

2020 AMENDMENT – CAFETERIA PLANS

We are providing you with this amendment so that you can amend your Cafeteria Plans to comply with the new CARES Act provisions concerning reimbursement of over-the-counter (OTC) drugs, menstrual products, and telehealth; the temporary change in status provisions under IRS Notice 2020-29; the DOL/IRS updates to the claims procedures and COBRA timelines (IRS Notice 2020-23 and EBSA Disaster Relief Notice 2020-01), and the new cost of living adjustment for the carryover provisions under IRS Notice 2020-33.

Are cafeteria plans required to be amended for this change?

No, most of this is optional. However, if the plan wants to take advantage of these changes, it must be amended to do so. The changes to claims deadlines and COBRA timelines are required for plans that are subject to ERISA. However, these will apply regardless of whether the plan itself is amended and it does not need to be amended solely to take advantage of these provisions. Care should be taken as to the change in status rules for the health insurance coverage to confirm that the insurance carrier will permit the change.

Does an employer need to modify or make any elections in the amendment? Can the amendment be modified?

Yes. The employer will need to add an effective date and choose which provisions to add. The amendment can be modified as needed.

When do the amendments become effective?

The amendment can take effect at any time during 2020; however, IRS guidance indicates expenses for OTC drugs and menstrual products are reimbursable only if incurred after December 31, 2019. The IRS has provided that the amendments to expand flexibility for participants to make new election changes or adjust grace periods and carryovers can be retroactive to January 1, 2020 so long as an amendment is made by December 31, 2021. However, if the employer is adding the new changes to medical expenses, the amendment should be adopted prior to the end of the 2020 plan year if those expenses will be reimbursed for the 2020 plan year.

In addition to the amendment, we have provided a sample Adopting Resolution, a sample Summary of Material Modifications (SMM), and a sample attestation for a participant to complete to document that they have obtained other coverage when revoking employer coverage under the new change in status provision.

2020 AMENDMENT FOR CARES ACT AND OTHER CHANGES

ARTICLE 1 PREAMBLE; DEFINITIONS

- 1.1 **Adoption of Amendment.** The Employer adopts this Amendment to implement provisions of the Act and other regulations and Notices issued by the IRS or DOL which affect the Plan.
- 1.2 **Superseding of inconsistent provisions.** This Amendment supersedes the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this Amendment.
- 1.3 **Construction.** Except as otherwise provided in this Amendment, any "Section" reference in this Amendment refers only to this Amendment and is not a reference to the Plan. The Article and Section numbering in this Amendment is solely for purposes of this Amendment and does not relate to the Plan article, section, or other numbering designations.
- 1.4 **Effect of restatement of Plan.** If the Employer restates the Plan then this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated onto a plan document which incorporates these provisions).
- 1.5 **Definitions.** Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment. The following definition applies specifically to this Amendment:

The "Act" is the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. This Amendment shall be interpreted and applied to comply with the Act.

ARTICLE 2 IDENTIFYING INFORMATION; EMPLOYER ELECTIONS

- 2.1 **Identifying information.**
- A. Name of Employer: MILLARD PUBLIC SCHOOLS
- B. Name of Plan: CAFETERIA PLAN
- 2.2 **Medical Expenses.** Will the Plan reimburse any or all of the following amounts, as described in Article 3, for Participants?
- (a) ☒ **Over the Counter Medications.**
- (b) ☒ **Menstrual products.**
- (c) ☒ **Telehealth (to the extent not otherwise provided).**
- 2.3 **Change in Status for health coverage.** Will the Plan adopt the new change in status events for Participants related to medical health coverage, as described in Section 4.2?
- (a) ☐ **Yes.**
- (b) ☒ **No.**
- (c) ☐ **Limitation:** The Employer elects to limit the change in status as follows: *(e.g. can only increase coverage, number of changes allowed (one time, before 7/31/2020, etc.))*:

- 2.4 **Change in Status for Health Flexible Spending Account.** Will the Plan adopt the new change in status events for Participants related to Health Flexible Spending Accounts, as described in Section 4.3?
- (a) ☐ **Yes.**
- (b) ☒ **No.**
- (c) ☐ **Limitation:** The Employer elects to limit the change in status to the following: *(e.g. only revoke for amounts over the amount already reimbursed, can only increase, number of changes allowed (one time, before 7/31/2020, etc.))*:

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- 2.5 **Change in Status for Dependent Care Flexible Spending Account.** Will the Plan adopt the new change in status events for Participants related to Dependent Care Flexible Spending Accounts, as described in Section 4.3?
- (a) ☒ Yes
- (b) ☐ No.
- (c) ☐ **Limitation:** The Employer elects to limit the change in status to the following: *(e.g. only revoke for amounts over the amount already reimbursed, only increase, number of changes allowed (one time, before 7/31/2020, etc.))*:
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- 2.6 **Carryover.** Will the Plan adopt the carryover provisions and/or the new adjustment for the carryover of amounts to be used in the health flexible spending account - \$550 for Plan Years beginning on or after January 1, 2020, and adjusted in future years, as described in Article 5.
- (a) ☐ Yes.
- (b) ☒ No.
- 2.7 **Grace Period and Extended Claims Period for Unused Amounts.** Will the Plan adopt the extension of time through December 31, 2020 to permit employees to apply unused amounts remaining in the Health Flexible Spending Account and/or Dependent Care Flexible Spending account as described in Article 6.3?
- (a) ☐ Yes, and the extension will apply to:
- (1) ☐ Health Flexible Spending Account.
- (2) ☐ Dependent Care Flexible Spending Account.
- (b) ☒ No.
- 2.8 **Effective Date.** This Amendment is effective as of January 1, 2020, or, if later, the following date: _____ . Expenses must be incurred after _____, *(Enter a date not earlier than December 31, 2019.)*

ARTICLE 3 MEDICAL EXPENSES REIMBURSED

- 3.1 **Application.** The Plan's definition of "Medical Expenses" under the Plan is amended by the addition of the following provisions as selected at Section 2.2.
- 3.2 **Over the Counter Medications.** This Section 3.2 applies if the Employer has made Election 2.2(a). Notwithstanding anything in the Plan to the contrary, a Participant may be reimbursed for the cost of any medicine or drug for medical care, within the meaning of the term "medical care" as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, determined without regard to whether medicines or drugs have been prescribed. Insulin remains a covered expense. The intention of this provision is to permit coverage for over the counter medications.
- 3.3 **Menstrual Products.** If the Employer has made Election 2.2(b), a Participant may be reimbursed for the purchase of menstrual care products as defined in Code Section 223(d)(2)(D) and as authorized in Code Section 106(f).
- 3.4 **Telehealth.** If the Employer has made Election 2.2(c), a Participant may be reimbursed for expenses related to telehealth and other remote care as defined in the CARES Act and further guidance. Such coverage will not disqualify an HSA-eligible High Deductible Health Plan if made for services provided on or after January 1, 2020, with respect to Plan Years beginning on or before December 31, 2021 or, and with respect to such additional Plan Years as may become permissible under applicable law and/or IRS guidance.

ARTICLE 4
CHANGE IN STATUS EVENTS

- 4.1 **Application.** For calendar year 2020 only, the Plan's provisions concerning "Change in Status" under the Plan are amended by the addition of the following provisions. Such provisions can apply to medical health coverage, the Health Flexible Spending Account and Dependent Care Flexible Spending Account, as elected at 2.3 to 2.5 above for mid-year elections made during calendar year 2020. All changes in health insurance coverage must be allowed by the Plan's insurance carrier and can be limited by that carrier.
- 4.2 **Change in Status – health insurance.** This Section 4.2 applies if the Employer has made Election 2.3 and is subject to any limitations in Election 2.3(c).
- A. **Revocation.** Participant may elect to revoke existing coverage under the Plan and select new coverage not sponsored by the Employer prospectively. Such Participant must complete an attestation that the new coverage will be effective immediately or has been obtained. The Employer may rely on such attestation unless there is actual knowledge to the contrary.
- B. **Prospective Coverage.** A Participant who has previously rejected coverage under the Plan may now elect to be covered prospectively under the Employer's health insurance coverage and pay for such coverage through the Plan. A Participant who has previously elected one type of coverage under the Plan shall be able to elect another type of coverage prospectively under the Plan (e.g. change from individual to family coverage).
- 4.3 **Change in Status – Health or Dependent Care Flexible Spending Account.** Election 2.4 applies this Section to the Plan's Health Flexible Spending Account. Election 2.5 applies this Section to the Plan's Dependent Care Flexible Spending Account. A Participant who has previously rejected coverage under the flexible spending account may now elect to contribute prospectively to such account. A Participant who has previously elected an amount to be reimbursed under the flexible spending account may now adjust or revoke that amount, subject to the statutory and plan limitations on the maximum allowable contribution and the limitations elected above in Election 2.4 (c) and/or 2.5(c).

