Minutes

Regular Meeting

Thursday, September 10, 2015

1:00 PM

City Hall, Room 416 1 Dr. Carlton B. Goodlett Place San Francisco, California 94103

- Call to order
- Pledge of allegiance
- □ Roll call President Randy Scott

Vice President Wilfredo Lim Commissioner Karen Breslin Supervisor Mark Farrell

Commissioner Sharon Ferrigno, excused Commissioner Stephen Follansbee, M.D.

Commissioner Gregg Sass

This Health Service Board meeting was recorded live by SFGovTV. Links to videotaped meetings and related materials are posted on the myhss.org website.

This meeting was called to order at 1:07 pm.

President Scott introduced Rafal Ofierski, Deputy City Attorney and colleague of Erik Rapoport (counsel to the Board), who attended this meeting in Mr. Rapoport's absence.

□ 09102015-01 Action item

Approval (with possible modifications) of the minutes of the meetings set forth below:

- Special Meeting Closed Session Member Appeal of August 13, 2015
- Regular meeting of August 13, 2015

Staff recommendation: Approve minutes.

Documents provided to Board prior to meeting: Draft minutes.

Public comments: None.

Action: Motion was moved and seconded by the Board to approve the special meeting Closed Session member appeal of August 13, 2015 and the regular meeting minutes of August 13, 2015.

Motion passed 6-0.

□ 09102015-02 Discussion item

General public comment on matters within the Board's jurisdiction not appearing on today's agenda

Public comments: Richard Rothman, retired City employee, stated that a number of retired workers have asked about the possibility of Kaiser being offered as a provider in Hawaii in the next plan year. He asked that the Board consider that as an option.

Mr. Rothman also mentioned the Retirement Board's five-year demographic study, which indicated that City employees are retiring earlier and living longer. He asked how plan costs are affected by that information.

President Scott responded that not only are pension benefits drawn out over a longer period of time, medical costs will also increase as a result of retirees surviving longer. He stated that the Board was aware of those facts, which will become part of a broad discussion in the Board's upcoming forum.

□ 09102015-03 Discussion item

President's Report (President Scott)

- President Scott relayed that he had read numerous articles on the trends in healthcare costs for 2016, and all indicate increased costs across the board. He noted that specialty drugs are a key driver of the increases.
- He also reported on a meeting with the health plans during the previous week that provided a very comprehensive overview of the specialty drug issue, as well as specific steps and interventions that the vendors were undertaking. He noted that Commissioner Follansbee also attended the vendor meeting.

- The topic of specialty drugs will also be included in the November forum as a critical factor in the next renewal cycle and beyond.
- Dr. Follansbee stated his belief, as a former prescriber of specialty drugs, that while some of the drugs are incredibly expensive, some offer unique opportunities to "do it right the first time."
- President Scott also reported that, as Chair of the Governance Committee, Commissioner Breslin requested scheduling a special Committee meeting during this month. Once a date has been determined, a notice will be distributed.

Documents provided to Board prior to meeting: None.

Public comments: None.

□ 09102015-04 Discussion item

Director's Report (Director Dodd)

- HSS Personnel
- Finance, Operations, Data Analytics, Communications, Wellness/EAP, Vendor Contracts
- Meetings with Key Departments
- Other additional updates

Documents provided to Board prior to meeting:

- 1. Director's report:
- 2. Reports from Operations, Data Analytics, Communications, Finance and Contracting, Wellness and Employee Assistance Program.
- Director Dodd reported on her written
 Director's Report, which may be viewed on the myhss.org website.
- Darric Sorko-Ram, new HSS Member Services Manager, was introduced to the Board. He came from the United Food and Commercial Workers' Union wherein he managed the claims department.
- Director Dodd asked the union and retiree representatives in attendance to notify their members that a booklet with the rates and

