

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Adoption of Chapter 14-52
Hawaii Administrative Rules

August 16, 1999

SUMMARY

Chapter 14-52, Hawaii Administrative Rules, entitled "Flexible Spending Accounts Plan", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 5

STATE OF HAWAII CAFETERIA PLAN

CHAPTER 52

FLEXIBLE SPENDING ACCOUNTS PLAN

Subchapter 1 Purpose and Definitions

- \$14-52-1 Purpose
- \$14-52-2 Definitions
- \$\$14-52-3 to 14-52-9 (Reserved)

Subchapter 2 Administration

- \$14-52-10 Plan administrator
- \$14-52-11 Nondiscriminatory administration
- \$\$14-52-12 to 14-52-19 (Reserved)

Subchapter 3 Participation in the Plan

- \$14-52-20 Participation; compensation reduction agreement
- \$14-52-21 Administration fee
- \$14-52-22 Maximum annual amount of reimbursements or benefits
- \$14-52-23 Duration of elections
- \$14-52-24 Annual elections to continue participation; failure to file
- \$14-52-25 Participation in the medical expense reimbursement account while on unpaid leave of absence or unpaid FMLA leave

\$14-52-26 Participation in the dependent care
 expense reimbursement account while
 on unpaid leave of absence, unpaid
 FMLA leave, vacation leave, sick
 leave, or other paid leaves
 \$14-52-27 Participation in the medical expense
 reimbursement account and dependent
 care expense reimbursement account
 while on USERRA leave
 \$14-52-28 Change or cancellation of elected
 benefits
 \$14-52-29 Separation from service
 \$14-52-30 Administrative cancellations
 \$14-52-31 Cessation or termination of
 participation
 \$14-52-32 Recommencement of participation
 §§14-52-33 to 14-52-39 (Reserved)

Subchapter 4 Accounts and Statements

\$14-52-40 Individual spending accounts
 \$14-52-41 Adjustments to individual spending
 accounts
 \$14-52-42 Interest on contributions
 \$14-52-43 Participant statements
 \$14-52-44 Disclosure of information
 §§14-52-45 to 14-52-49 (Reserved)

Subchapter 5 Payment of Benefits

\$14-52-50 Eligible expenses; reimbursement
 \$14-52-51 Reimbursement claim form; filing
 requirements
 \$14-52-52 Processing and payment of claims
 \$14-52-53 Appealing a denied or partially paid
 claim
 §§14-52-54 to 14-52-59 (Reserved)

Subchapter 6 Use of Contributions, Forfeited Balances, and Interest

§14-52-60 Use of contributions, forfeited
 balances, and interest

§§14-52-61 to 14-52-69 (Reserved)

Subchapter 7 Continuation of Coverage for
Medical Expense Reimbursement
Spending Account under COBRA

\$14-52-70 Continuation of coverage for medical
 expense reimbursement spending
 account

§§14-52-71 to 14-52-75 (Reserved)

Subchapter 8 Amendment or Termination of the Plan

§14-52-76 Amendment or termination of the plan

SS14-52-77 to 14-52-79 (Reserved)

Subchapter 9 General Provisions

S14-52-80 Effect of the plan on employment

\$14-52-81 Tax effects

§14-52-82 Transfer of benefits

§14-52-83 Participants who cannot be located

§14-52-84 Heirs and assigns

\$14-52-85 Computation of time

\$14-52-86 Headings and captions

\$14-52-87 Severability

§14-52-88 Applicable law

SUBCHAPTER 1

PURPOSE AND DEFINITIONS

\$14-52-1 Purpose. (a) The purpose of the flexible spending accounts plan is to allow eligible employees of the State to participate, on a pre-tax basis, in two types of benefits provided under the plan: medical expense reimbursement spending accounts and dependent care expense reimbursement spending accounts.

(b) The medical expense reimbursement spending account is intended to provide reimbursement for eligible medical and health care expenses (including dental, drug, and vision) that are not reimbursed by health insurance plans covering the participant or the participant's dependents. The State intends that the medical expense reimbursement spending account qualify as an accident and health plan within the meaning of sections 105(e) and 125 of the Code.

(c) The dependent care expense reimbursement spending account is intended to provide reimbursement for certain eligible types of care provided to participants' children and other dependents. The State intends that the dependent care expense reimbursement spending account qualify as a dependent care assistance plan within the meaning of sections 129(d) and 125 of the Code.

