco Administrative Code (Chapter 12Q) requiring that contractors that provide services to the City and County or enter into leases with the City and County (including certain subcontractors and subtenants) do one of the following:

1. offer health plan benefits at no cost to the covered employees that meets the minimum standards;
2. make payments ($1.50 per employee/per hour) to the Department of Public Health (DPH) to help partially offset the costs of services for uninsured workers; or
3. participate in a health benefits program that will be developed by DPH.

An estimated 16,050 uninsured workers are assumed to benefit from the proposed Ordinance. This includes 1,900 for-profit contractors, 2,650 non-profit contractors, 5,750 Airport tenants and 5,750 tenants on other City property (e.g., Port, PUC, etc.).

Minimum Standards

On June 19, 2001, the Health Commission adopted Resolution 13-01*, "Approving and Adopting Minimum Standards for Health Plan Benefits Required in the Healthcare Accountability Ordinance*." (See attached for copy of resolution.) Before the final standards were established, DPH reviewed current health plan benefits and discussed its approach in open forums (e.g., San Francisco Board of Supervisors, Small Business Commission). In addition, in late May 2001, the Department met with the following interested parties to review the proposed standards:

- Bay Area Organizing Committee
- Committee on Jobs
- San Francisco Chamber of Commerce
- San Francisco Health Plan
- San Francisco Human Services Network
- Service Employees International Union Local 790

The proposed standards reflect input from the open forums and the meeting. As much as possible, DPH attempted to address the various and sometimes conflicting perspectives of the interested parties.

The standards apply to all contractors and lessees subject to the HCAO, even those providing health coverage before the HCAO came into effect. One of the three required options outlined in Chapter 12Q of the administrative code must be offered to all employees funded through the affected contract. If a contract is funded through both General Fund and grant funding, any employee specifically funded through the grant is exempt. Initially, the HCAO required that employers offer these benefits to employees working 20 or more hours per week. Beginning July 1, 2002, this requirement was expanded to include employees working 15 hours or more per week.

Guiding Principles

DPH considered the following when it developed the minimum health plan benefit standards:

- Minimize disruption for employers and lessees who currently provide a comprehensive scope of medical benefits.
- Out-of-pocket costs (both premiums and co-payments) should not be so high that they decrease employee "take-up" rate (that is, the percentage of employees who are offered health insurance and who decide to accept the coverage).
- The minimum benefit standards were designed to ensure that contractors and lessees provide a comprehensive scope of medical benefits. (Catastrophic benefit coverage is not comprehensive.)
- The minimum benefits standards should be cost-effective and were therefore based on a health maintenance organization (HMO) model.
- Any health benefit package that is mandated must reflect those currently offered to small businesses – that is, what an employer can currently purchase in the health care market. For example, the Department looked at packages offered by PacAdvantage (formerly HIPC), Kaiser, Blue Cross, Blue Shield, Aetna, etc. DPH also surveyed some of its larger contractors to determine whether they provided coverage and if so, the components of the health insurance benefits package.
- Employers and lessees must offer at least one health benefits package. If an employer or lessee offers more than one health insurance package to its employees, then at least one of the products must meet the minimum standard.

Final Standards

The components of the minimum standards for health plan benefits include four components:

1. Effective Date of Coverage:

Effective date of coverage refers to the time at which an employee receives health insurance coverage from their employer after starting employment. The effective date of coverage varies across employers – from 30, 60 to 90 days. Employers have discretion over setting the effective date of coverage, but the date must take into account time needed to process health insurance paperwork. According to the Ordinance and the Health Commission's resolution, the effective date of coverage must be no later than 30 days following the start of employment by the employee on a covered contract, subcontract, lease, or sublease.

2. Percentage of Premium Paid by Employer and Employee:
Premiums reflect the amount that it costs to provide coverage to an employee. It is usually shown as a monthly figure. Premium costs are generally shared between employer and employee. For low-income workers, it is particularly important to keep premiums affordable. If a premium is too high, employees will not accept ("take up") the coverage offered to them. It was feared that small employers may require their employees to pay a larger percentage of the monthly health care premium (than larger employers) in order to comply with the new requirements of HCAO's requirements.

DPH's research found that premiums for HMO models were significantly less expensive than those for a PPO/POS plan. Because PPO/POS insurance is more expensive, it is reasonable for employers to pass on a portion of the cost to employees. However, if employers offered only a PPO/POS plan, some employees would not have an affordable option. Therefore, it was determined that employers must offer at least one health plan option in which the premium is entirely paid for by the employer. The option of using HMO plans makes this a reasonable requirement.

