UNIVERSAL HEALTHCARE COUNCIL 2013

HCSO IN DEPTH, ACA MARKET REFORMS, AND THE INTERSECTION OF HCSO AND ACA

HCSO IN DEPTH

STATUTORY AUTHORITY

The San Francisco Health Care Security Ordinance (HCSO or "Ordinance") was passed unanimously by the Board of Supervisors in July of 2006 and codified as Chapter 14 of the San Francisco Administrative Code. The HCSO comprises two main components:

1) A health access program – now called "Healthy San Francisco" (HSF) – created by the Department of Public Health; and
2) An Employer Spending Requirement (ESR), which mandates that employers subject to the HCSO "make required health care expenditures to or on behalf of their covered employees each quarter."[1]

The City's Office of Labor Standards Enforcement (OLSE) is charged with enforcing the ESR. According to the Ordinance, employers are required to maintain accurate records of their health care expenditures and to provide information to the OLSE on an annual basis regarding their compliance with the health care expenditure requirement.

EMPLOYER SPENDING REQUIREMENT

Since January 2008, the HCSO has required "covered employers" to make "health care expenditures" for their "covered employees."

Covered Employers

An employer is covered by the HCSO if it:

- Is a for-profit business with 20 or more persons performing work, or a nonprofit business with 50 or more persons performing work, per week during a quarter, and
- Employs workers who perform work within the geographic boundaries of the City and County of San Francisco and is required to obtain a valid San Francisco business registration certificate pursuant to Article 12 of the Business and Tax Regulations Code.

An employer need not be physically located in the City to be a covered employer. In addition, for the purpose of determining employer size, all persons performing work for

[1] The HCSO is codified in Chapter 14 of the San Francisco Administrative Code, and is available via the HCSO website: www.sfgov.org/olse/hcso.

compensation during a given week must be counted, regardless of whether the persons work in San Francisco.

Covered Employees

With some exceptions, 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; and
- Performs at least 8 hours of work per week within the geographic boundaries of San Francisco.

The following persons are not considered covered employees under the HCSO:

- Managerial, supervisory, or confidential employees;
- Medicare or TRICARE/CHAMPUS beneficiaries;
- Employees covered by the City's Health Care Accountability Ordinance;
- Trainees in non-profit corporations;
- Individuals who voluntarily waive their employer's health care expenditures because they are receiving health care services through another employer

HEALTH CARE EXPENDITURES

A health care expenditure (HCE) is any amount paid by a covered employer for the purpose of providing health care services or reimbursing the cost of such services for its covered employees.

Applicable Expenditure Rate

Employers must make health care expenditures at the following rates:

Employer Size (counting all employees, worldwide)		2013 Expenditure Rate	2014 Expenditure Rate
Large	All employers w/100+ employees	$2.33 per hour paid	$2.44 per hour paid
Medium	Businesses w/20-99 employees Nonprofits w/50-99 employees	$1.55 per hour paid	$1.63 per hour paid
Small	Businesses w/0-19 employees Nonprofits w/0-49 employees	Exempt from coverage	Exempt from coverage

These rates are based on the average contribution by the 10 most populous counties in California to their employees' health insurance, as determined in an annual survey. The HCSO health care expenditure rate is set at 75 percent of the 10-county survey for large businesses and 50 percent for medium-sized businesses.

Calculation of Health Care Expenditures

Required HCEs are calculated by multiplying the total number of "hours paid" to each covered employee by the applicable expenditure rate. "Hours paid" include both work hours (for which a person is paid wages or entitled to be paid wages for work performed within the City) and any paid time off, including vacation and sick leave.

OPTIONS FOR MEETING THE HCE REQUIREMENT

Employers can make valid health care expenditures in a number of ways, including:

1) Payments for health, dental, or vision insurance on behalf of covered employees;
2) Payments to the "City Option," which the City allocates to covered employees' health care; and/or
3) Contributions "to a health savings account" or to other reimbursement account having substantially the same purpose or effect (such as a Health Reimbursement Arrangement or "HRA") on behalf of covered employees.

City Option

The City Option Program is one option for employers to satisfy the ESR. An Employer participating in the City Option Program pays money to the City, which the City applies toward one of two public benefits programs that may be offered to the employer's employees:

- Healthy San Francisco, or
- A City Medical Reimbursement Account

Healthy San Francisco

For an employee who is an uninsured San Francisco resident and meets Healthy San Francisco eligibility requirements, the City applies the employer's payment toward a discount on Healthy San Francisco participant fees. The discount received by an employee expires six months after the last payment from the employer.