(d) These rules implement the plan and are intended to comply with the requirements of the Code. If there are any conflicts between the Code and these rules, the Code shall prevail. [Eff **SEP 13 1999**]
(Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. Law 99-272, as amended.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Compensation" means wages and all other earnings of a participant reported as federal taxable wages on a W-2 form.

"Compensation reduction agreement" means the voluntary written agreement between an eligible employee and the State in which the eligible employee agrees to reduce the employee's pre-tax compensation to obtain the benefits offered under the plan.

"Dependent" means an individual who can be claimed by an eligible employee as a dependent for federal tax purposes (under section 152(a) of the Code).

"Director" means the director of the State of Hawaii department of human resources development.

"Elected benefits" means the medical expense reimbursement spending account or dependent care expense reimbursement spending account, or both, selected by the participant.

"Eligible dependent care expenses" means expenses for qualifying dependent care services incurred by the participant or the participant's spouse, or the cost of sending a child of the participant to a qualified day care center or qualified caregiver.

"Eligible employee" means a person who is an employee of the state executive branch and who is eligible for the State of Hawaii employees' retirement system.

"Eligible medical expenses" means those expenses incurred by the participant, or the participant's spouse or dependents, for qualifying medical, dental, drug, and vision services allowable under section 213 of the Code (without regard to the limitations contained in section 213(a) of the Code); provided that this shall not include an expense incurred for the payment of premiums under a health insurance plan

or for the purpose of cosmetic surgery as defined by section 213(d) of the Code.

"Enrollment period" means the period of time designated by the State prior to the beginning of the plan year in which eligible employees may participate in the plan by completing the compensation reduction agreement.

"FMLA" means the Family and Medical Leave Act of 1993, 29 U.S.C. section 2601, as amended.

"FSA" or "plan" means the State of Hawaii flexible spending accounts plan which includes the medical expense reimbursement spending account and the dependent care expense reimbursement spending account described in this chapter.

"Highly compensated individual" means any employee defined as such in sections 105(h) and 414(q) of the Code.

"Key employee" means any employee defined as such in section 416(i) of the Code.

"Participant" means any eligible employee who participates in the plan in accordance with this chapter and part II of chapter 78, HRS.

"Plan year" means each twelve-month period commencing July 1 and ending on June 30.

"Qualified caregiver" means an individual who provides qualifying dependent care services and is not: a dependent of the participant; the participant's spouse; or a child of the participant who is under age nineteen (19) at the close of the plan year in which the services are rendered.

"Qualified day care center" means a day care center which provides full-time or part-time care for more than six individuals (other than individuals who reside at the day care center) on a regular basis during the participant's taxable year; receives a fee, grant, or payment for providing these services to any individual; and complies with all applicable state and local laws.

"Qualifying dependent care services" means services related to the care of a qualifying individual, that are performed while the participant

and the participant's spouse are both gainfully employed, and that are performed:

- (1) In the home of the participant; or
- (2) Outside the home of the participant for the care of a dependent of the participant under the age of thirteen (13), or the care of any other qualifying individual who spends at least eight (8) hours per day in the participant's home.

"Qualifying individual" means, for purposes of the dependent care expense reimbursement spending account, a:

- (1) Dependent of the participant who is under the age of thirteen (13); or
- (2) Dependent or spouse of the participant who is physically or mentally incapable of caring for himself or herself.

"Spouse" means an individual who is legally married to a participant; provided that this shall not include an individual legally separated from a participant under a decree of legal separation.

"State" means the State of Hawaii.

"Third-party administrator" means the outside party contracted by the director to perform the day-to-day operations of the plan.

"USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. section 4301, as amended. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

\$\$14-52-3 to 14-52-9 (Reserved).

SUBCHAPTER 2

ADMINISTRATION

\$14-52-10 Plan administrator. (a) The State, through the director, shall be the named fiduciary responsible for administration of the plan.

(b) The director shall be the administrator of the plan and may contract with a third-party administrator to perform recordkeeping, communications, and the day-to-day operations of the plan. The director may delegate any of the director's powers or duties under the plan in writing to the third-party administrator or any other person or entity.