- pertinent information required by federal law would be mailed to everyone with the exception of Medicare retirees. Members may download all of the information from the myhss.org website. Medicare retirees will receive the retiree booklet as always because not all retirees have access to the internet.
- The most important occurrence in the past several weeks has been in the area of legislation.
- See memoranda to Mayor's Office dated September 1 and September 8, 2015.
- HSS has spoken with the legislative analyst to acquire a better understanding of the impact of two state Managed Care Organization ("MCO") tax proposals on the 2018 federal excise tax on high cost health plans. The proposals are associated with state healthcare-related taxes allowed by the Centers for Medicare and Medicaid Services ("CMS") to fund Medi-Cal and In-Home Supportive Services ("IHSS").
- With assistance from Aon Hewitt, HSS performed an analysis on the two competing tax bills, one by the Governor and the other by Assemblyman Levine. The impact of the Governor's proposal was estimated to cost a total of \$5.9M. Assembly Member Levine's proposal, which sunsets in 2017, would charge a flat tax on enrollment of \$7.88 per member and was estimated to cost \$8.1M.
- To avoid risking the loss of \$1B in federal Medicaid funds for 2016-17, the state must take action to comply with federal requirements by August 30, 2016. Any increase in premiums resulting from either MCO tax proposal will alter the base upon which the excise tax will be calculated. The two proposals were being considered in the last days of the Special Session of the Legislature.
- Since 2011, with the implementation of the Affordable Care Act, employers have paid two major legislative taxes and fees to the federal

- government. The Health Insurance Tax ("HIT") will total \$16.2M in 2016 and the Transitional Reinsurance Fee will total \$2.4M. Taxes are part of the health premiums and adding a state tax would result in double taxation.
- Director Dodd stated that on September 1, 2015, she was more in favor of the Governor's proposal because of its lower cost. However, as of this meeting, she expressed a preference for Assemblyman Levine's proposal since it would expire in 2017, creating an opportunity to rework it.
- President Scott requested that Director Dodd revise her memorandum dated September 8, 2015 to include the total impact on the HSS system as well as the employers.
- Cindy Striegel, Kaiser Permanente representative, reported that Director Dodd did a spectacular job making a complex issue simpler to understand. She stated that as of yesterday, the MCO tax became an even bigger issue for Kaiser because of its nonprofit status and that it also will impact fullyinsured businesses as opposed to self-funded or ASO businesses. Kaiser has been in constant touch with the Governor's office to find an agreeable solution.
- Director Dodd stated that she will be submitting comments on a new set of regulations on the excise tax (in addition to her previous testimony). However, there will not be enough time to complete the analysis and present it to the Board for approval.
- Affordable Care Act regulations on implementing reproductive health equality related to transgender benefits also were distributed. HSS will provide comments before the deadline.

Public comments: Claire Zvanski, RECCSF representative, thanked Director Dodd for her thorough description of the MCO tax issues and stated that she hoped to get the facts right in an article that she intends to write for retired members.

She will refer members to HSS if there are additional questions.

Ms. Zvanski also commended Margaret O'Sullivan, HSS Wellness Plan Coordinator, for being very responsive to RECCSF members' needs, noting that she has been regularly attending the retiree meetings. The retired members continue to be very appreciative of Ms. O'Sullivan's participation.

□ 09102015-05 Discussion item

Treasurer and Tax Collector presentation on trust fund investments (Pauline Marx/Pamela Levin)

Documents provided to Board prior to meeting: Presentation prepared by Treasurer-Tax Collector, "CCSF Pooled Funds Investment Program."

- President Scott provided a framework for this agenda item. Over a year ago, he raised the question of the Board Members being plan fiduciaries with responsibility to monitor delegated duties. It was requested that at a future meeting, a representative responsible for funds provide background information on investments for Board educational purposes.
- Pamela Levin, HSS CFO, introduced Pauline Marx, Chief Assistant Treasurer in the office of the Treasurer and Tax Collector.
- Ms. Marx stated that usually her conversations with people concern paying their taxes as well as financial empowerment. However, the purpose of this presentation was to discuss the investment function.
- Ms. Marx reported that the Treasurer has the authority for collection of taxes, receipt of money and the safeguard, deposit and investment of such, which is Chartermandated. The other part of the Treasurer's authority comes from a State code which is very clear regarding holding and investing money.
- The investment policy is adopted every year pursuant to State code and has three objectives: safety, liquidity and yield (or market return on investments). The Treasurer invests in highly-rated securities, AA or better, and only fixed income securities with a

