

Department of Human Resources Development  
Amendment and Compilation of Chapter 14-52  
Hawaii Administrative Rules

(Date of Adoption)

1. Chapter 52 of Title 14, Hawaii Administrative Rules, entitled "Flexible Spending Accounts Plan," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 5

STATE OF HAWAII CAFETERIA PLAN

CHAPTER 52

FLEXIBLE SPENDING ACCOUNTS PLAN

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SUBCHAPTER 1

PURPOSE AND DEFINITIONS

**§14-52-1 Purpose.** (a) The purpose of ~~[the]~~ this chapter is to implement and administer the State of Hawaii flexible spending accounts plan pursuant to section 78-30, HRS, and within the meaning of section 125 of the Internal Revenue Code of 1986, as amended. ~~The flexible spending accounts plan [is to allow]~~ allows 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]~~ employment-related dependent care expenses for 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.]~~ is intended to satisfy the written plan requirement of section 125 of the Code and any United States Department of the Treasury regulations thereunder relating to cafeteria plans. If there are any conflicts between the Code and these rules, the Code shall prevail. [Eff 9/13/99; am and comp  
] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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.]~~, salaries, tips, other payments, and other earnings of a participant includible as gross income for the taxable year.

"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).]~~ any individual who qualifies as a dependent under section 152 of the Code (as modified under section 105(b) 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:

- (1) The state executive branch; or
- (2) A jurisdiction that is approved by the director to participate in the plan;

and who is eligible to participate in the State of Hawaii employees' retirement system.

"Eligible medical expenses" means those expenses incurred by the participant, ~~[or]~~ the participant's spouse or dependents, or the participant's child (as defined in section 152(f)(1) of the Code) who as of the end of the taxable year has not attained age twenty-seven, 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) ~~[+]~~ and as allowed under section 105 of the Code and the rulings and United States Department of the Treasury regulations thereunder; provided that this shall not include an expense incurred ~~[for]~~:

- (1) 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[-];
- (2) By the participant as a deduction in determining the participant's tax liability under the Code; or
- (3) For qualified long-term care services as defined in section 7702B(c) of the Code.

"Employer" means the State of Hawaii.

"Employment-related dependent care expenses" means the amounts paid for expenses of a participant for those services that, if paid by the participant, would be considered employment-related expenses under section 21(b)(2) of the Code. The term generally includes expenses for household services and for the care of a qualifying dependent, to the extent that the expenses are incurred to enable the participant and the participant's spouse to be gainfully employed or to actively search for gainful employment for any period for which there are one or more qualifying dependents with respect to the participant. Employment-related dependent care expenses are treated as having been incurred when the participant's qualifying dependents are provided with the dependent care that gives rise to the employment-related dependent care expenses, not when the participant is formally billed or charged for, or pays for the dependent care. The determination of whether an amount qualifies as an employment-related dependent care expense shall be made subject to the following rules:

- (1) If the amounts are paid for expenses incurred outside the participant's household, they shall constitute employment-related dependent care expenses only if incurred for a qualifying dependent;
- (2) If the expense is incurred outside the participant's home at a facility that provides care for a fee, payment, or grant for more than six individuals who do not regularly reside at the facility, the

facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

- (3) Employment-related dependent care expenses of a participant shall not include amounts incurred by and paid to a child who is under the age of nineteen, a dependent, or the spouse of a participant.

"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.

~~"Jurisdiction" means [an agency of the State or any of its political subdivisions.]~~ a political subdivision of the State, e.g., the executive branch, the department of education, the public charter schools, the University of Hawaii, the Hawaii health systems corporation, the Office of Hawaiian Affairs, the judiciary, the legislature.

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

"Limited ~~[Rollover]~~ rollover" means, with respect to any plan year beginning on or after ~~[January 1, 2013,]~~ July 1, 2021, an amount, not to exceed ~~[\$500,]~~ \$550, remaining in a participant's medical expense reimbursement spending account at the end of the plan year, including the time allowed for processing claims pursuant to section 14-52-60(b).