(c) The delegated representative shall have a fiduciary responsibility for only that part of the administration which has been delegated by the director and any references to the State or director shall instead apply to the delegated representative. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-11 Nondiscriminatory administration. (a) The plan shall be administered by the director and third-party administrator in a nondiscriminatory manner and in accordance with the Code and other applicable state laws.

(b) The plan is intended to not discriminate in favor of highly compensated individuals or key employees with respect to eligibility to participate, contributions, and benefits. If, in the judgment of the director, the operation of the plan results in such discrimination, the director may exclude highly compensated individuals or key employees from participating in the plan, or limit their participation in the plan. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§§14-52-12 to 14-52-19 (Reserved).

SUBCHAPTER 3

PARTICIPATION IN THE PLAN

S14-52-20 Participation; compensation reduction agreement. (a) To participate in the plan, an eligible employee shall submit a completed compensation reduction agreement to the third-party administrator before the close of the enrollment period for each plan year or within ninety (90) days of becoming eligible. The compensation reduction agreement shall be provided by the third-party administrator.

(b) In the compensation reduction agreement, the eligible employee shall provide the following:

- (1) The eligible employee's name, address, and social security number;
- (2) The type(s) of benefit(s) or spending account(s) selected;
- (3) The amount of pre-tax compensation the eligible employee wishes to contribute during the period covered by the compensation reduction agreement, provided that:
 - (A) The maximum amount of contributions shall be subject to the reimbursement limitations specified in section 14-52-22; and
 - (B) Except as otherwise provided in this chapter or law, the pre-tax compensation contribution shall be made by payroll reduction;
- (4) Whether the eligible employee wants the reimbursement amount deposited in a checking or savings account, or sent by check to the eligible employee's address; and
- (5) Any other information reasonably required by the director or third-party administrator.

(c) Participation in the plan shall commence on the first day of the next plan year for compensation

reduction agreements received and approved during the enrollment period.

(d) Participation in the plan during the plan year for newly eligible employees shall commence on the first day of the month following the third-party administrator's receipt and approval of the compensation reduction agreement, provided that the compensation reduction agreement is received by the third-party administrator within ninety (90) days of becoming eligible.

(e) By becoming a participant, each eligible employee agrees to make the monthly contribution specified in the compensation reduction agreement, pay the monthly administration fee, and abide by the provisions of the plan. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

S14-52-21 Administration fee. (a) Each participant shall pay a monthly administration fee, if required by the State. The amount of the fee shall be determined by the director.

(b) Except as otherwise provided in the Code or this chapter, the fee shall be paid on a pre-tax basis and shall be made by payroll reduction.

(c) Each participant shall pay one monthly administration fee regardless of whether the participant enrolls in one or both types of spending accounts.

(d) The administration fee shall be paid for the entire month regardless of when, during the month, the participant voluntarily cancels coverage, separates from service, or is administratively canceled as provided in this chapter. Upon cancellation of the participant's coverage or separation from service, the fee shall be deducted from the participant's account balance and paid until contributions are exhausted or until ninety (90) days following the date participation is terminated, whichever comes first.

(e) A participant who takes an unpaid leave of absence or unpaid FMLA leave in accordance with section 14-52-25 and elects to make payments using the

prepayment method or pay-as-you-go method shall be required to pay the administration fee on an out-of-pocket basis. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

\$14-52-22 Maximum annual amount of reimbursements or benefits. (a) The maximum annual amount of reimbursement or benefits a participant may receive for eligible medical expenses shall be \$2,400.

(1) If both husband and wife are eligible employees and become participants of the plan, each may contribute a maximum annual amount of \$2,400.

(2) The \$2,400 shall not include the participant's monthly administration fee.

(b) The maximum annual amount of reimbursement or benefits a participant may receive for eligible dependent care expenses shall be as follows:

(1) If the participant is not married at the close of the plan year, the maximum annual reimbursement shall be the lesser of \$5,000 or the participant's compensation for the plan year; and

(2) If the participant is married at the close of the plan year, the maximum annual reimbursement shall be the lesser of:

- (A) \$5,000 (or \$2,500 in the case of a married participant filing a federal tax return separately from the participant's spouse);
- (B) The participant's compensation for such plan year; or
- (C) The compensation of the participant's spouse for such plan year; provided that if the participant's spouse is a full-time student or is incapable of caring for himself or herself as provided in the Code, and has no earned income, the spouse shall be deemed to have compensation of \$200 per month if the participant has one dependent, or

\$400 if the participant has two or more dependents.

