

CAFETERIA PLAN AMENDMENT FOR HEALTH FSA CARRYOVER AND OTHER OPTIONS

We are providing you with this amendment so that you can amend your IRC §125 cafeteria plans to (1) condition the availability of carryover on participation in the health FSA during the following plan year so that if a employee declines to make a health FSA election in the subsequent year, the carryover is not available as permitted by IRS Notice 2015-87 clarifications

Are all Cafeteria Plans required to be amended?

No. This amendments is optional.

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

Yes.

When does the amendment become effective and by when should it be adopted?

(1) With respect to the subsequent year enrollment requirement, the amendment is optional and needs to generally be adopted on or before the beginning of the plan year to which it applies.

In addition to the amendment, we have provided a sample Adopting Resolution and a sample Summary of Material Modifications (SMM). **You must modify the SMM to match the elections made in the amendment.**

**AMENDMENT TO REQUIRE SUBSEQUENT YEAR ENROLLMENT TO BE ELIGIBLE FOR
HEALTH FSA CARRYOVER**

**ARTICLE I
PREAMBLE**

- 1.1 **Adoption and effective date of amendment.** The Employer adopts this Amendment to Averill Park CSD FSA
(Averill Park CSD FSA) ("Plan") to reflect recent law and regulatory changes. The sponsor intends this Amendment as good faith compliance with the requirements of these changes. This Amendment shall be effective on or after the dates the Employer elects in Article II below.
- 1.2 **Supersession of inconsistent provisions.** This Amendment shall supersede 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 reference to "Section" in this Amendment refers only to sections within 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 any Plan article, section or other numbering designations.

**ARTICLE II
ELECTIONS**

- 2.1 **Condition the availability of carryover on participation in the health FSA during the following plan year .** See Section 3.1 below. The effective date of this provision is January 1, 2017 (as of the 2017 plan year; election in the subsequent health FSA plan year will be required in order to carryover any and all eligible remaining funds from the preceding health FSA plan year).

**ARTICLE III
PROVISIONS**

- 3.1 **Condition of availability of rollover funds.**

The availability of carryover funds is contingent upon participation in the health FSA during the following plan year

- 3.2 **Eligibility and Effective Date of Participation.**

Any Eligible Employee shall be eligible to participate *in the Plan* hereunder as of the date he or she satisfies the eligibility conditions for the Employer's Flexible Spending Account plan.

This amendment has been executed this _____ day of _____, _____.

Name of Employer: _____

By: _____
EMPLOYER

CERTIFICATE OF ADOPTING RESOLUTION

The undersigned authorized representative of Averill Park CSD (the Employer) hereby certifies that the following resolutions were duly adopted by Employer on _____, _____, and that such resolutions have not been modified or rescinded as of the date hereof;

RESOLVED, that the Amendment to the _____ Plan (the Amendment) is hereby approved and adopted, and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the amendment.

The undersigned further certifies that attached hereto is a copy of the Amendment approved and adopted in the foregoing resolution.

Date: _____

Signed: _____

[print name/title]

**SUMMARY OF MATERIAL MODIFICATIONS
for the**

_____Averill Park CSD FSA Plan_____

**I
INTRODUCTION**

This is a Summary of Material Modifications regarding the Averill Park CSD FSA Plan (“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**

- 1. Condition of participation in a subsequent health FSA plan year in order to roll any funds eligible under the formerly adopted \$500 carryover provision**