



**National
Business
Group on
Health**

20 F Street, NW, Suite 200
Washington, D.C. 20001-6700
202.558.3000 • Fax 202.628.9244
www.businessgrouphealth.org

Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

August 5, 2014

The Honorable Mayor Edwin M. Lee
Office of the Mayor
City Hall,
Room 200,
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Mayor Lee:

The National Business Group on Health respectfully writes to request that the **CITY OF SAN FRANCISCO REPEAL THE EMPLOYER MANDATE PROVISIONS** (reporting, taxes, etc.) of the **HEALTH CARE SECURITY ORDINANCE (HCSO)**.

The National Business Group on Health supports efforts to increase the number of insured people. However, we believe you could do so by not taxing employer plans. You can better achieve your goals by working in closer coordination with the California state government and the Federal government to better implement the Affordable Care Act. **Therefore we urge the City to repeal the unnecessary and regulatory burdensome HCSO.**

We believe that the Health Care Security Ordinance pay or play employer mandate violates the Federal Employee Retirement Income Security Act (ERISA). Moreover, we believe that as employers comply with the Patient Protection and Affordable Care Act's (Affordable Care Act or ACA) employer shared-responsibility provisions (Section 1513 of ACA and 4980H of the Internal Revenue Code), employers shouldn't also have to comply with the local employer pay or play mandate ordinance because it is duplicative to Federal law, administratively burdensome, and unnecessary.

The National Business Group on Health represents approximately 395, primarily large, employers (including 66 of the Fortune 100, a few headquartered in the City of San Francisco, and many more who have employees in San Francisco) who voluntarily provide generous health benefits and other health programs to over 55 million American employees, retirees, and their families.

As you know, the ACA contains provisions that require employers to make payments if they do not offer coverage to full-time employees or, in some circumstances, if they offer coverage but the coverage does not meet ACA minimum value or affordability standards. The payments help to fund subsidized coverage on the state exchanges and expanded Medicaid programs authorized by the Affordable Care Act. Therefore the employer mandate provisions of the HSCO are duplicative to the ACA and thus unnecessary.

By continuing the HSCO employer reporting requirements and taxes, the City of San Francisco is raising employers' administrative costs. In addition, by requiring employers to pay to \$2.48 per hour for employees' benefits costs, San Francisco takes away money that employers could otherwise use for wages and benefits and to hire or recruit new employees, thus widening the City's tax base.

Other states and localities that had previously pursued pay or play laws are currently seeking to repeal their employer mandate provisions. For example, in Massachusetts in early 2013, Governor Deval Patrick (D-MA) introduced [a bill](#) that would remove the employer mandate. Recently, the Massachusetts Health Connector Board [voted](#) to approve a draft repeal of the regulations for the MA employer mandate and related provisions. Massachusetts cited the Federal employer mandate as a reason to remove the Commonwealth's employer mandate.

Finally, as you know, the Affordable Care Act, through its expansion of the Medicaid program, premium tax credits/cost-sharing reductions and individual mandate, is reducing the number of uninsured Americans, including those in the City of San Francisco. As more people gain coverage through the Health Insurance Exchanges and Medicaid expansion, the city and local providers will have to pay for less charity care thus making the HCSO fees unnecessary. Therefore, there is less need for the funds generated by the HCSO. Additionally, employers report that as Covered California and an expanded Medi-Cal are options along with employers' own coverage, many employees are confused about how Healthy San Francisco fits in and what are its advantages and disadvantages over their employers' coverage and the other ACA options.

Recently, Covered California [announced](#) 289,021 consumers enrolled in subsidized and non-subsidized health insurance exchange plans through March 31, 2014 in the San Francisco and Bay Area regions. According to the press release this is a 323% increase from the base projection of 89,599. In addition, according to a [July 2014 CMS announcement](#), since open enrollment 1,643,000 more people are covered by Medicaid in California.

In future years, as more people enroll in health insurance, the number of uninsured will continue to dwindle. Therefore it becomes increasingly unlikely that individuals seeking care at local hospitals and providers will be uninsured. Hence, it makes good sense for the citizens and the businesses in San Francisco to eliminate the now unnecessary HCSO.

Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink that reads "Brian J. Marcotte". The signature is written in a cursive style with a long, sweeping underline.

Brian J. Marcotte
President and CEO

CC: Supervisor Eric Mar

Supervisor Mark Farrell
Supervisor David Chiu
Supervisor Katy Tang
Supervisor London Breed
Supervisor Jane Kim
Supervisor Norman Yee
Supervisor Scott Wiener
Supervisor David Campos
Supervisor Malia Cohen
Supervisor John Avalos