The maximum annual reimbursement amount above shall be reduced by the participant's monthly administration fee and the amount of any tax-exempt dependent care assistance benefits received by the participant or the participant's spouse from any other employer during the plan year.

(c) If the maximum annual reimbursement amount for the dependent care expense reimbursement account is increased or decreased by the Code, the maximum annual reimbursement amount in subsection (b) shall be automatically increased or decreased by an identical amount. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-23 Duration of elections. A completed and submitted compensation reduction agreement and the elections thereunder shall remain in effect until the end of the plan year for which they are made, unless a change is made pursuant to sections 14-52-25, 14-52-26, 14-52-27, and 14-52-28. [Eff]
(Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-24 Annual elections to continue participation; failure to file. (a) During each plan year, an eligible employee shall affirmatively reelect to continue participation in the plan by filing a new compensation reduction agreement during the annual enrollment period.

(b) The new compensation reduction agreement shall become effective on the first day of the plan year which commences after the compensation reduction agreement is properly signed, dated, submitted by the eligible employee, and received by the third-party administrator during the annual enrollment period.

(c) If any participant fails to file a new compensation reduction agreement during the enrollment period, the participant shall be deemed to have elected to receive cash compensation in lieu of the

benefits under the plan and shall not be considered a participant in the plan. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

S14-52-25 Participation in the medical expense reimbursement account while on unpaid leave of absence or unpaid FMLA leave. (a) A participant who takes an unpaid leave of absence or unpaid FMLA leave may elect to continue participation in the medical expense reimbursement account by making the required contributions and administration fees under the plan during the period of unpaid leave or unpaid FMLA leave. The participant may make the payments using either the:

- (1) Prepayment method: the participant may prepay the entire contribution due during unpaid leave or unpaid FMLA leave; or
- (2) Pay-as-you-go method: the contributions due during the unpaid leave or unpaid FMLA leave period may be paid out-of-pocket based on the same schedule that would have been used if the participant had not been on unpaid leave or unpaid FMLA leave, and under the State's existing rules for payment by employees on leave without pay.

A participant on unpaid leave or unpaid FMLA leave who fails to make the required contributions or administration fees shall be administratively canceled from the medical expense reimbursement account in accordance with section 14-52-30.

(b) A participant who takes an unpaid leave or unpaid FMLA leave for ten (10) or more working days may elect to change or cancel the medical expense reimbursement account elected benefits in accordance with section 14-52-28.

(c) A participant who is administratively canceled or elects to cancel participation in the medical expense reimbursement spending account under subsection (b), and returns from unpaid leave or unpaid FMLA leave during the same plan year, may recommence participation in the medical expense

reimbursement account in accordance with section 14-52-20. The election may be the same as or different from the benefit that was in effect at the time the participant began the unpaid leave or unpaid FMLA leave, in accordance with section 14-52-28.

[Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-26 Participation in the dependent care expense reimbursement account while on unpaid leave of absence, unpaid FMLA leave, vacation leave, sick leave, or other paid leaves. (a) A participant in the dependent care expense reimbursement account who takes an unpaid leave of absence, unpaid FMLA leave, vacation leave, sick leave, or other paid leaves (e.g., sabbatical leave, funeral leave, administrative leave, industrial injury leave, accidental injury leave, family leave, or compensatory time off) shall not be entitled to submit a claim for dependent care expenses incurred during the unpaid leave of absence, unpaid FMLA leave, vacation leave, sick leave, or other paid leaves.

(b) A participant who takes an unpaid leave of absence or unpaid FMLA leave may elect to continue participation in the dependent care expense reimbursement account by making the required contributions and administration fees under the plan during the period of unpaid leave or unpaid FMLA leave in the manner prescribed under section 14-52-25(a). A participant who fails to make the required contributions or administration fees shall be administratively canceled from the plan in accordance with section 14-52-30.