"Participant" means any eligible employee who participates in the plan in accordance with this



chapter and [~~part II of chapter 78, HRS.~~] section 78-30, HRS.

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

"Plan administrator" means the director, as provided for in section 14-52-10.

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

"Qualified caregiver" means an individual who provides [~~qualifying dependent care~~] employment-related 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~~] calendar year in which the services are rendered.

"Qualified day care center" means a day care center [~~which~~] that 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" means, for purposes of the dependent care expense reimbursement spending account, a:

- (1) Dependent of the participant, as defined in section 152(a)(1) of the Code, who is under the age of thirteen;
- (2) Dependent, as defined in section 152 of the Code determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B), or spouse of the participant who is physically or mentally incapable of caring for oneself and has the same principal place of residence as the participant for more than one-half of the taxable year; or

(3) Child who is deemed to be a qualifying dependent described in paragraph (1) or (2), whichever is appropriate, pursuant to section 21(e)(5) of the Code.

~~["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 9/13/99; am 6/13/02; am 8/17/15; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§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~~] that has been delegated by the director and any references to the State or director shall instead apply to the delegated representative. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-12 Powers and duties.** The plan administrator shall have the powers and duties specified in the plan to take all action and make all decisions necessary or proper to carry out the plan. The determination of the plan administrator as to any questions involving the general administration and interpretation of the plan shall be conclusive as to all parties thereto. Any discretionary action to be taken under the plan by the plan administrator with respect to employee eligibility, benefits, election cancellations or changes, and reimbursements, shall be uniform in their nature and applicable to all persons similarly situated. Without limiting the generality of the forgoing, the plan administrator shall have the following powers and duties:

- (1) To require any person to furnish information as the plan administrator may reasonably request for the purpose of the proper administration of the plan as a condition to receiving any benefit under the plan;
- (2) To make and enforce rules and prescribe the use of forms as the plan administrator deems necessary for the administration of the plan;
- (3) To interpret the plan and to resolve ambiguities, inconsistencies, and omissions;
- (4) To decide on questions concerning the plan, including eligibility, benefits, election cancellations or changes, and reimbursements;
- (5) To designate short plan years of less than twelve consecutive months for valid business purposes. Notwithstanding the foregoing, the plan administrator may not designate two consecutive short plan years;
- (6) To select and hire advisors and a third-party administrator and appoint qualified parties to handle the day-to-day administrative requirements of the plan; and

(7) To delegate to any or each state agency responsibility for the day-to-day administration of the plan. [Eff and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§14-52-13 to 14-52-19 (Reserved).**

### SUBCHAPTER 3

#### PARTICIPATION IN THE PLAN

**§14-52-20 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)~~] Each type of benefit or spending [~~account(s)~~] account selected;
- (3) The amount of pre-tax compensation the eligible employee wishes to contribute during the period covered by the compensation reduction agreement[~~7~~];  
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~~[7]~~ and, in the case of a medical expense reimbursement spending account, whether the employee instead prefers the option of having a debit card; 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~~[7]~~; 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 9/13/99; am and comp

] (Auth: HRS §78-30) (Imp: HRS §78-

30)

**§14-52-21 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~~] sections 14-52-25 and 14-52-26 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, after-tax basis. [Eff 9/13/99; am and comp ]  
(Auth: HRS §78-30) (Imp: HRS §78-30)

**§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.~~] \$2,750; provided that:

- (1) If both [~~husband and wife~~] spouses are eligible employees and become participants of the plan, each may contribute a maximum annual amount of [~~\$2,400.~~] \$2,750; and
- (2) The [~~\$2,400~~] \$2,750 shall not include the participant's monthly administration fee nor any amounts carried over from a prior year as a limited rollover.

