

# Summary Plan Description (SPD) for the New York City Flexible Spending Accounts (FSA) Program



Dependent Care  
Assistance Program  
(DeCAP)

*Plan Year 2010*

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This SPD describes the highlights of the Flexible Spending Accounts (FSA) Program which falls under Internal Revenue Code (IRC) Section 125. The material contained in this SPD is provided for informational purposes only and does not constitute a representation by the City of New York as to results and benefits which might actually be received by any individual. All actions are wholly governed by applicable law and regulations. The IRC and regulations are subject to change and may affect determinations made with respect to the Program. The burden of proof is on the participant in the HCFSA/DeCAP Program to show that each health care/dependent care expense is reimbursable under the Program, as well as being reimbursable under all laws (including the IRC).

# ***Health Care Flexible Spending Account (HCFSA) and Dependent Care Assistance Program (DeCAP) Summary Plan Description (SPD)***

## ***Introduction***

The City of New York, in recognizing the needs of its employees, many of whom incur medical, dental, vision, hearing and dependent care expenses, is pleased to offer HCFSA and DeCAP. HCFSA and DeCAP are ways to help pay for out-of-pocket health care and dependent care expenses, while reducing your taxable income.

Health care expenses can be costly. In most cases, health insurance does not cover all medical expenses. If your family is among those feeling overburdened by medical expenses in your budget, contributing to an HCFSA may be beneficial to you.

Dependent care expenses can also be costly when both parents must work to provide for their family's needs. In the single-parent household, it is virtually a requirement that the parent work full-time in order to make a living. If you are one of the many families overburdened by dependent care expenses, contributing to DeCAP may be beneficial to you.

## ***The Advantage of HCFSA/DeCAP***

As an active employee of the City of New York participating in HCFSA and/or DeCAP, you can set aside from \$260 for HCFSA and \$500 for DeCAP, up to \$5,000 each on an annual basis, to pay for out-of-pocket health care and/or dependent care expenses. Contributions to your HCFSA and/or DeCAP accounts are made with before-tax dollars in equal installments every pay period, thereby reducing your taxable income.

The money you use to pay for eligible health care expenses and/or dependent care expenses is never subject to federal income taxes or Social Security (FICA) taxes, resulting in an increase in your take-home pay. The degree of tax savings you can enjoy will depend on the amount of your contributions, your income, and your tax bracket.

## ***DeCAP Reimbursement Versus the Federal Dependent Care Tax-Credit***

Before deciding whether to allocate money to DeCAP for dependent care reimbursement, it is important to consider the federal tax credit available to people who use dependent care services.

You must choose between having dependent care bills reimbursed through your DeCAP account on a monthly basis or using those expenses to apply for a Federal Dependent Care Tax Credit when you file your Federal Income Tax return.

Although you are permitted by law to use the Federal Dependent Care Tax Credit and/or the DeCAP account, you cannot apply the same expenses to receive both the federal tax credit and a dependent care reimbursement through your DeCAP account.

Under the existing tax credit provision, based on your taxable income, you can take a direct tax credit ranging from 20% to 35% of your eligible dependent care expenses. Eligible expenses are limited to an annual maximum of \$3,000 for one dependent or \$6,000 for two or more dependents. DeCAP eligible expenses are limited to an annual maximum of \$5,000 for one or more dependents.

Keep in mind that you can use the Federal Dependent Care Tax Credit instead of DeCAP if you believe it would save you more in taxes. However, payments received through DeCAP will reduce, dollar for dollar, amounts that can be considered for a tax credit and vice versa.

*You Cannot use HCFSA to pay for health insurance, Cobra, and Long-Term Care premiums.*

When deciding between using the Federal Dependent Care Tax Credit or DeCAP, you should note that if you participate in DeCAP and it covers all of your dependent care expenses, you are not eligible for the New York State tax credit for dependent care expenses.

You must determine whether reimbursing dependent care expenses from a DeCAP account or using the Federal Dependent Care Tax Credit is more advantageous to you, depending on your individual tax status. The basic purpose of the Federal Dependent Care Tax Credit and DeCAP is to help pay for dependent care expenses when you and your spouse must work or attend school full-time.