Healthy San Francisco is a health care access program designed to make health care services available and affordable to uninsured San Francisco residents. Healthy San Francisco participants access primary and preventive care through their Medical Home. The program also provides access to specialty care, urgent and emergency care, laboratory services, inpatient hospitalization, radiology, and pharmaceuticals.

An employee may qualify for Healthy San Francisco if the employee meets all of the following requirements:

- San Francisco resident;
- Uninsured for at least 90 days;
- Between the ages of 18 and 64; and

- Not eligible for state and/or federally funded health insurance or assistance programs.

If the employee doesn't qualify for Healthy San Francisco, the City allocates the employer's payment to a City Medical Reimbursement Account (MRA) for the employee.

Medical Reimbursement Account

MRAs are a City-created and administered public benefit program, not an employer-sponsored group health plan, like health reimbursement accounts (HRAs, which are discussed in more detail below). When an employer contributes to the City Option to meet its ESR, the employer has no further control of the funds. Unlike employer-sponsored HRAs, the employer cannot direct which employees will receive a MRA, how the City structures and administers the MRA benefit program, or the City's disposition of unused funds.

The City permits funds in a MRA to be used for eligible health care expenses incurred by the Employee, the Employee's spouse or domestic partner, and the Employee's dependents. Eligible health care expenses are those that result from the diagnosis, care, treatment, improvement or prevention of disease or illness.[2] Employees submit receipts and claim forms online or by mail, fax, or mobile app and get reimbursed by check or direct deposit. Employees are provided regular written notice of the accounts, can access online information about the balance of their accounts, and can obtain reimbursements for a wider range of health care expenses than are allowable under HRAs.

Unlike HRAs, the balance in a MRA does not expire. The funds in a MRA roll over from year to year. Employees can still use their MRA even after they no longer work for the covered employer and the benefits do not expire even when inactive accounts are closed. There is a $2.75 administrative fee subtracted from the available funds in each active MRA monthly, whether or not the account is used that month. Employer contributions to MRAs are irrevocable and unused funds are transferred to the Department of Public Health, but employees can reactivate closed accounts at any time.

Employer-Sponsored Reimbursement Accounts

There are two types of valid reimbursement accounts for purposes of HCSO compliance: health savings accounts (HSAs) and health reimbursement accounts (HRAs).

[2] A complete listing of eligible expenses can be found at http://sfcityoption.org/wp-content/uploads/2013/07/MRA_Eligible_Expense_Guide.pdf.

A HSA (health savings account) may be offered coupled with a high-deductible insurance plan. Employers may contribute unlimited funds to a HSA, while employees can contribute up to $2,500 per year through pre-tax employee payroll deductions. HSA funds roll over from year to year and belong to the employee upon termination of employment.

A HRA (health reimbursement account) is funded solely by the employer, which reimburses an employee for covered health expenses. Employers may choose to restrict how the HRA funds can be used (i.e. restricted to certain benefits, not to be used for purchasing insurance, etc). An HRA may be coupled with a health insurance plan, or *standalone*, meaning it is offered on its own. This distinction is important for compliance with the ACA, and is discussed in more detail below.

A contribution to a reimbursement account constitutes a qualifying health care expenditure if the employer's contribution is "irrevocably paid to a third party on behalf of an employee" – meaning that the contribution can never revert to the employer. Alternatively, the contribution may revert to the employer if it meets the following criteria:

- The contribution is reasonably calculated to benefit the employee;
- The contribution remains available to the employee (and any other person eligible for reimbursement for health care expenses through the employee) for a minimum of 24 months from the date of the contribution;
- The employee receives a written summary of the contribution within 15 days of the date of the contribution; and
- Covered employers satisfy two additional requirements with respect to separated employees.