(c) A participant in the dependent care expense reimbursement account who takes unpaid leave of absence or unpaid FMLA leave of ten (10) or more working days may elect to change or cancel the dependent care expense reimbursement account elected benefits in accordance with section 14-52-28. A participant who cancels participation in the dependent care expense reimbursement account shall not be

allowed to recommence participation in the dependent care expense reimbursement account for the remainder of the plan year. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

\$14-52-27 Participation in the medical expense reimbursement account and dependent care expense reimbursement account while on USERRA leave. (a)

Notwithstanding the provisions of sections 14-52-25 and 14-52-26, a participant who takes an unpaid leave of absence under USERRA may elect to continue participation under the medical expense reimbursement account and dependent care expense reimbursement account by making the required contributions and administration fees under the plan during the period of unpaid USERRA leave using one of the methods specified under section 14-52-25(a). A participant who fails to make the required contributions or administration fees shall be administratively canceled from the plan in accordance with section 14-52-30.

(b) A participant on unpaid USERRA leave of ten (10) or more working days may elect to change or cancel participation in the medical expense reimbursement account or dependent care expense reimbursement account in accordance with section 14-52-28.

(c) A participant who is administratively canceled or elects to cancel, and who returns from unpaid leave of absence under USERRA during the same plan year, may recommence participation in the medical expense reimbursement account and the dependent care expense reimbursement account for the remainder of the plan year upon return from the USERRA leave. The participant may recommence participation in accordance with section 14-52-20 and under the same conditions and with the same rights that applied prior to the USERRA leave. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

§14-52-28 Change or cancellation of elected benefits. (a) Except as otherwise provided in this chapter, once an eligible employee has elected benefits under the plan and the plan year has begun, the eligible employee may not change or cancel the elected benefits unless there is a change in status authorized under the Code. Examples of a change in status authorized under the Code include, without limitation:

- (1) A change in legal marital status (including marriage, death of a spouse, divorce);
- (2) A change in the number of dependents (including birth, adoption, or death of a dependent);
- (3) A change in employment status (including commencement or termination of employment of the spouse); or
- (4) A change in work schedule (including an increase or decrease in the number of hours of employment by the eligible employee or spouse, a switch between full-time and part-time status, or commencement of an unpaid leave of absence).

(b) To change or cancel elected benefits, a participant shall submit a written request on a form prescribed by the director to the third-party administrator fully describing the change in status, within ninety (90) days of the change in status.

- (1) An allowable change in elected benefits shall be effective on the first day of the month following the third-party administrator's receipt and approval of the required forms and shall be consistent with the status change.
- (2) The cancellation of elected benefits or an election of new benefits may be made by a participant only for the remainder of the plan year, shall be effective prospectively, shall be consistent with the status change, and shall be done in accordance with this chapter. An allowable cancellation of

elected benefits shall be effective on the last day of the month following the third-party administrator's receipt and approval of the required forms. [Eff **SEP 13 1999**]
 (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-29 Separation from service. (a) If a participant separates from service with the State during a period in which the participant is covered under the plan, coverage shall terminate on the same date as the participant's separation from service.

(b) A participant who separates from service shall be entitled to reimbursement for claims for qualified benefits incurred up until the participant's separation from service, only if the participant or the participant's estate applies for the reimbursement on or before the end of ninety (90) days following the date of the separation from service and the administration fees are paid during the ninety (90) day period in accordance with section 14-52-21. Thereafter, any unused contributions shall be permanently forfeited to the State. [Eff

SEP 13 1999] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-30 Administrative cancellations. (a) If a participant fails to make the monthly contribution specified in the compensation reduction agreement, or fails to pay the monthly administration fee, the third-party administrator may administratively cancel the employee's participation in the plan.

(b) The third-party administrator shall notify the participant of the cancellation in writing.

(c) The administrative cancellation shall be effective retroactively to the beginning of the pay period in which the participant failed to make the monthly contribution or pay the monthly administrative fee.

(d) Once the administrative cancellation becomes effective, any unused contributions shall be permanently forfeited to the State. [Eff **SEP 13 1999**

] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-31 Cessation or termination of participation. A participant shall cease to be a participant as of the earliest of:

- (1) The date on which the plan terminates;
- (2) The date on which the participant ceases to be eligible for the plan;
- (3) The effective date of a voluntary cancellation due to an allowable change in status pursuant to section 14-52-28, or unpaid FMLA or USERRA leave pursuant to sections 14-52-25, 14-52-26 or 14-52-27; or
- (4) The date an administrative cancellation becomes effective under this chapter. [Eff

SEP 13 1999
HRS §78-61)

] (Auth: HRS §78-61) (Imp:

§14-52-32 Recommencement of participation. (a) Except as otherwise provided in this chapter, a former active participant who is reemployed during the same plan year in which the participant separated from service:

- (1) May recommence participation in the medical expense reimbursement account in accordance with section 14-52-20. The election may be the same as or different from the benefit that was in effect at the time the participant separated from service with the State, in accordance with section 14-52-28; and
- (2) Shall not be allowed to recommence participation in the dependent care expense reimbursement account for the remainder of the plan year.