If you have two or more eligible dependents and you incur more than \$5,000 in dependent care expenses, you may join DeCAP for \$5,000 and apply the excess \$1,000 to the Federal Dependent Care Tax Credit. According to the IRS, the amount of your federal tax credit, or the amount you allocate to DeCAP, cannot exceed the annual earnings of the lower-income spouse. A special rule permits reimbursement for months during which a spouse is a full-time student or is unable to care for himself/herself.

The Flexible Spending Accounts (FSA) Program Brochure provides a guide with examples and worksheets for employees to use when deciding whether to join DeCAP or use the Federal Dependent Care Tax Credit.

## ***Questions and Answers About HCFSA and DeCAP***

### ***Who is eligible to enroll in HCFSA and DeCAP?***

Active City employees covered by New York City health insurance and a) the Citywide contract, or b) the Management Benefits Fund, are eligible to enroll in HCFSA and/or DeCAP. This includes the Mayoralty, HHC, CUNY, OTB, Housing Authority, Department of Education (DOE), and School Construction Authority. (Employees of cultural institutions, libraries and DOE charter schools may be offered HCFSA and DeCAP through their individual institutions.)

### ***How do I enroll in these programs?***

To participate in HCFSA and/or DeCAP, you must complete a Plan Year 2010 FSA Program Enrollment/Change Form during the annual FSA Open Enrollment Period, from September 21, 2009 through November 13, 2009, for the effective date of January 1, 2010.

### ***What happens if I don't enroll during the annual Open Enrollment Period?***

If you do not enroll during the annual Open Enrollment Period, you will not be covered under HCFSA and/or DeCAP and you will have to wait until the next Plan Year's annual FSA Open Enrollment Period before you are eligible to enroll.

### ***Do I need to re-enroll if I am currently in these programs?***

Yes, you must re-enroll every year during the annual Open Enrollment Period since these programs are salary reduction programs. During the annual Open Enrollment Period, you will have to complete a new FSA Program Enrollment/Change Form that will take effect on January 1st of the following year, and remain in effect for the entire calendar year, unless you experience a Qualifying Event.

### ***How do I join these programs as a newly eligible employee?***

If you are a new hire during the Plan Year, you will become eligible to participate in HCFSA and DeCAP when you become eligible to receive City health benefits. To enroll, you must complete and submit an FSA Program Enrollment/Change Form and a Qualifying Event Mid-Year Change Form within thirty (30) days after becoming eligible for HCFSA and DeCAP.

### ***What is a Qualifying Event and what changes can I make if I incur a Qualifying Event?***

Generally, a Qualifying Event is a change in family or employment status.

*Enrollment is not automatic from year to year. Each year you must re-enroll.*

Under both HCFSA/DeCAP, eligible Qualifying Events are:

- commencement of new employment;
- marriage;
- birth or adoption of a child; or
- employee's return from approved unpaid leave of absence (taken during the Open Enrollment Period).

For marriage or birth or adoption of a child during the mid-year, you may add the dependents within thirty (30) days after such an event. At this time, you may also increase your contribution for the remainder of the Plan Year.

Qualifying Events under DeCAP only include:

- divorce or annulment;
- death of a spouse or dependent;
- ineligibility of a dependent;
- termination of employment of participant;
- beginning or termination of employment of participant's spouse;
- changing from part-time to full-time employment, or vice-versa, by participant or participant's spouse; and
- taking an approved unpaid leave of absence by participant or participant's spouse.

***If my spouse's employer has an HCFSA and/or DeCAP Program, am I still eligible to enroll?***

Yes. You and your spouse can each participate in an HCFSA and/or DeCAP Program. However, you may not be reimbursed for the same expenses by more than one program.

***Can my spouse and I each use the \$5,000 limit for DeCAP?***

No. There is a \$5,000 combined limit on dependent care expenses that may be reimbursed each Plan Year. If you are married and file separate tax returns, the DeCAP limit is \$2,500 each.