ADDITIONAL EMPLOYER RESPONSIBILITIES

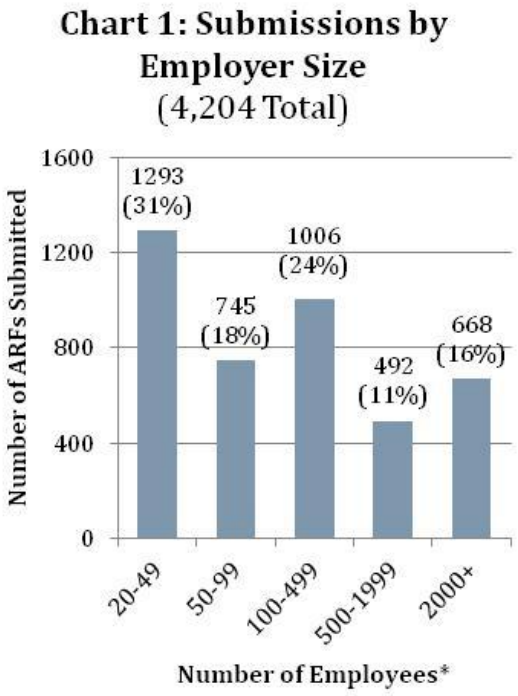
- Employers must post the 2013 HCSO Notice (available on the OLSE website) in a conspicuous place at any workplace or job site where any covered employee works in a language the employee can read.
- Covered employers must submit an Annual Reporting Form (ARF) which provides data on HCEs made in the previous year.
- Recordkeeping: Employers shall maintain complete and accurate records of HCE calculations, hours paid to employees, and HCEs made. Employers shall allow the Office of Labor Standards Enforcement reasonable access to such records.
- Surcharges: If a covered employer imposes a surcharge on its customers to cover the costs of the health care expenditure requirement, the full amount of the surcharge must be spent on employee health care.

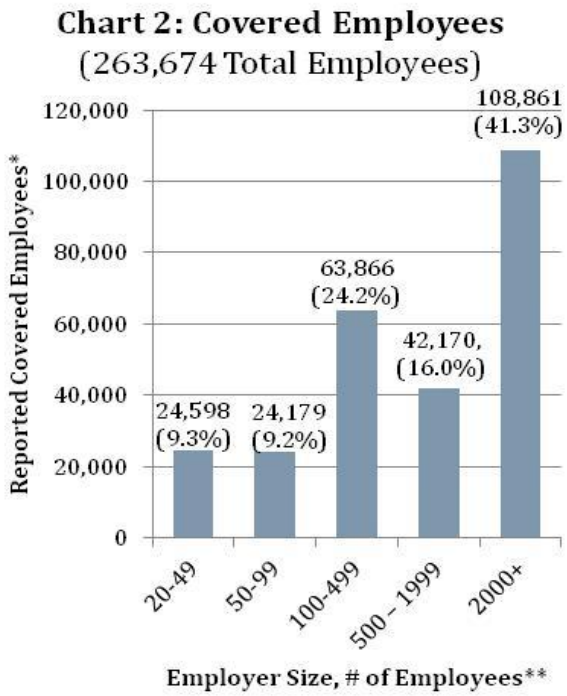
- Employee Voluntary Waiver Form: A covered employer that seeks to claim an exemption for an employee who qualifies for the waiver must maintain in its records a completed HCSO Voluntary Waiver Form signed by that employee.

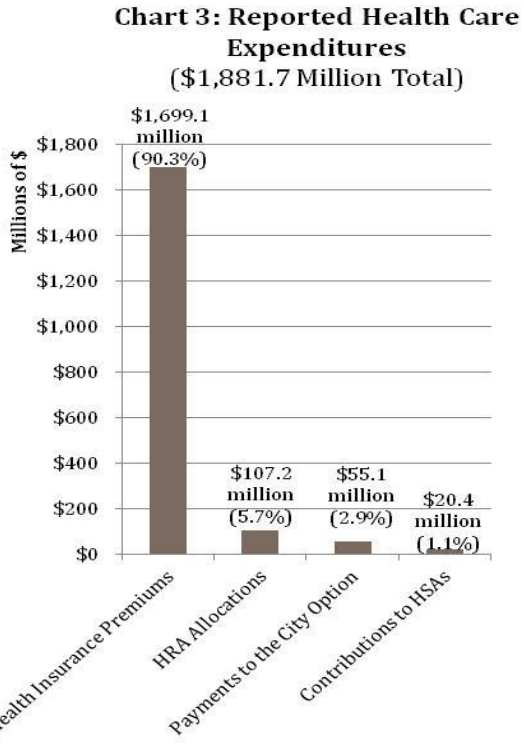
THE NUMBERS: HCSO COMPLIANCE

Covered Employers and Covered Employees

San Francisco's Office of Labor Standards Enforcement (OLSE) monitors employer compliance with the ESR. Covered employers self-report employer size, type of health expenditure, number of covered employees, and compliance strategy to OLSE in an Annual Reporting Form (ARF). The charts below, which are taken from the Analysis of the 2012 Health Care Security Ordinance Annual Reporting Forms, issued by OLSE on September 5, 2013, provide detail on the 4,204 employers that reported $1.88 billion in health care expenditures on behalf of 263,674 employees in 2012. The vast majority of expenditures (90%) were for the purchase of health insurance.







