

# FCR 8

Office of the President  
December 9, 2003

Members, Board of Trustees:

## APPROVAL OF AMENDMENTS TO UNIVERSITY SECTION 125 PLAN

Recommendation: that the Board of Trustees approve amendments to the following sections of the Internal Revenue Code Section 125 Plan document to permit these changes:

- Amend section 2.6(b)(i) to allow the open enrollment of a spouse as a qualifying event for plan changes;
- Amend section 2.9 (c) to allow employees to participate in the dependent care reimbursement account, regardless of status (e.g. regular full-time, part-time, etc.);
- Amend section 3.1(c) (ii) to remove the 12 (twelve) month waiting period for new employees who wish to participate in the Health Care Flexible Spending Account;
- Amend section 6.1(b) to increase annual maximum amount for the Health Care Account from \$3,000 to \$4,000;
- Add section 13.2.1 granting the President of the University of Kentucky the authority to amend the plan as needed; and
- Add section 14.15 to provide language required to accommodate the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy provisions.

Background: The Section 125 Plan Document was originally approved by the Board at its June 23, 1987 meeting. The Board amended the Plan document in 1994 and needs to approve changes that will allow the University to comply with updates to federal law. By delegating amendment authority to the University President to approve future changes to the Plan, it will lessen approval time for keeping the plan in compliance with federal laws and permit the President to more easily update the plan to newer business practices.

### Details of Changes:

Section 2.6 b (i) – The amended section, adding one qualifying event, shall read as follows, with the changes shown in **bold print**.

. . . a change in the legal marital status of the Participant, or in the number of the Participant's dependents or in the employment status of the Participant, his spouse or dependents, or an increase or decrease in the hours of employment by the Participant, spouse or dependents, including a switch between part-time and full-time, a strike or lockout, a start of or return from an unpaid leave, **the open**

**enrollment of a spouse**, or an event that causes a Participant's dependent to satisfy or cease to satisfy requirements for coverage under the underlying plan due to age, student status or any similar circumstance provided in the underlying plan, or a change in status that results in an increase or decrease in the number of Participant's family members or dependents who may benefit from coverage under the plan, or a change in the residence or worksite of the Participant, spouse or dependent or the commencement or termination of an adoption proceeding, but only if the election change the Participant seeks to make is consistent with the change in status; or. . .

Section 2.9 (c) – The amended section, expanding eligibility to employees other than regular full-time, shall read as follows, with the changes shown in **bold** print.

For purposes of allocating salary reduction contributions to the Dependent Care Account pursuant to Section 6.1(c), **any employee** who is employed by the University or a participating Affiliate and who has sufficient earnings to have the necessary deductions made.

Section 3.1(c)(ii) – This section shall be deleted, eliminating the waiting period for initial enrollment. The prior language read as follows.

. . .the date the eligible Employee completes at least 12 full months of regular half-time or more employment with the Employer or a participating Affiliate since the last date of the eligible Employee's hire; or. . .

Section 6.1(b) Health Care Account – The amended section, raising the maximum contribution from \$3,000 to \$4,000, shall read as follows, with the changes shown in **bold** print.

A Participant may elect for any Plan Year to have salary reduction contributions of not less than Two Hundred Fifty Dollars (\$250.00) nor more than **Four Thousand Dollars (\$4,000.00)** allocated to the Participant's Health Care Account. Amounts so allocated shall be applied toward the reimbursement of covered medical expenses in accordance with the provisions of Article 8.

Section 13.2.1 Amendments and Changes to Plan – The following section, delegating to the President future details of the Plan, shall be added to the document.

The University of Kentucky reserves the right, by action of its Board of Trustees, acting by and through its President, to terminate the Plan or amend the Plan, in any manner or respect, including with respect to the Plan's terms, conditions, benefit structures, and coverages, at any time.

Section 14.15.1.1 Health Insurance Portability Accountability Act of 1996 (HIPAA) – The following section, ensuring compliance with federal law (HIPAA), shall be added to the document.

## **HIPAA PRIVACY MASTER PLAN AMENDMENT FOR Group Health Plans OF THE UNIVERSITY OF KENTUCKY**

WHEREAS, the Health Insurance Portability and Accountability Act of 1996, ("HIPAA"), and the regulations issued thereunder at 45 CFR Parts 160 and 164 ("the HIPAA regulations"), impose privacy obligations on group health plans that restrict the use and disclosure of protected health information ("PHI");

WHEREAS, The University of Kentucky sponsors and maintains the following group health plans that are subject to the HIPAA regulations: Flexible Spending Account (FSA) Program;

WHEREAS, the University of Kentucky and/or agents representing the University intend to receive PHI from the Plan(s) (including its Business Associates, health insurance issuers, HMOs, and their agents) from time to time;

WHEREAS, the HIPAA regulations require the University of Kentucky to amend the Plan(s) to incorporate provisions specified in 45 CFR 164.504(f)(2) prior to the receipt of such PHI; and

WHEREAS, the President of the University is authorized under section 9 of this document to approve Amendments to the Plans;

NOW, THEREFORE, each respective Plan is hereby amended, as set forth below, to implement appropriate protections required under the HIPAA regulations.