- maximum maturity of five years. It is required to insure sufficient liquidity to meet all of the anticipated expenditures for the following six months, which the Treasurer certifies.
- The Board of Supervisors established a Treasury Oversight Committee. This committee reviews and monitors the investment policy prepared annually by the Treasurer and requires an annual compliance audit conducted by an outside audit firm.
- The Treasury Oversight Committee meets quarterly and may not select investment advisors, brokers, dealers or be involved in day-to-day operations.
- The Treasurer serves as treasurer for all CCSF departments, including the San Francisco Unified School District and San Francisco Community College District. Other outside agencies located in San Francisco may also deposit funds with the Treasurer, such as the Transbay Authority.
- The Treasurer's current pool is approximately \$7B. The cost of managing that pool is spread out over the investments and is handled by the Controller's Office. The Treasurer honors requests to withdraw funds for normal cash flow purposes, which is also handled through the Controller's Office.
- At Ms. Levin's request, Ms. Marx explained that the greatest advantage of HSS funds being included in the City's pooled investments, other than liquidity, is each participant pays only its fair share of the fund (currently \$7B). This allows investments to be managed at a very low cost to the City because the dominator is so large.
- Ms. Levin also pointed out how interest earnings are recorded in HSS' annual audit statement by external auditors and asked Ms. Marx to explain to the Board.
- Ms. Marx stated that in the investment earnings portion of the financial statement are two lines that are added together. The first line indicates net increase or decrease in

- fair value. The second line indicates interest income. It is a way of showing risk and a temporary view of finances on June 30 (end of fiscal year), which is immediately reversed on July 1.
- Ms. Levin stated that while the sale of funds does not actually occur on June 30, it is required to be reported on the audited financial statement since interest is being earned.
- Supervisor Farrell stated that as Chair of the Budget and Finance Committee for the previous three years, the City is incredibly fortunate to have such great professionals not only in the Treasurer-Tax Collector's Office but the Controller's office as well. He thanked Ms. Marx for her presentation and commended the Treasurer's office for all of their hard work.
- Commissioner Sass concurred with Supervisor Farrell's statements, noting that as a former CFO for the largest department in the City, he appreciated the fact that investment decisions were not made by the CFO (which is the case in New York) and that he could focus his attention on managing the finances of the department.
- President Scott also thanked Ms. Marx for her presentation to the Board. He stated that this presentation was a good starting point in the flow of information and hoped that the Board would receive additional reports in the future.
- See Treasurer's PowerPoint, "CCSF Pooled Funds Investment Program" at myhss.org.

Public comments: None.

Strategic update on Well-being Program (Stephanie Fisher)

Documents provided to Board prior to meeting: "Well-being Program Strategic Update, January-August 2015."

- Stephanie Fisher, HSS Wellness Manager, presented a high-level strategic update on the Well-being Program.
- Ms. Fisher acknowledged the Wellness Team's assistance in building a strong program infrastructure:
 - Jeff Lintner, newly appointed Senior Employee Assistance Program ("EAP") Counselor;
 - Jean Miranda (retired Senior EAP Counselor) who was on the Wellness staff during the first six months of the strategic update;
 - Margaret O'Sullivan, HSS Wellness Plan Coordinator, who has been actively working with the retirees;
 - Carrie Beshears, HSS Health Program Coordinator; and
 - Lisa Ocampo, HSS Wellness Management Assistant.
- In addition to expressing appreciation for the dedication of the HSS Executive Team (Director Dodd, Pamela Levin, HSS CFO and Mitchell Griggs, HSS COO), the following HSS staff were recognized for their contributions to the program:
 - Rosemary Passantino,
 Communications Manager; and
 - Marina Coleridge, Data Analytics Manager.
- Ms. Fisher also acknowledged support of the following City sponsors: Mayor's Office, Controller's Office, Department of Human Resources, the Joint Labor Management Committees and HSS.