(b) A former active participant who has a change in status pursuant to section 14-52-28 in the same plan year in which the participant terminated enrollment in the plan due to the change in status may

recommence participation in accordance with section 14-52-20.

(c) A former active participant who recommences participation in accordance with this section, shall not be entitled to any forfeited balances. The participant shall be required to establish a new spending account. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

§§14-52-33 to 14-52-39 (Reserved).

SUBCHAPTER 4

ACCOUNTS AND STATEMENTS

§14-52-40 Individual spending accounts. Upon receipt and approval of a completed compensation reduction agreement, the third-party administrator shall establish and maintain an individual spending account or accounts for each participant for recordkeeping and reporting purposes. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

§14-52-41 Adjustments to individual spending accounts. Each individual spending account shall be credited with the amount of contributions made and shall be adjusted whenever a reimbursement is made. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

§14-52-42 Interest on contributions. A participant shall not be entitled to any interest earned on the pre-tax compensation amounts contributed by the participant. [Eff **SEP 13 1999**] (Auth: HRS \$78-61) (Imp: HRS \$78-61)

§14-52-43 Participant statements. (a) The third-party administrator shall send each participant a quarterly statement within thirty (30) days after the end of the calendar quarter that shall contain the following:

- (1) Amounts of pre-tax compensation contributed to the plan and credited to the participant's spending account(s);
- (2) Amounts and dates of any reimbursements;
- (3) Remaining balance in the participant's spending account(s); and
- (4) Any other information reasonably required by the director.

(b) The third-party administrator shall mail the quarterly statements to the participant's last known address on file with the third-party administrator.

[Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-44 Disclosure of information. Information about a participant shall only be disclosed to the participant, the third-party administrator, the State, or a person authorized in writing by the participant unless otherwise authorized or required by law. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§§14-52-45 to 14-52-49 (Reserved).

SUBCHAPTER 5

PAYMENT OF BENEFITS

§14-52-50 Eligible expenses; reimbursement. (a) A participant shall only be entitled to reimbursement for eligible medical expenses and eligible dependent

care expenses incurred after becoming a participant and for the remainder of the plan year.

(b) The director shall determine, in accordance with the Code and other applicable state laws, whether a submitted dependent care expense is an eligible expense. An expense shall be an eligible dependent care expense only if the service is provided by a person who is a qualified caregiver.

(c) The director shall determine, in accordance with the Code and other applicable state laws, whether a submitted medical expense is an eligible expense.

(d) Eligible medical and dependent care expenses shall be considered incurred when the goods or services giving rise to such eligible expenses are provided, irrespective of when such eligible expenses are billed to the participant.

(e) Reimbursement shall not be made for any amount that does not qualify as an eligible medical or dependent care expense, and no participant or former participant shall receive a reimbursement amount which exceeds the amount actually paid for eligible medical and dependent care expenses. [Eff **SEP 13 1999**]
(Auth: HRS §78-61)(Imp: HRS §78-61)

\$14-52-51 Reimbursement claim form; filing requirements. (a) To receive benefits under the plan, a participant shall submit a written claim for reimbursement to the third-party administrator. The claim shall be filed and received by the third-party administrator in accordance with the Code and other applicable state laws:

- (1) At any time during the plan year, provided the participant maintains eligibility;
- (2) Within ninety (90) days after the end of the plan year, provided the eligible medical or dependent care expense was incurred during the plan year;
- (3) Within ninety (90) days following the date a participant separates from service, provided the eligible medical or dependent care