1. **Effective Date**. This Amendment is effective as of March 20, 2003.
2. **Uses and Disclosures of PHI**. The Plan and the University of Kentucky may disclose a Plan Participant's PHI to the University of Kentucky (or to the University's agent) for the following Plan administration functions under 45 CFR 164.504(a), to the extent not inconsistent with the HIPAA regulations:

**Benefits Department:**

Uses of PHI include Customer Service, Claims and Eligibility Appeals

**Benefits Accounting:**

Uses of PHI include Payment or Funding of FSA Claims and reconciliation of Enrollment and Contributions.

**Business Systems Support, Fiscal Affairs and Information Technology**

Uses of PHI includes system support for Eligibility, Contributions, Claims and Administrative Fees and providing Reconciliation and Error reports to Benefits Department and Benefits Accounting.

**3. Restriction on Plan Disclosure to the University of Kentucky.**

Neither the Plan nor any of its Business Associates will disclose PHI to the University of Kentucky except upon the Plan's receipt of University of Kentucky certification that the Plan has been amended to incorporate the agreements of the University of Kentucky under paragraph 4, except as otherwise permitted or required by law.

**4. Privacy Agreements of The University of Kentucky** As a condition for obtaining PHI from the Plan, its Business Associates, Insurers, and HMOs, the University of Kentucky agrees it will:

- a. Not use or further disclose such PHI other than as permitted by paragraph 2 of this Amendment, as permitted by 45 CFR 164.508, 45 CFR 164.512, and other sections of the HIPAA regulations, or as required by law;
- b. Ensure that any of its agents, including a subcontractor, to whom it provides the PHI agree to the same restrictions and conditions that apply to the University of Kentucky with respect to such information;
- c. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the University of Kentucky;
- d. Report to the Plan any use or disclosure of the PHI that is inconsistent with the uses or disclosures provided for of which the University of Kentucky becomes aware;
- e. Make the PHI of a particular Participant available for purposes of the Participant's requests for inspection, copying, and Amendment, and carry out such requests in accordance with HIPAA regulation 45 CFR 164.524 and 164.526;
- f. Make the PHI of a particular Participant available for purposes of required accounting of disclosures by the University of Kentucky pursuant to the Participant's request for such an accounting in accordance with HIPAA regulation 45 CFR §164.528;
- g. Make the University of Kentucky internal practices, books, and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance by the Plan with HIPAA;

h. If feasible, return or destroy all PHI received from the Plan that the University of Kentucky still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, the University of Kentucky agrees to limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and

i. Ensure that there is adequate separation between the Plan and the University of Kentucky by implementing the terms of subparagraphs 5.i.(1) through (3), below:

(1) Employees With Access to PHI: The following employees or other individuals under the control of the University of Kentucky are the only individuals that may access PHI received from the Plan:

- a. Joey Payne, Plan Administrator, Director of Employee Benefits and Self-funded Plans
- b. Michelle Bliffen, Benefits Manager for Medical Programs and Data Management, Employee Benefits
- c. Kathy Harman, Benefits Manager for Benefit Programs and Customer Service
- d. Tony Day, Manager of Accounts Payable, Office of the Controller and Treasurer
- e. Kim Lush, Manager of Benefits Financial Accounting, Office of the Controller and Treasurer
- f. Geoff Malloy, Director of Business Systems Support, Fiscal Affairs and Information Technology

(2) Use Limited to Plan Administration: The access to and use of PHI by the individuals described in (1), above, is limited to Plan Administration functions as defined in HIPAA regulation 45 CFR §164.504(a) that are performed by University of Kentucky for the Plan.

(3) Mechanism for Resolving Noncompliance. If the University of Kentucky HIPAA Compliance Officer determines that any person described in (1), above, has violated any of the restrictions of this Amendment, then such individual shall be disciplined in accordance with the policies of the University of Kentucky established for purposes of privacy compliance, up to and including dismissal from employment. The University of Kentucky shall arrange to maintain records of such violations along with the persons involved, as well as disciplinary and corrective measures taken with respect to each incident.

5. **PHI not Subject to this Amendment.** Notwithstanding the foregoing, the terms of this Amendment shall not apply to uses or disclosures of Enrollment, Disenrollment, and Summary Health Information made pursuant to 45CFR 164.504 (f)(l)(ii) or (iii); of PHI released pursuant to an Authorization that complies with 45 CFR 164.508; or in other circumstances as permitted by the HIPAA regulations.

6. **Definitions.** All capitalized terms within this Amendment not otherwise defined by the provisions of this Amendment shall have the meaning given them in the respective Plan or, if no other meaning is provided in the Plan, the term shall have the meaning provided under HIPAA.

7. **Copies Effective as Originals.** A copy of the signed and dated original of this Amendment shall be as effective as the original, and either an original or such copy shall be appended to the governing instruments of each Plan and shall be deemed to be a part of such governing instruments.

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Action taken:  Approved  Disapproved  Other Approved with amendment;  
see minutes