- Ms. Fisher presented a color-coded update that tracked the strategic objectives, primary challenges, and updates on infrastructure, motivation, programming and reporting.
- President Scott commended Ms. Fisher on her leadership, stating that he was immensely impressed with her and her team in keeping the program on track.
- Supervisor Farrell departed the meeting during this agenda item.
- See Well-being Strategic Update on myhss.org.

Public comments: None.

Meeting Break

Recess from 2:43pm to 2:58 pm.

¬ 09102015-07 Discussion item

Affordable Care Act compliance update (Pamela Levin)

Documents provided to Board prior to meeting: "2015 Affordable Care Act Compliance" report prepared by HSS.

- Pamela Levin, HSS CFO, presented a quick review of the compliance requirements of the Affordable Care Act from 2011 to present. HSS is compliant in all areas with the exception of the following:
 - Automatic enrollment (awaiting clarification); and
 - 2015 Annual Return/Report of Employee Benefit Plan to IRS (in process).

Public comments: None.

□ 09102015-08 Discussion item

Discussion regarding Public Employees Committee ("PEC") Resolution to Health Service Board to request the City Attorney join, support or assist with UFCW anti-trust lawsuit against Sutter Health's anti-competitive practices (PEC Representative)

Documents provided to Board prior to meeting: PEC Resolution to Health Service Board.

 Bob Muscat, Chair of the Public Employee Committee ("PEC") and Executive Director of local 21, stated that the PEC is a coalition of all of the organizations representing San

- Francisco City employees. The Resolution before the Board demonstrated the PEC's interest in attempting to have more influence and leverage over the quality, safety and cost of healthcare for its members.
- The annual healthcare costs for actives and retirees in San Francisco is over \$700M or approximately 35% of payroll each year.
- Rebecca Rhine, representative for the PEC and Municipal Executives Association, read the PEC's Resolution for the record. She also stated that Richard Grossman, counsel for UFCW Employer Benefits Trust and its antitrust case against Sutter, was present to answer any questions.
- The PEC Resolution requested that the Health Service Board join the United Food and Commercial Workers ("UFCW") lawsuit and request that the City Attorney join, support or assist with UFCW's anti-trust lawsuit against Sutter Health's anti-competitive practices.
- The PEC's goal is to get the most value for every worker dollar, every City dollar and every taxpayer dollar. This mean having access to information to make the right decisions to achieve the most quality care and best value for its members.
- President Scott asked if other unions beyond UFCW had partnered in the lawsuit against Sutter and why a lawsuit ensued as opposed to another tactic.
- Ms. Rhine stated that the PEC was secondary and that the class action suit was intended for purchasers of benefits. She suggested that Richard Grossman, counsel to UFCW, answer the question.
- Richard Grossman, attorney with the San Francisco firm of Pillsbury & Coleman, responded that the core of the lawsuit was the overcharge being imposed on the purchasers of health insurance and health insurance companies throughout the State by providers who have used their market power to impose contractual provisions preventing

price competition in the healthcare market. For example, healthcare costs in Northern California exceed the costs for the same procedures in Southern California by as much as 40%. There is no economic explanation for the cost discrepancies other than the competitive practices that have been imposed on health systems such as HSS by certain providers that have a monopoly power in the Northern California market.

- Mr. Grossman stated that there were multiple provisions within Sutter's contract with providers of healthcare networks that prevent any possibility of price competition and allows Sutter to charge prices that far exceed what would be charged in a competitive marketplace such as Southern California where such practices are not present.
- Because of the "umbrella effect," Sutter's competitors (the other hospital systems) have less incentive to lower costs in order to compete with Sutter since no real competitive benefit would be gained.
- The dramatically higher prices in Northern California, led by Sutter, tend to result in increased costs across the board for all beneficiaries of HSS plans that utilize Sutter facilities.
- The above are the allegations in the UFCW lawsuit, which was filed in April 2014. Sutter filed a motion to compel UFCW to arbitrate in private instead of in open court so that the public would not see the evidence of its wrongdoing. That motion was denied by the San Francisco Superior Court. Sutter has now taken the matter to the Court of Appeals. Mr. Grossman expects to appear in the Court of Appeals and, hopefully, have the Superior Court's decision affirmed.
- Mr. Grossman estimated that the damage of overcharges to self-insured, self-funded health plans, exceeds \$1B and could possibly exceed that amount many times.