3. Benefits Offered under Coverage:
The health benefits are essentially the services that the employee will be entitled to receive. DPH's priority is to ensure that the health benefit coverage offered to employees is not limited to catastrophic care, but is instead comprehensive health coverage (i.e., medical coverage). All employers would have to ensure that their health plan offers, at a minimum, the benefits decided upon by the Health Commission. (See attached resolution for benefits.)

4. Employee Co-Payments for accessing services:
The co-payment represents the out-of-pocket costs borne by the employee when accessing services. The co-payment is made directly to the provider. Co-payments are often structured to create incentives for appropriately utilizing services. Yet, this must be balanced with making co-payments affordable. In developing the co-payments DPH examined the benefit packages and co-payments offered to small businesses by other health plans. The Health Commission adopted a co-payment structure based on these recommendations. (See attached resolution for co-payments.)

Some contractors and lessees may provide comprehensive health insurance to their employees before the HCAO came into effect, and the co-payments may be higher than those recommended. These contractors and lessees have entered into contractual agreements with their health insurance providers that cannot be amended until the contract expires. As a result, they would be unable to meet the minimum standards because they cannot get their health insurer to change their existing co-payment policy. Thus it was determined that contractors, subcontractors, lessees, and subtenants that provide comprehensive health plan benefits to their employees which does not comply with the co-payment schedule, have up to one year to comply with all components of the minimum standards.

According to the Ordinance, the Health Commission is required to review the standards every two years. This analysis is meant to ensure that the standards stay current with State and Federal regulations and existing health benefits practices. The Health Commission will be in a position to review these standards in June 2003.

HCAO Rules and Regulations

The Office of Contract Administration (OCA), through the newly formed Living Wage/Living Health Division, is responsible for the overall implementation and enforcement of both the MCO and the HCAO. OCA spent the past year developing the Rules and Regulations (see attached) for the Ordinance, negotiating with various stakeholders to develop a plan that is workable and acceptable, and creating a system by which contractors and city agencies can fully understand the HCAO and comply. The Living Wage/Living Health staff, directed by Louis Knox, worked diligently over the past year to implement the HCAO.

The Rules and Regulations for the HCAO were developed with significant community involvement and input. On August 22, 2001, OCA conducted a Town Hall Meeting to introduce the HCAO to contractors. Over 200 people attended, including for-profit entities, non-profits, and labor organizations. The agenda consisted of the following:

- Explanation of the Ordinance
- Health Care Minimum Standards
- Administration and Enforcement
- Question and Answers

The Living Wage/Living Health Division received and responded to 25 written inquiries and 172 e-mail inquiries after the Town Hall meeting from businesses, individuals, non-profit organizations and City Departments. Following this introductory meeting, "work out" meetings continued with the Living Wage Task Force members, small businesses, non-profits, advocates, and the San Francisco Living Wage Coalition to finalize the rules and regulations. The following is a list of those meetings:

- ***April 16, 2002*** Meeting and outreach with the Living Wage Task Force
- ***April 16, 2002*** Meeting and outreach with the Business Community
- ***April 17, 2002*** Meeting and outreach with the Nonprofit Community
- ***April 23, 2002*** Meeting and outreach with Advocate organizations

OCA released six draft Rules and Regulations before the final version was published. On May 10, 2002, the final Rules and Regulations were released at a Public Hearing.

The Living Wage/Living Health Division has also endeavored to educate contractors about the HCAO. A website maintained by OCA, accessed through the City website (www.sfgov.org), provides all interested parties with Rules and Regulations, the administrative code, health coverage minimum standards, and many of the required forms. A letter, signed by both Louis Knox (OCA) and Monique Zmuda (DPH), was sent

to all contractors on April 3, 2002. This letter outlined the options available to contractors in order to comply with the HCAO (see attached).

Waivers and Exemptions

In the HCAO's first year, OCA granted 555 exemptions and 9 waivers, of these approximately 200 were for DPH contractors. There are a number of reasons that a business may be exempt from the HCAO. Listed below are some of the more common reasons that an exemption or waiver may be sought; though there are others listed in the Rules and Regulations:

- The contract is with a public entity (e.g., UCSF). There were 228 exemptions granted to public entities.
- The contract was entered into before 7/1/01. OCA granted 211 exemptions for this reason.
- The business employs too few employees (20 or fewer employees - for profits and 50 or fewer - non-profits). There were 27 exemptions granted for these agencies.
- The contract duration is for less than one year. There were 79 exemptions for this purpose.
- The contractor is a sole source. OCA granted waivers to 7 sole source providers.
- The contractor is the only prospective business that complies with other City requirements. There was 1 waiver granted for this reason.