In 2012, 4,204 employers reported $1.88 billion in health care expenditures on behalf of 263,674 employees. The vast majority – 90% – of expenditures were for the purchase of health insurance.

According to a study published in the journal Health Affairs in January 2013, the HCSO has been responsible for a five-percentage-point increase in the proportion of employers offering health insurance in San Francisco.[3] Prior to implementation, health insurance offerings among employers were already high at 93 percent. Between 2007 (prior to HCSO) and 2009 (post HCSO implementation), that proportion rose to 96 percent, while similar rates fell to 90 percent in surrounding counties. The study also found that the HCSO was associated with a corresponding five-percentage-point increase in the proportion of workers covered by employer-sponsored health insurance or Healthy San Francisco.

How Employers Comply with HCSO Today

Employers' actual HCSO compliance reflects choices related to established practice (group health insurance), cost (HRAs), and convenience (City Option). Covered employers may use a single compliance option or employ a combination. Some combinations include:

- an employer offers full health insurance benefits to full-time employees, and makes HRA contributions or City Option payments for part-time employees;

[3] Carrie H. Colla, William H. Dow and Arindrajit Dube, "San Francisco's 'Pay or Play' Employer Mandate Expanded Private Coverage by Local Firms and a Public Care Program," *Health Affairs,* 32, no. 1 (2013):69-77, http://content.heatlhaffairs.org/content/32/1/69.full.html.

- an employer offers full health insurance benefits and an HRA that covers only vision benefits to all employees; and
- An employer's offered insurance plan does not meet minimum expenditure requirements for a covered employee, so the employer makes up the difference through an HRA or City Option payments.

COMPLIANCE STRATEGIES		
COMPLIANCE STRATEGY	**NUMBER OF EMPLOYERS**	**% OF TOTAL**
Health Insurance Only*	2407	57.3%
Health Insurance* + City Option	590	14.0%
Health Insurance* + HRA	720	17.1%
City Option Only	143	3.4%
HRA Only	190	4.5%
Other Strategy	154	3.7%
Total Employers	4204	100.0%

Most covered employers (88%) comply with the ESR by providing health insurance, either alone or in combination with the City Option or a HRA.

Insurance

Group health insurance is the most common practice for providing health benefits, particularly among large employers for their full-time employees. The vast majority of employers – 88% – comply by either offering health insurance alone or in combination with another option. Health insurance is typically not available to employees who work fewer than 20 hours per week. Health insurance is generally an irrevocable expense to employers, although excess premiums may be reimbursed under some circumstances.

HRAs

HRAs represent the lowest cost option for the employer. Employer contributions are tax deductible and excluded from employee income (no payroll taxes) if the HRA meets the following Internal Revenue Code (IRC) requirements:

- Must be solely employer-funded;
- May only reimburse medical expenses included in IRC § 213(d);[4]
- Limited to use by the employee and his or her tax dependents; [5]
- Unused funds may carry over from year to year; and
- Expired funds must revert to employer and may not be cashed out by employee.

[4] For a complete list, see http://www.irs.gov/pub/irs-pdf/p502.pdf.
[5] Domestic partners often do not qualify as tax dependents.

In 2012, 996 covered employers contributed $107.2 million to HRAs to comply with the HCSO, representing nearly one quarter of all covered employers but only 5.7 percent of all expenditures. The 996 covered employers include 190 employers that used HRAs exclusively, 720 employers that used HRAs in combination with health insurance, and an additional 86 employers that used HRAs in some other combination (reported as "other strategy" in the table above). The table below shows HRA utilization by employer size. While small employers comprise about one-third of all employers relying on HRAs, small employers utilize HRAs at approximately the same rate as larger employers (one-quarter) with up to 500 employees.