- The PEC's request was that the Health Service Board ask the City Attorney's Office to review what CCSF and the Health Service System can do to support the efforts of UFCW's lawsuit.
- Mr. Grossman added one final personal note stating that he had worked previously with Darric Sorko-Ram and commended him as the consummate professional.
- President Scott asked for the City Attorney's advice on UFCW's lawsuit stating that the Board needed to carefully review this particular case. He asked whether the Board had previously participated in such a lawsuit and for an estimate of the cost and time involved. He also asked for any additional information from the City Attorney that would be instructive in order for the Board to provide a public response at a future meeting.
- Mr. Ofierski confirmed follow-up at a future meeting.
- The PEC Resolution may be found on myhss.org.

Public comments: Herbert Weiner, retired City employee, stated that most of his doctors practice at California Pacific Medical Center. He stated disappointment that many medical facilities are being swallowed up by CPMC throughout San Francisco. He stated that CPMC stands for "criminal professionals making cash."

□ 09102015-09 Discussion item

Legislative update on California budget (Director Dodd)

Documents provided to Board prior to meeting: Memo to Mayor's Office.

Director Dodd stated that the MCO legislative update was presented in her Director's report. She noted that Supervisor Farrell scheduled a transparency meeting in which four or five experts in the area of health economics will discuss the issue of transparency, possible barriers and how to eliminate them.

 The transparency meeting will be held on October 1, 2015 from 1:00 to 5:00 pm in City Hall. It is open to the public but there will be no public participation in the discussion or public comment.

Public comments: None.

□ 09102015-10 Action item

Approval of Section 125 Cafeteria Plan updates (Mitchell Griggs)

Staff Recommendation: Approve updates.

Documents provided to Board prior to meeting: Summary of changes and draft Section 125 Cafeteria Plan updates.

- Mitchell Griggs, HSS Chief Operating Officer, stated that the revisions to the Section 125 Cafeteria Plan were made in compliance with federal rules.
- Revisions were made as follows:
 - Exhibit D updated 2016 Flexible Credit values; and
 - Exhibit E updated benefit program table (administrator name update and new voluntary benefit for 2016).

Public comments: None.

Action: Motion was moved and seconded by the Board to approve the Section 125 Cafeteria Plan updates as presented.

Motion passed 5-0.

□ 09102015-11 Action item

Vote on whether to cancel October 8, 2015 regular Health Service Board meeting due to Open Enrollment (Director Dodd)

Staff Recommendation: Approve cancellation of regular October meeting.

Documents provided to Board prior to meeting: None.

Public comments: None.

Action: Motion was moved and seconded by the Board to cancel its regular meeting on October 8, 2015 due to Open Enrollment

Motion passed 5-0.

□ 09102015-12 Action item

Vote on whether to cancel November 12, 2015 regular Health Service Board meeting and hold strategic update and forum (Director Dodd)

Staff Recommendation: Approve cancellation of regular November meeting to hold strategic update and forum.

Documents provided to Board prior to meeting: None.

- Director Dodd reported that this public meeting will take place at the same time and date as the Board's regular meeting in November. However, it will be an informal session wherein the Board members will discuss issues such as the impact of its decisions, specialty drugs, compliance, surrogate coverage for same-sex couples and other topics.
- President Scott stated that he and Director Dodd, along with other Board members, will provide input in drafting the agenda for this forum.

Public comments: Diane Urlich, retired member, asked for the start time of this forum.

President Scott clarified that this meeting will be held on November 12, 2015 at 1:00 pm, the Board's regular meeting time.

Action: Motion was moved and seconded by the Board to cancel its regular meeting on November 12, 2015 and hold a strategic update and forum instead.

Motion passed 5-0.

□ 09102015-13 Discussion item

Report on network and health plan issues (if any) (Respective plan representatives)

 Jennifer Magoon, UnitedHealthcare Account Manager, introduced Shannon Haas, retiree Strategic Account Executive, who replaced Nicole Bonner.