(b) The maximum annual amount of reimbursement or benefits a participant may receive for [~~eligible~~] employment-related 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]~~ calendar 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]~~ calendar year; or
  - (C) The compensation of the participant's spouse for ~~[such plan]~~ the calendar 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]~~ \$250 per month if the participant has one dependent, or ~~[\$400]~~ \$500 if the participant has two or more dependents.

The maximum annual reimbursement amount ~~[above shall]~~ may 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[-], as determined by the plan administrator.

~~[(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 9/13/99; am 8/17/15; am and comp

] (Auth: HRS §78-30) (Imp: HRS §78-

30)

**§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~~] or 14-52-28. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-24 Annual elections to continue participation; failure to file.** (a) [~~During~~] Except as specifically provided in this section, 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~~] that 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~~] an 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.] opt out of continued enrollment and participation in the plan in the following plan year. Notwithstanding the forgoing, an eligible employee shall continue to be considered a participant in the medical expense reimbursement spending account benefit of the plan for any subsequent plan year during which limited rollover funds remain. [Eff 9/13/99; am 8/17/15; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-25 Participation in the medical expense reimbursement spending 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 spending 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 spending 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 spending 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 spending 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 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-26 Participation in the dependent care expense reimbursement spending 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 spending account who takes an unpaid leave of absence, unpaid FMLA leave, vacation leave, sick leave, or other paid leaves (~~e.g.~~ including 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 employment-related 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 spending 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 and 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 spending 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 spending account elected benefits in accordance with section 14-52-28. A participant who cancels participation in the dependent care expense reimbursement spending account and returns from the unpaid leave or unpaid FMLA leave during the same plan year~~[7]~~ may recommence participation in the dependent care expense reimbursement spending account in accordance with section 14-52-20. [Eff 9/13/99; am 6/13/02; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-27 Participation in the medical expense reimbursement spending account and dependent care expense reimbursement spending 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 spending account and dependent care expense reimbursement spending 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 spending account or dependent care expense reimbursement spending 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 spending account and the dependent care expense reimbursement spending 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 9/13/99; am and comp ] (Auth: HRS §78-30)  
(Imp: HRS §78-30)

**§14-52-28 Participant 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~~[-]~~ and if on account of a change of status described in 26 Code of Federal Regulations §1.125-4(c), the change or cancellation is necessitated by and is consistent with a change in status.

(b) 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, legal separation, or annulment);
- (2) A change in the number of dependents (including birth, adoption, addition of a foster child, death of a dependent, ~~[or]~~ placement for adoption~~[-]~~, or the joining of eligible dependents to the employee's household);
- (3) A change in employment status of the employee, the employee's spouse, or the employee's dependent, (including commencement or termination of employment, a strike or lockout, reduction or increase in hours of employment by the employee, spouse, or dependent, commencement of or return from an unpaid leave of absence, transfer to a non-eligible employment classification, a change to a new employment classification where other component plans are available or where the employee's carrier's plan is not available, or a change in worksite);
- (4) A change that causes an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage (including attaining age, student status, or any similar circumstance); or
- (5) A change in residence of the employee, spouse, or dependent~~[-]~~ (including moving from the geographic area covered by the employee's carrier's plan or moving into an area where other component plans are available).

(c) Examples of other changes permitted under the Code include, without limitation:

- (1) A change to conform to a judgment, decree, or order;
- (2) A change because the employee becomes entitled to Medicare or Medicaid coverage;
- (3) A change allowed because of a special requirement relating to the Family and Medical Leave Act; or
- (4) For the dependent care expense reimbursement spending account, a dependent becoming or ceasing to be a qualifying dependent as defined under section 21(b) of the Code and the availability or a significant cost change of a qualified dependent care services provider shall also qualify as changes in status; provided the cost change is imposed by a dependent care services provider who is not related to the participant, as defined in section 152(a)(1) through (8) of the Code.