***Can I reduce my HCFSA election during the year?***

No. Your HCFSA election cannot be reduced, terminated or revoked for any reason whatsoever during the Plan Year.

***Can I reduce my DeCAP election during the year?***

Yes. You may reduce the amount of your annual election to your DeCAP account if you incur a Qualifying Event. The request must be submitted within thirty (30) days after the Qualifying Event's occurrence with proper documentation. An FSA Program Enrollment/Change Form must also be submitted with the Qualifying Event Mid-Year Change Form.

***Can I increase my HCFSA election during the year?***

Yes. You may increase your HCFSA election, but only when you add new dependents during the Plan Year. To add new dependents, you must incur a Qualifying Event. You must submit an FSA Program Enrollment/Change Form and a Qualifying Event Mid-Year Change Form with proper documentation within thirty (30) days after acquiring a new dependent in order to have the dependent covered and to increase your goal amount.

***Can I increase my DeCAP election during the year?***

Yes. You may increase your DeCAP election consistent with your Qualifying Event. You must submit an FSA Program Enrollment/Change Form and a Qualifying Event Mid-Year Change Form with proper documentation within thirty (30) days after the event in order to increase your goal amount.

*You will not receive reimbursement from DeCAP when you and/or your spouse are not working or attending school fulltime*

*You cannot decrease or discontinue your HCFSA contribution for any reason during the Plan Year.*

***What happens to my HCFSA account if I leave City service or take an unpaid leave of absence?***

Upon termination of employment or taking an unpaid leave of absence, you remain obligated to continue to contribute to your HCFSA. You have the option of a) making a lump sum pre-tax payment by notifying the FSA Administrative Office in writing thirty (30) days prior to your termination or unpaid leave of absence or b) having the necessary deductions taken from your last paycheck or pro-rated over your remaining paychecks. If you work for the Department of Education, please be aware that its payroll is closed during the summer months. Therefore, you must notify the FSA Administrative Office in writing before the third week in May.

However, if you fail to provide the required written notification, you must contribute after-tax dollars in an amount equal to the remaining monthly deductions elected as an active participant.

If payment of the remaining elected HCFSA goal amount is defaulted, coverage will cease and collection procedures will ensue. Continuation under HCFSA for future Plan Years will not be permitted for participants who have defaulted on payment of their elected HCFSA goal amount. Failure to contribute, once you have elected to participate in the Plan, will result in your ineligibility to participate for the remainder of the Plan Year and for the following two Plan Years.

At the end of the Plan Year following your termination, you (and any qualifying dependents) may choose to continue HCFSA coverage under COBRA. However, your HCFSA allocation under COBRA (which will include the \$48 HCFSA annual administrative fee) will have to be paid with after-tax dollars, so you will not receive the tax advantages you had as an active employee. Also, a 2% COBRA administrative fee will be added to your annual contribution amount. Under COBRA, you cannot revoke or change your election during the Plan Year.

***What happens to my DeCAP account if I leave City service?***

You will have until December 31 to submit claims for any money already deposited into your account for services rendered during the Plan Year as long as you and your spouse remain actively employed or are full-time students. You also have a Claims Run-Out Period until February 27 after the close of the Plan Year to submit claims for expenses incurred during the previous Plan Year.

***Can I submit claims for DeCAP while I am on a leave of absence?***

No, in order to submit claims for reimbursement from your DeCAP account, you must be actively at work or a full-time student. However, you may terminate from the program or decrease your annual contribution within thirty (30) days after the commencement of your leave.

***Are there any costs associated with my participation in HCFSA and /or DeCAP?***

Yes. Each program has a monthly administrative fee of \$4.00. These administrative fees will be deducted from your HCFSA and/or DeCAP accounts to cover the costs of program administration.