EMPLOYERS UTILIZING HEALTH REIMBURSEMENT ACCOUNTS (HRA)

Number of Employees (EEs)	20-49 EEs	50-99 EEs	100-499 EEs	500+ EEs	Total
Employers with HRAs in 2012 (#)	336	212	223	225	**996**
Employers with HRA in 2012 (%)	26.0%	28.5%	22.2%	19.4%	**23.7%**
Employers with HRA in 2011 (%)	22.0%	24.9%	17.6%	17.7%	**20.3%**

Among the 190 employers who rely on HRAs as the only method of compliance with the HCSO, 94 (49%) are businesses with 20-49 employees. The following table details HRA use among employers covered by the HCSO by employer size.

EMPLOYERS UTILIZING HEALTH REIMBURSEMENT ACCOUNTS (HRA) BY EMPLOYER SIZE

Number of Employees (EEs)	20-49 EEs	50-99 EEs	100-499 EEs	500+ EEs	Total
HRAs Only	94	37	33	26	**190**
HRA + Health Insurance*	216	164	163	177	**720**
Other Strategy including HRA**	26	11	27	22	**86**
Total (any reported HRA)	336	212	223	225	**996**

*Employers who report contributing to HRAs and also paying premiums for health insurance may or may not offer HRAs that are "integrated" with health insurance. OLSE often finds that employers meet the employer spending requirement by providing health insurance one group of employees (often full-time) and providing stand-alone HRAs to another group (often part-time).

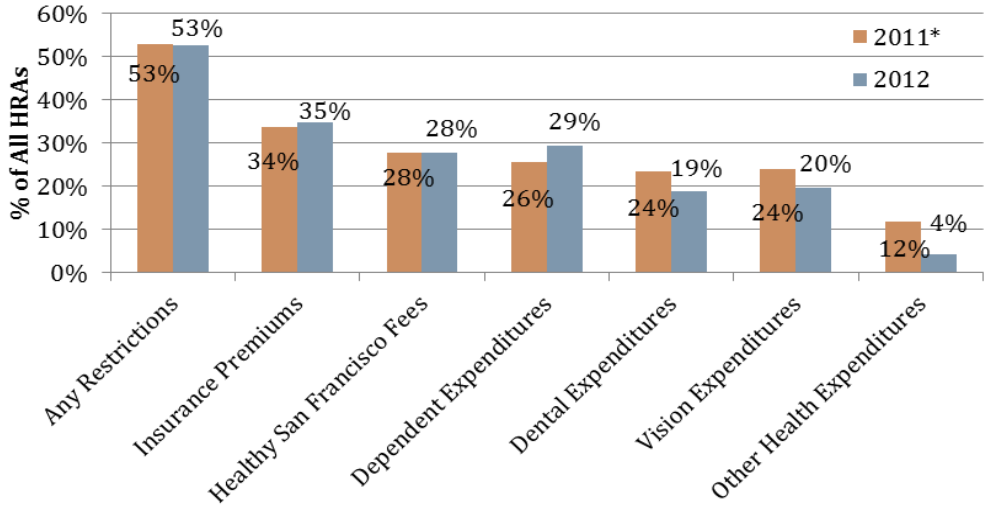
**"Other Strategies" for making health care expenditures that included the use of an HRA were: (a) allocations to HRA and contributions to City Option (12 employers); and (b) payments for health insurance, allocations to HRA, and contributions to City Option (74 employers),

In 2012, 46,051 employees had a HRA provided to them under the HCSO. However, it cannot be determined which HRAs were integrated and which were stand-alone. The table below depicts the number of employees with HRAs by employer size; the majority of employees with HRAs work for employers with more than 100 employees.

EMPLOYEES WITH HEALTH REIMBURSEMENT ACCOUNTS (HRA) BY EMPLOYER SIZE					
Number of Employees (EEs)	20-49 EEs	50-99 EEs	100-499 EEs	500+ EEs	**Total**
Employees with HRAs (includes both stand-alone and integrated)	6,112	6,589	11,723	21,627	**46,051**

The HCSO allows employers to place restrictions and set expiration rates on HRA contributions. In 2012, more than half (52.7%) of San Francisco employers with HRAs imposed one or more restrictions. In total, 24,612 covered employees had restricted HRAs in 2012. The following chart shows the most common types of health related expenditures not reimbursed by HRAs.

Chart 5: HRA Restrictions, by Type of Restriction



Employers may impose restrictions on the use of HRAs for many reasons. For example, employers may provide HRAs in combination with health insurance and, thus, restrict the use of HRAs to prohibit the purchase of health insurance or reimbursement of Healthy San Francisco fees. Restrictions, however, may also contribute to low reimbursement rates as fewer expenses are reimbursable.