Other common reasons include:

- The contract amount is less than the required amount ($25,000 or less - for profits and $50,000 or less - non-profits);
- The contract concerns the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, or installation or maintenance of such goods; and
- The agreement involves special funds, specifically programs funded through other sources than the City's General Fund, such as grant funds.

To obtain an exemption or waiver from the HCAO, the "HCAO Exemption and Waiver Request" must be submitted to OCA (directly from the business or the City Department).

Employers Options under HCAO

As noted previously, employers can choose from three options to comply with the HCAO requirements. The following outlines the three options that employers may choose from according to the HCAO. All three options apply to workers residing in San Francisco County and who work at the San Francisco Airport or at the San Bruno Jail. The third option is only intended for San Francisco residents. (Employers are able to make available more than one option to their employees, as long as each covered employee has at least one form of coverage to choose from that meets the HCAO standards.)

1. Private Health Plan Option

In this case, employers can offer covered employees a health plan that meets HCAO's minimum standards. In developing the minimum standards, DPH reviewed insurance

packages offered by a number of insurers (e.g., Kaiser, Blue Cross, Aetna, etc.) and established that health plans could be obtained by many small employers that would satisfy HCAO requirements. With the absence of any large scale auditing and given the relatively small number of contractors choosing Option #2, DPH assumes that as many as 98% of the city contractors have successfully found new health plans or expanded current health coverage for their workers. In the last year, many previously uninsured employees obtained access to a comprehensive health coverage plan because of HCAO.

2. Payments to the City

If employers are unable or unwilling to offer a health insurance option to their employees, they are required to pay DPH $1.50 per hour for each hour worked, not to exceed $60 in any workweek. OCA has created a form that employers are required to complete and remit to DPH's Accounting Department at the San Francisco General Hospital (SFGH) along with the payment. The HCAO Payment Form is sent to the Accounting Department by the 15th of each month for the previous month's payment. The HCAO requires DPH to use this funding for staffing and other resources to provide medical care for the uninsured. The Health Commission may increase the hourly fee and/or monthly maximum according to applicable standards no more than once per year. These adjustments must be approved by the Board of Supervisors by resolution.

After the Contractors were advised of their obligation in the joint DPH/OCA letter sent in April, DPH began receiving payments. To date, SFGH's Accounting Department has received a total of $6,279 from four businesses (See's Candies, CATS, Compass Community Services, and San Francisco Visitors and Conventions Bureau). These four businesses paid for 45 individual employees for the months of April, May and June.

3. Health Benefits Program

DPH is required to develop a health benefits program, in consultation with OCA, which will provide health coverage to employees covered under the HCAO. This program may be a health insurance product that is developed specifically for these employees (i.e., similar to Healthy Workers) or a pool that would enable employers to collectively purchase health insurance benefits. According to the Ordinance, this plan was to be developed by DPH and approved by the Health Commission within the HCAO's first year.

According to the Ordinance, the health benefits program should:

- Attempt to make health coverage available for uninsured covered employees and, if feasible, other uninsured City residents;
- Use public health facilities to the maximum extent practicable;
- Make the program economically viable; and
- Provide a mechanism for funding which relies, as much as possible, on contributions by participating employers and employees.

DPH understands that the requirement to cover part-time employees working 15 to 20 hours is the most difficult to secure on the open market. This may make the creation of a local health coverage program or pool necessary. In order to develop such a product,

DPH must undertake an actuarial analysis. Required information for this type of analysis includes an estimate of the number of individuals that would be insured through the product as well as their age and gender. OCA developed the HCAO Payment form to capture this information, by adding relevant fields to the document (age and gender of each person) as it is thought that those employees being covered under Option #2 are the most likely to participate in the San Francisco health benefits program. Because of the small number of employees currently noted on the HCAO payment forms (45 employees), DPH is surveying all City contractors who may wish to pursue this option, querying the number of employees they would hope to cover, their ages and gender. This survey is being sent out this month, along with a mailing already being conducted by OCA to all City contractors.

Another option that has been recommended is to create a pool using the Taft-Hartley framework. Taft-Hartley funds are used to create an insurance trust for union employees. This model has been used to create a product to cover unionized employees working 15 hours or more per week. Taft-Hartley funds have five basic characteristics:

- One or more employers contribute to the plan;
- The plan is collectively bargained with each participating employer. (Unions negotiate for employer contributions to the Taft-Hartley fund. Employer contributions are typically a flat rate per hour of covered employment. Thus, the contribution can change with the number of covered hours worked.);
- The plan and its assets are managed by a joint board of trustees equally representative of labor and management;
- Assets are placed in a trust fund; and
- Mobile employees can change employers without losing coverage provided the new job is with an employer who participates in the same Taft-Hartley fund.