***What types of expenses are eligible for reimbursement under HCFSA?***

You can use HCFSA to reimburse yourself for eligible health care expenses that were provided to you or your eligible health care recipient(s) and which meet the following criteria:

- the expense is incurred for an eligible medical service;
- the service is performed for an eligible health care recipient (defined on Page 7);
- the expense is eligible under the Internal Revenue Code (any expense defined by the IRS as a non-deductible expense for income tax purposes shall be ineligible for reimbursement under HCFSA. Furthermore, an expense deductible for income tax purposes does not necessarily mean that it qualifies for reimbursement under this Plan.); the expense is medically necessary; the expense is not for purely cosmetic and general health reasons; and the expense was not reimbursed, will not be reimbursed, nor is reimbursable by your health insurance and/or your Welfare Fund, or through any other plan.

### ***Who is an eligible health care recipient?***

An eligible health care recipient is any person qualified to be covered by the participant's employer-sponsored medical plan and is either:

- the participant;
- the participant's spouse; or
- the participant's eligible dependent.

You must list each eligible dependent on your FSA Program Enrollment/Change Form. If you acquire a new dependent during the Plan Year, you must submit a new FSA Program Enrollment/Change Form and a Qualifying Event Mid-Year Change Form with proper documentation within thirty (30) days after the date you acquire a new dependent, listing any new dependents. Dependents not listed on the FSA Program Enrollment/Change Form will not be covered by HCFSA.

### ***What types of expenses are eligible under DeCAP?***

You may use DeCAP to pay for expenses that meet the following qualifications:

- The services are performed to enable you and, if you are married, your spouse to remain gainfully employed or full-time students. Dependent care expenses incurred while you are not working (sick leave, vacation, maternity leave, off hours, etc.) or not a full-time student are not eligible for reimbursement under DeCAP.
- The services are for a dependent child claimed on your tax return who is under the age of thirteen (13). For example, if your child will be thirteen (13) on July 1, plan to set aside only the amount needed for January 1 through June 30.
- The service is provided for an incapacitated dependent adult or your disabled child over the age of thirteen (13).
- The dependent care recipient must live with you for more than half of the year.

### ***Who can provide the dependent care services?***

Dependent care services must be provided by a Qualifying Caregiver.

A Qualifying Caregiver is any person who is:

- not your spouse;
- not your dependent; or
- not your child or your spouse's child, unless he/she has attained the age of nineteen (19) as of the close of the Plan Year in which the service was performed.

Services may also be provided by a Qualifying Day Care Center. These are licensed nursery schools, preschools, day camps (not overnight camps), and child care centers which provide day care.

The day care center must:

- comply with all applicable laws and regulations of the state, city, town, or village in which it is located;
- provide care for more than six (6) individuals (other than individuals who reside at the day care center);
- receive a fee, payment, or grant for any of the individuals to whom it provides services (whether facility is profit or non-profit);
- and not be primarily for the purpose of education.

### ***How do I deposit money into my HCFSA and/or DeCAP account?***

On the FSA Program Enrollment/Change Form, you will be asked to indicate the amount you wish to contribute for health care and/or dependent care expenses for the year. These amounts will be deducted automatically from your paycheck in equal installments on a pre-tax basis. As an active employee, you may only make contributions through payroll deductions.

### ***How do I get reimbursed for my health care and/or dependent care expenses?***

To be reimbursed for health care expenses, you must submit an HCFSA Claims Form and documentation to the HCFSA Administrative Office by the last day of the month so that it may be processed for that month. While expenses for any amount are reimbursable, you must accumulate claims totaling at least \$50 before submitting a Claims Form, unless you have less than \$50 remaining in your account.

*Under HCFSA/DeCAP no reimbursement can be made prior to the services being provided.*

To be reimbursed for dependent care expenses, you must submit a DeCAP Claims Form to the DeCAP Administrative Office by the last day of the month so that it may be processed for that month. In order to be reimbursed, the Claims Form must be signed by your Qualifying Caregiver or Qualifying Day Care Center. The form must include the applicable Social Security Number or Federal Tax Identification Number, the name of the person who or institution that provided the service(s), the amount of payment(s) and the date(s) services were performed.