City Option (i.e., Healthy San Francisco and MRAs)

In 2012, approximately 733 covered employers complied with the HCSO by contributing $55.1 million to the City Option. Of this amount, the City allocated $27.9 million were allocated to medical reimbursement accounts (MRAs) for those ineligible for Healthy San Francisco. MRAs can reimburse for a wider range of health care expenses than are allowable under HRAs, which may contribute to higher reimbursement rate than HRAs.

Since the ESR went into effect, over 106,000 Employees have had City Option contributions made on their behalf. In 2012, 19,071 employees received City Option contributions; the table below provides details on these employees by employer size.

EMPLOYEES RECEIVING CITY OPTION CONTRIBUTIONS BY EMPLOYER SIZE

Number of Employees (EEs)	20-49 EEs	50-99 EEs	100-499 EEs	500+ EEs	Total
Employees Receiving City Option Contributions	1,401	1,092	2,874	14,335	**19,701**

Comparison of HRA and MRA Reimbursement Rates

In its Analysis of the 2012 Health Care Security Ordinance Annual Reporting Forms, OLSE compared HRA utilization with MRAs available through the City Option. Despite the increase in HRA reimbursement rates in 2012, the proportion reimbursed remained lower than the reimbursement rate for the City's MRA program. The reimbursement rate for the City's MRAs declined to 53% in 2012, but has generally increased over time: from just 10% in the first fiscal year to a peak of 60% in 2011.

HRA REIMBURSEMENT RATES

	2012 ARFS	2011 ARFS	CITY OPTION MRA 2012*
Total Allocations / Contributions	$107,204,578	$65,965,091	$27,928,669
Total Reimbursements	$26,400,777	$11,314,575	$14,699,878
Percent of Total Reimbursed	24.6%	17.2%	53%

* Total *contributions and claims paid provided by the Department of Public Health for calendar year 2012.*

ACA MARKET REFORMS

One of the ways that the ACA makes insurance more accessible is through new insurance market reforms. Several of these reforms (e.g., dependent coverage up to age 26, no pre-existing condition exclusions) have been described in previous Council materials. The following market reforms particularly affect HCSO compliance choices.

- Minimum Essential Coverage was outlined in detail in the Council's October 10, 2014 meeting materials and is defined by the type of coverage, e.g., employer-sponsored group health plans, Medicare, most Medicaid programs, etc. Minimum essential coverage does not include health insurance coverage consisting only of "excepted benefits," such as dental or vision coverage.

- Essential Health Benefits: The ACA requires all non-grandfathered health plans in the individual and small group market, whether sold in or out of Exchanges, to cover essential health benefits (EHB). The ACA doesn't enumerate EHBs, but specifies 10 categories of EHBs that must be covered:
    - Ambulatory patient services
    - Emergency services
    - Hospitalization
    - Maternity and newborn care
    - Mental health and substance use disorder services including behavioral health treatment
    - Prescription drugs
    - Rehabilitative and habilitative services and devices
    - Preventive and wellness services and chronic disease management
    - Pediatric services, including vision and dental care

- Annual Limits: Starting in 2014, the ACA bans annual dollar limits. This means plans cannot limit annual coverage of essential health benefits.

- Preventive Care: Also beginning in 2014, the ACA prohibits cost sharing for preventive care. That is, most plans must cover preventive services, such as health screenings and vaccines, without charging a copayment or coinsurance even if a deductible has not yet been met.

These market reforms go into effect on January 1, 2014 and impact the continuation of HRAs as they are currently structured.

ACA CHANGES TO HRAs

Recent federal guidance[6] issued pursuant to the ACA disallows stand-alone employer-sponsored HRAs because they do not comport with the ACA's market reforms described above. As employer-sponsored HRAs and some HSAs are considered group health plans providing minimum essential coverage, these arrangements are subject to the ACA's market reforms prohibiting group health plans from imposing annual dollar limits on essential health benefits or cost-sharing for preventative services.

Specifically, employer-sponsored HRAs provide a fixed dollar amount each coverage period for employee medical expense reimbursements. Accordingly, by their nature, they have dollar limits and cannot comply with the ACA's ban on annual dollar limits for essential health benefits and, further, cannot guarantee access to free preventive services.