- expense was incurred during the plan year and prior to separation from service; and
- (4) Within ninety (90) days after the employee ceases to be a participant, provided the eligible medical or dependent care expense was incurred during the plan year and prior to cessation of participation.
- (b) The claim shall be on a form prescribed by the director and shall include the following:
- (1) The name, address, and social security number of the participant;
 - (2) The type of benefit claimed;
 - (3) The amount of reimbursement being requested; and
 - (4) Any other information reasonably required by the director or third-party administrator.
- (c) The minimum amount of a claim for reimbursement shall be \$15; provided that at the end of the plan year, the minimum amount may be less than \$15.
- (d) The maximum amount of a claim for reimbursement of eligible medical expenses shall be the amount specified in the participant's compensation reduction agreement; provided that whenever a participant receives a reimbursement, the maximum amount shall be reduced by the amount of the reimbursement. The maximum amount of a claim for eligible dependent care expenses shall be the amount of contributions remaining in a participant's spending account.
- (e) A participant shall provide whatever proof the director or third-party administrator may reasonably require to verify the claim. [Eff
- SEP 13 1999**] (Auth: HRS §78-61)(Imp: HRS §78-61)

\$14-52-52 Processing and payment of claims. (a) Claims shall be processed on a semi-monthly basis and subject to the approval of the director or third-party administrator in accordance with the Code and other applicable state laws.

(b) If a participant's claim is approved, the participant shall be reimbursed the approved amount. Participants shall only be entitled to be reimbursed from:

- (1) The remaining balance in the participant's dependent care expense reimbursement spending account; or
- (2) The total amount specified in the compensation reduction agreement for the participant's medical expense reimbursement spending account less any prior reimbursements for that plan year.

(c) Upon approval, the third-party administrator shall:

- (1) Deposit the reimbursement amount into the participant's checking or savings account; or
- (2) Issue a check in the reimbursement amount and mail the check to the participant's last known address on file with the third-party administrator.

(d) If the participant's claim is rejected for any reason, the third-party administrator shall notify the participant in writing within two (2) business days of the rejection, clearly explaining the basis for the rejection and informing the participant of the appeal procedure set forth in section 14-52-53.

(e) If a claim is authorized for an amount different from the request for reimbursement, the third-party administrator shall provide the participant written notification of the reason within five (5) business days of the authorization and shall inform the participant of the appeal procedure set forth in section 14-52-53. [Eff **SEP 13 1999**]
(Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-53 Appealing a denied or partially paid claim. (a) Within sixty (60) days after a participant receives notice denying a claim in whole or in part under section 14-52-52, the participant or the participant's duly authorized representative may

request in writing a full and fair review of the claim by the director.

(b) The director may extend the sixty-day (60) period where the nature of the benefit involved or other attendant circumstances make such extension appropriate.

(c) The appeal shall include all pertinent information related to the claim and shall be submitted to the director, who shall make the final decision.

(d) The director shall render a final decision within sixty (60) days after receipt of the appeal; provided that if special circumstances require an extension of time, the director shall render a final decision within one hundred twenty (120) days after receipt of the appeal. The director's decision shall be in writing and shall include specific reasons for the decision.

(e) Except as otherwise provided by law, all decisions on appeals by the director shall be final and conclusive upon all participants. [Eff
SEP 13 1999] (Auth: HRS §78-61)(Imp: HRS §78-61)

§§14-52-54 to 14-52-59 (Reserved).

SUBCHAPTER 6

USE OF CONTRIBUTIONS, FORFEITED BALANCES, AND INTEREST

§14-52-60 Use of contributions, forfeited balances, and interest. (a) Contributions shall be used for the benefit of the participants and the plan.

(b) Any balance remaining in a participant's spending account(s) after ninety (90) days following the end of the plan year or ninety (90) days following a cancellation in accordance with this chapter shall be forfeited by the participant, and the participant's spending account balance shall be reduced to zero for that plan year.

(c) Except as otherwise provided by law, the forfeited balances and interest earned on the contributions shall revert to the State. [Eff
SEP 13 1999] (Auth: HRS §78-61) (Imp: HRS §78-61)

§§14-52-61 to 14-52-69 (Reserved).

SUBCHAPTER 7

CONTINUATION OF COVERAGE FOR MEDICAL EXPENSE REIMBURSEMENT SPENDING ACCOUNT UNDER COBRA

§14-52-70 Continuation of coverage for medical expense reimbursement spending account. (a) Pursuant to COBRA, participants and their dependents who would lose coverage under the medical expense reimbursement spending account as a result of a qualifying event may be entitled to continue coverage for the medical expense reimbursement spending account. Examples of a qualifying event include, without limitation: separation from service, death of the participant, or divorce.

(b) Eligible participants and their dependents shall be given a written notification of COBRA eligibility by the third-party administrator.