No reimbursement can be made for HCFSA/DeCAP prior to the services actually being provided. You will be sent check(s) or reimbursement will be directly deposited into the bank account you indicate on your FSA Program Enrollment/Change Form, for the reimbursement of approved health care/dependent care expenses received during a particular month by the close of the following month. Check(s) will not be made payable to the service provider or any other third party.

### ***Does this mean that I have to deposit money in my DeCAP account and pay my dependent care expenses before I get reimbursed?***

This will depend on whether the provider of the dependent care service is willing to wait for you to be reimbursed before being paid.

### ***What information must be included on an HCFSA Claims Form?***

The HCFSA Claims Form must:

- indicate the name of the person or persons receiving care;
- include the type of service(s) and the amount of expenses incurred;
- state the name of the service provider;
- show the date(s) of service;
- indicate whether the claims are being submitted during the Plan Year or Grace Period;
- be accompanied by a bill and an Explanation of Benefits (EOB) statement from your health insurance carrier and/or Welfare Fund, if applicable;
- for over-the-counter (OTC) drugs, be accompanied by an itemized receipt or copy of a product box indicating the name of the drug; and
- be signed and dated by the participant.

*The Date(s) of Service(s) on the Claims Form must match the Date(s) of Service(s) on the bills and EOB statements.*

### ***What information must be included on a DeCAP Claims Form?***

The DeCAP Claims Form must:

- indicate the name of the person or persons receiving care;
- include the type of service(s) and the amount of expenses incurred;
- state the name of the service provider;
- show the date(s) of service;
- show the Federal Tax Identification or Social Security Number of the provider;
- be signed and dated by the provider; and
- be signed and dated by the participant.

***How often may I submit claims for these programs?***

You may submit claims as necessary. There is no limit on the number of claims you can file during any single month. You may file a claim as long as you incur an eligible expense and do not exceed your benefit amount.

***What kind of OTC drugs are eligible for reimbursement under HCFSA?***

You may submit claims for any OTC drugs that cure, treat, prevent, or mitigate ailments. Cosmetic items, sundries and toiletries are not eligible. For example, aspirin and cold medicine are eligible, but toothpaste and shampoo are not eligible. Please keep in mind that alternative medicine, such as vitamins and supplements, are not eligible even if recommended by a physician. However, certain vitamins and supplements are eligible if prescribed by a physician. The HCFSA Program reserves the right to request documentation of medical necessity from your physician.

***How do I submit claims for OTC drugs under HCFSA?***

You must submit a Claims Form and an itemized receipt for any and all OTC drugs.

***Can I submit claims under HCFSA in excess of the current balance in my account?***

Yes. Under HCFSA, the full amount of your election, reduced by any claims that have already been paid and the \$48 annual administrative fee, is always available for reimbursement of eligible claims, regardless of the current balance in your account.

***If I receive payment from another HCFSA Program, can I also be reimbursed from the City's HCFSA Program for the same claim?***

A claim may not be reimbursed for more than 100%. You can only submit a claim under the City's HCFSA Program for the amount not covered by the other HCFSA Program.

***Are my health care expenses that are reimbursed by the HCFSA Program also deductible under the federal itemized deduction?***

Health care expenses that are reimbursed from the HCFSA Program are not deductible under the federal itemized deduction.

Once you have exhausted your goal amount, additional expenses that you incur can be deducted for federal tax purposes, if certain requirements are satisfied.

To take advantage of the federal tax deduction, you must itemize your deductions. In addition, your health care expenses must be greater than 7.5% of your adjusted gross income.

***Must I have paid my medical bill in order to be reimbursed under HCFSA?***

You are not required to pay a medical bill to be reimbursed. As soon as you incur the expense and receive the Explanation of Benefits (EOB) statement from your and/or your spouse's primary health insurance carrier and/or Welfare Fund, you may submit a claim.

***What is the deadline for submitting HCFSA claims for a Plan Year?***

For HCFSA only, there is a Grace Period offered following the end of a Plan Year from January 1 through March 15. During the Grace Period for Plan Year 2010, you may submit claims for eligible services incurred from January 1, 2011 through March 15, 2011 using the remaining balance in your Plan Year 2010 account, if any.