Beginning in 2014, HRAs will be deemed to satisfy the dollar limit and preventive care reforms only if they are "integrated" with primary group health insurance coverage that complies with those requirements. That insurance must be provided by the employer or the spouse's employer, and the employee must actually be enrolled in the insurance plan. HRAs cannot be "integrated" with individual insurance bought on the Exchange, and HRA funds cannot be used to purchase insurance on the Exchange.

In addition, because employer-sponsored HRAs will constitute "minimum essential coverage," employees with HRAs will not be eligible for federal premium subsidies. It is currently unclear whether this rule applies only to HRAs that comply with the ACA market reforms and are therefore already integrated with employer-sponsored health insurance coverage, or whether it also applies to stand-alone HRAs that consist solely of carryover balances from 2012 and/or 2013.

Under new ACA requirements, employees must be given the opportunity to waive or opt out of HRA coverage at least annually.

[6] U.S. Departments of Treasury and Labor. IRS Notice 2013-54: Application of Market Reform and other Provisions of the Affordable Care Act to HRAs, Health FSAs, and Certain other Employer Healthcare Arrangements. September 13, 2013.

INTERSECTION OF HCSO AND ACA

FOR THE EMPLOYEE

Individual Shared Responsibility

A non-exempt individual is required to fulfill the individual mandate irrespective of the actions of his/her employer, if employed. If covered employees, as defined by the HCSO, are also considered non-exempt individuals as defined by the ACA, then they are required to have health insurance even if their employer does not offer health care coverage to fulfill the Employer Spending Requirement. Employment status and the number of hours worked by the individual are not factors in the determination of whether an individual must comply with the ACA's individual mandate.

HRAs Going Forward

HRAs will be considered Minimum Essential Coverage. An employee with an HRA will not be able to purchase coverage on Covered CA and, therefore, will also be ineligible for federal premium subsidies. The employee will also be deemed to have satisfied the individual insurance mandate and will not be subject to penalties. Although this rule clearly applies to integrated HRAs, it is not yet clear whether it will also apply to employees with standalone HRAs consisting solely of employer contributions that have carried forward from 2013 and not yet expired.

FOR THE EMPLOYER

Employer Shared Responsibility

Following is a chart that compares ACA employer provisions with the HCSO employer spending requirement.

	Large Employer Shared Responsibility under the ACA	Employer Spending Requirement under the HCSO
Effective Date	January 1, 2015	January 9, 2008
Covered Employer	Businesses with 50+ full-time equivalent (FTE) employees	San Francisco-based employers with: • 20+ employees (medium, for-profit) • 50+ employees (medium, non-profit) • 100+ employees (large, regardless of profit status)
Covered Employee	Working an annual average of 30 hours/week	• Employed for 90+ days; and • Working at least 8 hours/week
Employer Responsibility	• Offer affordable health insurance (defined as covering at least 60% of health costs with employee contribution <9.5% of wages) to all covered employees (defined as at least 95% of FTEs) • Employers with 200+ employees must automatically enroll employees in health coverage. Employee may refuse.	Make minimum Health Care Expenditures (HCE) for all covered employees via: • Health insurance • Health reimbursement accounts • Payments to the City Option • Any combination of the above, or • By any other means that provides health care or reimburses health care costs for covered employees
Minimum Contribution	• Cost of affordable health coverage to 95% of full-time employees; or • Possible penalties	For 2014: • $1.63/hour paid (20-99 employees) $2.44/hour paid (100+ employees) • Capped at 172 hours/month per covered employee • Expenditures must be made w/in 30 days of end of each quarter

Penalties	• For no coverage: $2,000 annually/FTE beyond the first 30
	• For unaffordable coverage, lesser of:
	  • $2,000 annually/FTE beyond the first 30; or
	  • $3,000 annually/employee purchasing subsidized coverage on Covered CA
		• Failure to make HCE: $100/ employee/quarter
		• Failure to submit annual reporting form: $500/quarter
		• Retaliation against employees: $100/ targeted employee/day
		• Not allowing City access to records: $25/employee with missing records/day
		• Failure to maintain accurate or complete records: $500

Reporting Requirement	Annual	Annual
Enforcement Agency	United States Internal Revenue Service(IRS)	San Francisco Office of Labor Standards Enforcement (OLSE)

HRAs Going Forward

After January 1, 2014, stand-alone HRAs will no longer be a viable option for compliance with HCSO. This is an important change particularly for the 190 employers who currently use HRAs as their only mode of HCSO compliance. Other options for employer compliance with the HCSO will remain, including health insurance and the City Option MRA. The following table provides a comparison of HRAs and MRAs.