~~[(b)]~~ (d) 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, and 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 9/13/99; am 6/13/02; am and comp  
] (Auth: HRS §78-30) (Imp:  
HRS §78-30)

**§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 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99;

comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 spending 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 spending 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 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-33 Death of participant.** If a participant dies, the participation in the plan shall cease; provided however, the participant's surviving spouse or dependents may submit claims for expenses or benefits incurred on or before the date of the participant's death. Claims must be submitted no later than ninety days after the date of the participant's death. In no event may reimbursements be paid to a party that is not a spouse or dependent. If the plan is subject to the provisions of section 4980B of the Code, then those provisions and related regulations shall apply for purposes of the medical expense reimbursement spending. [Eff and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§14-52-34 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 9/13/99;

comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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~~] send the quarterly statements to the participant's last known mailing or e-mail address on file with the third-party administrator. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§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~~] employment-related 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~~] employment-related dependent care 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 employment-related dependent care expenses shall be considered incurred when the goods or services giving rise to [~~such~~] the eligible expenses are provided, irrespective of when [~~such~~] the eligible expenses are billed to or paid for by the participant.

(e) Reimbursement shall not be made for any amount that does not qualify as an eligible medical or

employment-related dependent care expense, and no participant or former participant shall receive a reimbursement amount [~~which~~] that exceeds the amount actually paid for eligible medical and employment-related dependent care expenses. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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~~[-]~~, except that a written claim shall not be required for a participant who has opted to use a debit card for the payment of medical expenses, as provided under section 14-52-51.1. 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 employment-related 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 employment-related 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 employment-related dependent care expense was incurred during the plan year and prior to cessation of participation~~[-]~~; and
- (5) Extension of unused amounts. Pursuant to Notice 2020-29 and Notice 2020-33, considering this plan offers a medical

expense reimbursement spending account and/or a dependent care expense account reimbursement spending account, and the plan has a grace period that ends within 2020 or the plan year ends within 2020, the plan may permit expenses to be paid or reimbursed through December 31, 2020.

(b) The claim shall be on a form prescribed by the director and shall include the following:

- (1) The name, address, and last four digits of the 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) For a claim involving an event addressed in paragraphs (a) (2) through (a) (4), the participant shall provide complete information within the ninety day run-out period to enable the third-party administrator to render a determination. A claim that was submitted on a timely basis but that requires additional information or correction of the claim and that is not received by the third-party administrator by the end of the ninety day run-out period will not be allowed.

(d) The minimum amount of a claim for reimbursement shall be \$25 or ~~[such]~~ any other amount approved by the ~~[State,]~~ director; provided that at the end of the plan year, the minimum amount may be less than \$25 or the other amount approved by the ~~[State.]~~ director.

~~[(d)]~~ (e) The maximum amount of a claim for reimbursement of eligible medical expenses shall be the amount specified in the participant's compensation reduction agreement plus the amount of any limited rollover from a prior year; 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]~~ employment-related dependent care expenses

shall be the amount of contributions remaining in a participant's spending account.

~~[(e)]~~ (f) A participant shall provide whatever proof the director or third-party administrator may reasonably require to verify the claim. [Eff 9/13/99; am 8/6/04; am 8/17/15; am and comp ]  
(Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-51.1 Debit card terms; correction methods.** (a) A participant may use debit cards provided by the third-party administrator and the plan for payment of medical expenses, subject to the following terms:

- (1) Card only for medical expenses. Each participant issued a card shall certify that the card shall only be used for medical expenses. The participant shall also certify that any medical expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the participant will not seek reimbursement from any other plan covering health benefits.
- (2) Card issuance. The card shall be issued upon the participant's effective date of participation and reloaded in the amount designated by the participant for each plan year the participant remains a participant in the medical expense reimbursement spending account. The card shall be automatically cancelled upon the participant's death or termination of employment or if the participant has a change in status that results in the participant's withdrawal from the medical expense reimbursement spending account.
- (3) Maximum dollar amount available. The dollar amount of coverage available on the card shall be the amount elected by the participant for the plan year. The maximum dollar amount of coverage available shall be

the maximum amount for the plan year as set forth in section 14-52-22.