ARTICLE 5
HEALTH FLEXIBLE SPENDING ACCOUNT CARRYOVER

- 5.1 **Application.** This Section 5.1 will apply if the Employer has made Election 2.6. A Participant in the Health Flexible Spending Account may carry over up to \$550 for a Plan Year beginning on or after January 1, 2020 of unused amounts in the Health Flexible Spending Account remaining at the end of one Plan Year to the immediately following Plan Year, subject to any further provisions or restrictions of the Plan. Such limit shall be adjusted in future years, as indexed to 20% of the statutory limit under Code Section 125(i) for health flexible spending accounts.

ARTICLE 6
CLAIMS SUBMISSION AND OTHER DEADLINES

- 6.1 **Application.** The Plan's deadlines contained within its claims procedures, and various other statutory deadlines are temporarily extended by the "outbreak period" as set forth in IRS Notice 2020-23, EBSA Disaster Relief Notice 2020-01, the joint notice of the IRS and DOL published May 4, 2020, entitled "Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak," and subsequent guidance. Such deadlines shall include but are not limited to HIPAA special enrollment, COBRA elections and claims procedure deadlines, including initial filing and appeal of adverse benefit determination.

- 6.2 **"Outbreak Period."** The "outbreak period" begins March 1, 2020 and extends until 60 days after the end of the National Emergency or such other date as announced by the IRS and DOL, or otherwise declared by the Federal government as a result of the national emergency due to the COVID 19 pandemic.
- 6.3 **Grace Period and Extension of Unused Amounts.** This Section 6.3 will apply if the Employer has made Election 2.7. If the Plan uses a grace period for the Health Flexible Spending Account and/or Dependent Care Flexible Spending Account, the grace period for a calendar year Plan now extends to December 31, 2020. For a grace period or plan year that ends within 2020, the Plan may permit expenses to be paid or reimbursed through December 31, 2020. Unless such Health Flexible Spending Account is a limited purpose flexible spending account, a Participant will not be permitted to contribute to a Health Savings Account (HSA) during the extended period.

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This Amendment has been executed this 11th day of May, 2021.

Name of Plan: CAFETERIA PLAN

Name of Employer: MILLARD PUBLIC SCHOOLS

By: 

EMPLOYER

SUMMARY OF MATERIAL MODIFICATIONS
for the

CAFETERIA PLAN
(Name of Plan)

I
INTRODUCTION

This is a Summary of Material Modifications regarding the MILLARD PUBLIC SCHOOLS ("Plan"). This is merely a summary of the most important changes to the Plan and information contained in the Summary Plan Description ("SPD") previously provided to you. It supplements and amends that SPD so you should retain a copy of this document with your copy of the SPD. If you have any questions, contact the Administrator. If there is any discrepancy between the terms of the Plan, as modified, and this Summary of Material Modifications, the provisions of the Plan will control.

II
SUMMARY OF CHANGES

This amendment is effective JANUARY 1, 2020.

You may now request reimbursement for the purchase of "over the counter" drugs without a prescription.

You may now request reimbursement of the purchase of menstrual care products, including tampons, pads, and other products.

You may now request reimbursement of telehealth services.

For calendar year 2020, you may have a change in status for Dependent Care Flexible Spending Account:

- You may elect to contribute to your Dependent Care Flexible Spending Account if you declined to do so during the enrollment period.
- You may elect to increase your Dependent Care Flexible Spending Account, up to the maximum that we allow.
- You may elect to decrease the amount you contribute to your Dependent Care Flexible Spending Account on a prospective basis (*however, it may not be less than the amount you have already contributed to the plan or have already been reimbursed, if greater*).

The deadlines for submitting claims, exercising HIPAA special enrollment rights, and electing COBRA coverage will be extended due to the pandemic. If you are submitting claims incurred after March 1, or electing special enrollment rights or electing COBRA coverage, you will have an extended period in which to submit claims or make these elections. Your Administrator will provide you with details.