	Health Reimbursement Account (HRA)	SF City Option Medical Reimbursement Account (MRA)
Contribution	Employer	Employer
End of year funds	May roll over. (HCSO requires HRA funds to be available for 24 months from the date of distribution.)	Roll over. (City MRA funds technically revert to the City after 18 consecutive months of non-use. However, in practice, the funds roll over in perpetuity and closed accounts are made available at employee's request.)
Considered by ACA to be a group health plan	Yes	No
Funds at termination of employment	Revert to employer. (HCSO requires HRA funds to be available to employees for 90 days after termination of employment.)	Remain available to employee
Restrictions	Employer may restrict benefits	Unrestricted
Types	• Stand -alone • Integrated with group health plan	N/A
After ACA Market Reforms	• Qualifies as minimum essential coverage • May not be used toward premiums for individual coverage on Covered CA • Disqualifies individual for premium subsidies on Covered CA • Stand-alone disallowed • Disallowed if coupled w/ individual (non-employer) coverage • Allowed if integrated w/ group coverage • Allowed if used only for excepted benefits (e.g., vision or dental only) • Allowed if used for retiree-only plans • May not be used to pay for OTC drugs w/out a prescription • Whether these rules apply to pre-2014 HRAs with balances that carry over into 2014 is unclear	• Does not qualify as minimum essential coverage • May be used toward premiums for individual coverage on Covered CA • Does not disqualify employee from accessing income-based subsidies on Covered CA

FOR CONSIDERATION/DISCUSSION

HEALTH REIMBURSEMENT ACCOUNTS MOVING FORWARD

While the federal government has provided guidance about what HRAs must look like going forward, it has provided few answers about how it will treat existing stand-alone HRAs with balances that carry forward into 2014. These are pressing questions for the 996 employers who currently use such HRAs to comply with the HCSO because the HCSO requires employer contributions to remain available to employees for 24 months. Employees are also affected to the extent that carryover balances could be considered "minimum essential coverage," thus making them ineligible to purchase health insurance on Covered CA and, therefore, would also ineligible for premium subsidies even if they otherwise qualified. The City is urgently seeking federal guidance on these issues.

EFFECT OF MARKET REFORMS ON THE CITY OPTION

The ACA does not affect an employer's option to satisfy all or part of its HCSO obligation by paying into the City Option. However, covered employees with health insurance or those who are eligible for federal premium subsidies will no longer be eligible to participate in Healthy San Francisco. Those employees will receive a City MRA instead. Unlike HRAs, City MRAs are not employer-sponsored plans. For that reason, they are not "minimum essential coverage," they will not affect employees' eligibility for federal premium subsidies, and MRA benefits may be used to reimburse premium payments for insurance purchased on the Exchange.

EFFECT OF ACA MARKET REFORMS ON 2014 HCSO COMPLIANCE CHOICES

The table below provides information on the impact of ACA Market Reforms on employers and employees, which may be helpful for assessing current HCSO compliance choices and future policy considerations.

	Employer Impact	Employee Impact
Group health insurance	• Large employer may meet shared responsibility requirement through HCSO if insurance is "affordable" for FT employees • Small employer may be able to leverage tax credit and ESR to provide insurance • May not be available option for part-time employees • May not be sufficient to meet ESR • Tax favored but premium payments may be irrevocable	• Employer-sponsored health insurance will be more widely available to employees • Will satisfy individual mandate

	Employer Impact	Employee Impact
HRA	• Employer must also offer health insurance unless employee is covered by spouse's insurance or HRA only covers excepted benefits • Excepted benefits HRA must be "reasonably calculated to benefit employee" • Tax favored and unused funds may be returned to employer after 24 months. Potential for savings through return of unused funds is diminished or extinguished by the health insurance integration requirement	• 2013 carryover balances may be considered minimum essential coverage
City Option	• No change to employer • Doesn't satisfy employer shared responsibility provisions	• Neither HSF nor MRA is minimum essential coverage • Do not satisfy individual mandate • Do not disqualify from premium subsidies • MRA can be used to purchase insurance on Covered CA
Employer Payment Plan or other options	• Post-tax, more expensive for employer • Irrevocable expenditure • Does not satisfy shared responsibility requirement	• Post-tax, reduced benefit to employee • Can be used to offset Exchange premium • Does not disqualify from premium subsidies