- (4) Only available for use with certain service providers. The cards shall only be accepted by merchants and service providers that have been approved by the plan administrator.
- (5) Card use. The cards shall only be used for medical expenses from approved merchants and service providers, including, but not limited to, the following: co-payments for doctor and other medical care; purchase of medicines and drugs either prescribed by an individual so authorized by State law or available over-the-counter; purchase of medical items such as eyeglasses, syringes, crutches, etc.
- (6) Substantiation. All purchases by the cards shall be subject to substantiation by the plan administrator, usually by submission of a receipt from a service provider describing the service, the date, and the amount. The third-party administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(b) If a debit card purchase is later determined by the plan administrator to not qualify as a medical expense, the plan administrator, in its discretion, shall use one of the following correction methods to make the plan whole. Until the amount is repaid, the plan administrator shall take the following actions to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card:

- (1) Repayment of the improper amount by the participant;
- (2) Claims substitution or offset of future claims until the amount is repaid;
- (3) Withholding the improper payment from the participant's wages or other compensation to

- the extent consistent with applicable federal or state law; and
- (4) If paragraphs (1) through (3) fail to recover the amount, consistent with the employer's business practices, the employer may treat the amount as any other business indebtedness. [Eff and comp ]  
(Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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~~] the 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 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§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 or accounts after ninety calendar days following the end of the plan year in excess of any limited rollover, or ninety calendar 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.

(d) Forfeited participant balances and interest earned may be used to defray participant fees and other administrative costs of the plan. [Eff 9/13/99; am 8/17/15; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§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]~~ The third-party administrator shall give eligible participants and their dependents [shall be given a] written notification of their entitlement to continue medical expense reimbursement spending account coverage under 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 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

§§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-77 Contributions and payments after termination of the plan.** In the event the plan is terminated, no further contributions shall be made. No further additions shall be made to the medical expense reimbursement spending account or dependent care reimbursement spending account, but all payments from those accounts shall continue to be made according to the elections in effect until ninety days after the termination date of the plan. Any amounts remaining in any fund or account as of the end of the period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period. [Eff and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§§14-52-78 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~~] that the termination will have upon the eligible employee as a participant of this plan. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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~~] excludable from gross income for federal and State income tax purposes[-], or that any other federal or state tax treatment shall apply to or be available to any participant. It shall be the obligation of each participant to determine whether each payment under the plan is excludable from the participant's gross income for federal and state income tax purposes, and to notify the employer if the participant has reason to believe that any payment under the plan is not so excludable. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-81.1 Indemnification of employer by participants.** If any participant receives one or more payments or reimbursements under the plan that are not for a permitted benefit, the participant shall indemnify and reimburse the employer, plan administrator, and third-party administrator for any liability it may incur for failure to withhold federal or state income tax or social security tax from the payments or reimbursements. However, the indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the participant would have owed if the payments or reimbursements had been made to the participant as regular cash compensation, plus the participant's share of any social security tax that would have been paid on the compensation, less

any additional income and social security tax actually paid by the participant. [Eff and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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~~[.]~~, and shall not be subject to the rights of creditors. [Eff 9/13/99; am and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-84.1 Transmittal of notices.** All notices, statements, reports, and other communications from the plan administrator and third-party administrator to any employee or other person required or permitted under the plan shall be deemed to have been duly given when electronically mailed, hand delivered, or mailed via first class mail to the

employee or other person at the address last appearing on the records of the employer. [Eff and comp  
] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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~~[-]~~, excluding the first day of the event. [Eff 9/13/99; am and comp  
] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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. If there should be any conflict between the headings and captions and the text of the plan, the text shall control. [Eff 9/13/99; am and comp  
] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-87 Severability.** If any provision of these rules or the plan is declared to be invalid or unenforceable by a court, ~~[such]~~ the 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]~~ the provision had not been included. [Eff 9/13/99; am and comp  
] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§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 9/13/99; comp  
] (Auth: HRS §78-30) (Imp: HRS §78-301)