DPH and OCA are looking into this further to see how and if it would be a possible option.

AB2178

New State legislation is currently being considered that would make the purchasing pool for many employers mandated to provide insurance to their employees under HCAO a reality. This bill would provide that an employer subject to a local living wage law (i.e., the MCO in San Francisco) or other legislation enacted by a local government that regulates the minimum hourly compensation of employees be considered a "small employer" and be able to participate in the State's small employer purchasing pool, PacAdvantage.

This bill would apply to employees who work 20 hours or more and to employers who were not offering health care coverage before January 1, 2003. Though the provisions of this law do not perfectly match those in San Francisco's MCO/HCAO legislation, many businesses in San Francisco would benefit from this legislation. The City supports this legislation, and currently expects it to pass and take effect next year.

Impact of the HCAO on DPH

DPH has over 500 contracts, with approximately 200 vendors.

- 290 contracts are definitely within the purview of the Ordinance. 100 of these are mixed fund contracts (grant and general fund). In this case, the contract is split and only those employees funded through general funds must be covered. This accounts for $110 million of DPH's $200 million in contractual services.
- 140 contracts are grant funded, and are therefore exempt. These contracts represent $70 million dollars.
- 100 contracts are exempt because the business has too few employees. This accounts for approximately $10 million dollars.
- 10 contracts that are multi-year contracts that have not been modified, and are not likely to be modified before the contract ends, representing $10 million dollars.

There are 290 contracts that are impacted, with approximately 150 vendors holding these contracts. The vast majority of these are non-profit organizations, and with only about 20 being for-profit agencies.

In November 2001, DPH sent out a letter to all its contractors that described the HCAO, included reference information and a survey. This survey was meant to determine the cost to each agency of complying with the HCAO. Contractors were asked to tell DPH how much money they would need added to their contract if they were to comply with the Ordinance. It has been assumed that non-profit contractors will pass on up to 100% of their increased costs to the contracting Department. There were approximately 150 responses (out of 300) to the survey, with only 10 noting that they would request additional funding. The majority of respondents said that they were already in compliance.

DPH's Contracts Office has created a new survey for vendors to again determine the amount contractors will need in order to become compliant. This will give DPH a better idea of the increase in contracting funds necessary for Fiscal Year 2002-2003. This year, DPH is working with the Mayor's Office to help pay for any additional funding requested by the non-profit agencies.

At this time, citywide statistics on the total number of contracts impacted by the HCAO (new in the last year, or renewed) are not available. However, audits were conducted to monitor MCO and HCAO activity beginning in January 2002. According to the Rules and Regulations, OCA will monitor the operations of employers to ensure compliance by conducting site visits and payroll audits. The OCA will also perform an investigation when there is a specific concern or complaint about an employer.

Many of the MCO contracts reviewed did not contain the HCAO requirements because those contracts were signed before the Ordinance took effect. There were a total of eleven contracts randomly audited for the HCAO standards and three of these were non-compliant in some regard. In each case OCA and the City Department worked

cooperatively with the contractor to bring them into compliance. OCA will conduct approximately 50 audits of contractors subject to HCAO in FY 2002-2003.

Conclusion

In conclusion, this past year has been one primarily of implementation and education for City Departments and Contractors. The HCAO is groundbreaking legislation, giving San Francisco the distinction of being the first county in the nation to enact a policy of this kind. Given this, though, the County is in a position to implement and enforce this Ordinance without an established pattern to follow. DPH is committed to the success of the HCAO, and will continue to work closely with OCA and support their on-going implementation and enforcement efforts.

DPH continues to have responsibility to create a third option for employers and employees by facilitating a purchasing pool or designing a public health plan offering. DPH has a record of creating unique options for difficult to insure populations, specifically through the San Francisco Health Plan for groups like the In-Home Supportive Services (IHSS) workers. In this case though, there has not been enough data or demonstrated need, based on the fact that only four contractors are Option #2, to be able to fulfill this responsibility. As noted in the HCAO, the health program must be "economically viable." At this time, due to lack of data, the creation of a new product is not economically viable. However, DPH and OCA are actively looking into alternatives and seeking data at this time.

Expanding health care coverage to a previously uninsured population will improve the health status of the uninsured individuals, and also contribute to improving health outcomes and health status for our entire community. This is the goal that is shared among San Francisco residents, DPH, OCA, other City Departments, and our contracting agencies. DPH will return to the Health Commission with an update next June to revisit the HCAO and report on further progress.