(c) The election to continue participation in the plan shall be made within sixty (60) days from the date the eligible participants or their dependents receive the written COBRA notification.

(d) Eligible participants and their dependents shall pay for continued coverage under this section on an out-of-pocket basis and shall be subject to the terms and conditions of the plan. [Eff **SEP 13 1999**
] (Auth: HRS §78-61) (Imp: HRS §78-61)

§§14-52-71 to 14-52-75 (Reserved).

SUBCHAPTER 8

AMENDMENT OR TERMINATION OF THE PLAN

§14-52-76 Amendment or termination of the plan.

(a) The State or the director may amend or terminate the plan, in whole or in part, for any reason, and at any time without the consent of any employee, participant, or other person.

(b) The director may amend or modify this plan retroactively to enable the plan to provide non-taxable medical expense reimbursement benefits under section 105 of the Code or non-taxable dependent care reimbursement benefits under section 129 of the Code.

(c) Except as otherwise provided in the plan, no amendment shall deprive any participant or beneficiary of any benefit to which the participant or beneficiary is entitled under the plan. [Eff **SEP 13 1999**]
(Auth: HRS §78-61) (Imp: HRS §78-61)

§§14-52-77 to 14-52-79 (Reserved).

SUBCHAPTER 9

GENERAL PROVISIONS

§14-52-80 Effect of the plan on employment. (a)

The plan shall not be deemed to constitute a contract of employment between the State and any participant, or to be a consideration or an inducement for the employment of any participant or eligible employee.

(b) Nothing contained in this plan shall be deemed to give any participant or eligible employee the right to be retained in the service of the State or to interfere with the right of the State to terminate any participant or eligible employee at any time regardless of the effect which such termination

will have upon the eligible employee as a participant of this plan. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-81 Tax effects. Neither the State, the director, nor the third-party administrator makes any warranty or other representation as to whether or not any benefits received by a participant under the plan shall be treated as includible in gross income for federal and State income tax purposes. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-82 Transfer of benefits. Except as otherwise provided in this chapter, benefits under the plan shall not be voluntarily or involuntarily transferred, assigned, or alienated. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-83 Participants who cannot be located. If a participant or other distributee is entitled to a reimbursement under this chapter and cannot be located, the reimbursement amount shall be deemed unclaimed or abandoned in accordance with the Uniform Unclaimed Property Act, chapter 523A, HRS. The unclaimed or abandoned reimbursement amount shall be handled in accordance with chapter 523A, HRS. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-84 Heirs and assigns. The plan shall be binding upon the heirs, assignees, transferees, beneficiaries, executors, administrators, successors, representatives, and agents of the participant. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

\$14-52-85 Computation of time. Except as otherwise provided in this chapter, whenever a period of time is stated in terms of days, the period shall

mean calendar days. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-86 Headings and captions. The headings and captions set forth in these rules are provided for convenience only, and shall not affect the construction or interpretation of the plan. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-87 Severability. If any provision of these rules or the plan is declared to be invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of these rules or the plan, and these rules or the plan shall be construed and enforced as if such provision had not been included. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)

§14-52-88 Applicable law. The plan shall be construed and enforced according to the Code, and the laws of the State to the extent not preempted by federal law. [Eff **SEP 13 1999**] (Auth: HRS §78-61) (Imp: HRS §78-61)


DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Chapter 14-52, Hawaii Administrative Rules, on the Summary Page dated August 16, 1999, was adopted on August 16, 1999, following a public hearing held on July 26, 1999, after public notice was given in the Hawaii State & County Public Notices which are circulated in the State of Hawaii, Sun Press community and military newspapers and MidWeek which are circulated in the City and County of Honolulu on June 21, 1999.

The adoption of chapter 14-52 shall take effect ten (10) days after filing with the Office of the Lieutenant Governor.

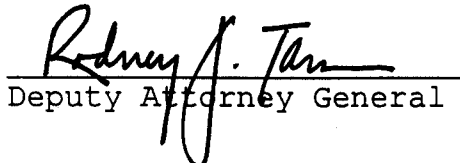

Director, Department of
Human Resources Development

APPROVED:


Benjamin J. Cayetano
Governor
State of Hawaii

Dated: 9/1/99

APPROVED AS TO FORM:


Deputy Attorney General

SEP 02 1999

Filed

LIEUTENANT GOVERNOR
OFFICE

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