**§14-52-88.1 Health Insurance Portability and Accountability Act (HIPAA).** Notwithstanding any provision of the plan to the contrary, the plan shall be operated in accordance with HIPAA and regulations thereunder. [Eff and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-88.2 Compliance with HIPAA Privacy Standards.** (a) Application. If the medical expense reimbursement spending account under the plan is subject to the Standards for Privacy of Individually Identifiable Health Information (45 Code of Federal Regulations Part 164, the "Privacy Standards"), then this section shall apply.

(b) Disclosure of Protected Health Information. The plan shall not disclose Protected Health Information to any member of the employer's workforce unless each of the conditions set out in this section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present, or future physical or mental health or condition of an individual, including information about treatment or payment for treatment.

(c) Protected Health Information disclosed for administrative purposes. Protected Health Information disclosed to members of the employer's workforce shall be used or disclosed by them only for purposes of plan administrative functions. The plan's administrative functions shall include all plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care.

(d) Protected Health Information disclosed to certain workforce members. The plan shall disclose



Protected Health Information only to members of the employer's workforce who are authorized to receive the Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the plan. "Members of the employer's workforce" shall refer to all employees and other persons under the control of the employer. The employer shall keep an updated list of those authorized to receive Protected Health Information.

- (1) An authorized member of the employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the plan.
- (2) In the event that any member of the employer's workforce uses or discloses Protected Health Information other than as permitted by this section and the Privacy Standards, the incident shall be reported to the plan's privacy officer. The privacy officer shall take appropriate action, including:
  - (A) Investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;
  - (B) Appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;
  - (C) Mitigation of any harm caused by the breach, to the extent practicable; and
  - (D) Documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

- (e) Certification. The employer must provide certification to the plan that it agrees to:
- (1) Not use or further disclose the information other than as permitted or required by the plan documents or as required by law;
  - (2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the plan, agrees to the same restrictions and conditions that apply to the employer with respect to the information;
  - (3) Not use or disclose Protected Health information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the employer;
  - (4) Report to the plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this section, or required by law;
  - (5) Make available Protected Health Information to individual plan members in accordance with Section 164.524 of the Privacy Standards;
  - (6) Make available Protected Health Information for amendment by individual plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
  - (7) Make available the Protected Health Information required to provide an accounting of disclosures to individual plan members in accordance with Section 164.528 of the Privacy Standards;
  - (8) Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the plan available to the United States Department of Health and Human Services for purposes of determining compliance by the plan with the Privacy Standards;

- (9) If feasible, return or destroy all Protected Health Information received from the plan that the employer still maintains in any form, and retain no copies of the information when no longer needed for the purpose for which disclosure was made, except that, if the return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
- (10) Ensure the adequate separation between the plan and members of the employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in subsection (d). [Eff and comp ] (Auth: HRS §78-30) (Imp: HRS §78-30)

**§14-52-88.3 Compliance with HIPAA electronic security standards.** Under the Security Standards for the Protection of Electronic Protected Health Information (45 Code of Federal Regulations Part 164.300 et. seq., the "Security Standards"):

(a) Implementation. The employer agrees to implement reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of Electronic Protected Health Information that the employer creates, maintains, or transmits on behalf of the plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.

(b) Agents or subcontractors shall meet security standards. The employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security

measures to protect the Electronic Protected Health Information.

(c) Employer shall ensure security standards. The employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in section 14-52-88.2. [Eff and comp ]  
(Auth: HRS §78-30) (Imp: HRS §78-30)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material, except source notes and other notes, is underscored.

3. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

4. These amendments to and compilation of chapter 14-52, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_, and filed with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Director  
Department of Human Resources Development

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General