Public comments: None.

□ 09102015-14 Discussion item Opportunity to place items on future agendas

President Scott reported that a Governance Committee meeting had been scheduled on September 22, 2015 at 10:00 am in Hearing Room 416 to undertake the process of evaluating the HSS Director and the Board's self-evaluation.

Public comments: None.

09102015-15 Discussion item Opportunity for the public to comment on any

matters within the Board's jurisdiction

Public comments: None.

□ 09102015-16 Action Item Vote on whether to hold closed session to discuss

member appeal under Charter §12.200(5). (California Constitution Article I, Section 1; the Confidentiality of Medical Information Act, Cal. Civ. Code §§56 et seq; and the Health Insurance Portability and Accountability Act, 42 U.S.C.

§§1320d et seq.) (President Scott)

Staff recommendation: Hold closed session.

Public comment on all matters pertaining to the

closed session: None.

Action: Motion was moved and seconded by the Board to hold a closed session member appeal.

Motion passed 5-0.

Closed session pursuant to California Constitution Article I, Section 1; the Confidentiality of Medical Information Act, California Civil Code §§56 et seq; and the Health Insurance Portability and Accountability Act, 42 U.S.C. §§1320d et seq.

□ 09102015-17 Action Item

Discussion and possible action regarding member

appeal (Deputy City Attorney)

Documents provided to Board prior to meeting:

Draft prepared by City Attorney.

Reconvene in Open Session

□ 09102015-18 Action item Possible report on action taken in closed session

(Government Code Section 54957.1(a)(5) and San Francisco Administrative Code Section 67.12

(President Scott)

Public Comments: None.

Action: Motion was moved and seconded by the Board not to report on action taken in closed session.

Motion passed 5-0.

09102015-19 Action item Vote to elect whether to disclose any or all

discussion held in Closed Session (San Francisco Administrative Code Section 67.12) (President Scott)

Public Comments: None.

Action: Motion was moved and seconded by the Board not to disclose any of the discussion held in

closed session.

Motion passed 5-0.

□ Adjourn: 4:17 pm

Summary of Health Service Board Rules Regarding Public Comment

- Speakers are urged to fill out a speaker card in advance, but may remain anonymous if so desired.
- A member of the public has up to three (3) minutes to make pertinent public comments before action is taken on any agenda item.
- A member may comment on any matter within the Board's jurisdiction as designated on the agenda.

Health Service Board and Health Service System Web Site: http://www.myhss.org Disability Access

Regular Health Service Board meetings are held at City Hall, 1 Dr. Carlton B. Goodlett Place, in Hearing Room 416 at 1:00 PM on the second Thursday of each month. The closest accessible BART Station is Civic Center, three blocks from City Hall. Accessible MUNI lines serving this location are: #42 Downtown Loop, and the #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call (415) 923-6142. There is accessible parking in the vicinity of City Hall at Civic Center Plaza adjacent to Davies Hall and the War Memorial Complex.

Accessible seating for persons with disabilities (including those using wheelchairs) will be available.

In order to assist the City's effort to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Knowing Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County of San Francisco exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, visit the Sunshine Ordinance Task Force website at http://www.sfgov.org/sunshine.

Lobbyist Registration and Reporting Requirements

Individuals and entities influencing or attempting to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112; web site www.sfgov.org/ethics.

Summary of Health Service Board Rules Regarding Cell Phones and Pagers

- The ringing and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at Health Service Board and committee meetings.
- The Chair of the meeting may order the removal of any person(s) in violation of this rule from the meeting room.
- The Chair of the meeting may allow an expelled person to return to the meeting following an agreement to comply with this rule.

The complete rules are set forth in Chapter 67A of the San Francisco Administrative Code.

If any materials related to an item on this agenda have been distributed to the Health Service Board after distribution of the agenda packet, those materials are available for public inspection at the Health Service System during normal office hours. For more information, please contact Laini K. Scott at (415) 554-0662 or email at laini.scott@sfgov.org.

The following email has been established to contact all members of the Health Service Board: health.service.board@sfgov.org.

Health Service Board telephone number: (415) 554-0662