Example: At the end of Plan Year 2010, you have \$300 remaining in your HCFSA account. You may submit claims for eligible medical expenses incurred from January 1, 2011 through March 15, 2011 to be reimbursed with the remaining \$300 in your account from Plan Year 2010.

*Visit the FSA Web site at [nyc.gov/olr](http://nyc.gov/olr) to access the on-line savings calculator to estimate your potential savings.*

In the event that you are unable to submit HCFSA claims by the end of the Plan Year or Grace Period, an HCFSA Claims Run-Out Period is provided from March 16, 2011 through May 31, 2011 during which you may submit claims for services performed during the previous Plan Year and/or Grace Period.

*A Grace Period is NOT available for DeCAP. All DeCAP claims must be for services incurred during the Plan Year (January 1-December 31).*

#### ***HCFSA Claims Run-Out Period***

Plan Year:	January 1, 2010 – December 31, 2010
Grace Period:	January 1, 2011 – March 15, 2011
Claims Run-Out Period:	March 16, 2011 – May 31, 2011

***After May 31, 2011, you will forfeit any money remaining in HCFSA for Plan Year 2010.***

#### ***What is the deadline for submitting DeCAP claims for a Plan Year?***

For DeCAP only, in the event that you are unable to submit claims by the end of the Plan Year, a DeCAP Claims Run-Out Period is provided until February 28 following the close of the Plan Year to submit claims for services performed during the previous Plan Year.

#### ***DeCAP Claims Run-Out Period***

Plan Year:	January 1, 2010 – December 31, 2010
Claims Run-Out Period:	January 1, 2011 – February 28, 2011

***After February 28, 2011, you will forfeit any money remaining in DeCAP for Plan Year 2010.***

#### ***What if I do not use all the money I allocated to my HCFSA and/or DeCAP account(s) by the end of the Plan Year?***

Because of the tax advantages afforded by HCFSA and DeCAP, federal regulations require that any unused amounts be forfeited. This is often referred to as the "Use or Lose"\* rule. If you deposit pre-tax dollars into either reimbursement account and do not incur eligible expenses equal to all of the money you deposit, you will forfeit any remaining balance in those accounts.

*IRS guidelines will not permit any remaining balance to be returned to you or carried forward into the next year. Furthermore, if you participate in DeCAP and HCFSA, the amount you allocate to one account cannot be transferred to the other.*

- The "Use or Lose" rule is the reason that we stress the importance of careful planning when you estimate your health care and dependent care expenses for the year. The FSA Program Brochure includes HCFSA and DeCAP worksheets to help you calculate your annual health care and/or dependent care expenses.

#### ***What happens if I transfer to another City agency?***

In order to continue your HCFSA and/or DeCAP through payroll deductions, you must notify the FSA Administrative Office in writing within thirty (30) days prior to your transfer.

#### ***Will participation in these programs affect my pension?***

No. Your contributions to HCFSA/DeCAP will have no effect on your pension contributions or benefits.

#### ***Will participation in HCFSA and/or DeCAP affect any of my other benefits?***

Program participation will reduce your Social Security taxes and thereby reduce future Social Security benefits. The tax benefits of using these types of programs, however, usually outweigh the slight reduction in Social Security benefits.

#### ***Are amounts received from my HCFSA and DeCAP accounts free from all taxes?***

HCFSA and DeCAP fall under Section 125 of the Internal Revenue Code (IRC) and reimbursements received are free from Federal and Social Security taxes. However, you must add back the amount that appears under IRC 125 on your Form W-2 for computing state and city taxes.

***If I am a participant in DeCAP, is there any other form that I must file with the 1040?***

Yes. You must complete Form 2441 "Child Dependent Care Expenses."

***Who should I contact for additional information on these programs?***

If you have any questions and would like to speak to an FSA counselor, you may contact the FSA Administrative Office at 212-306-7760. FSA counselors are available to answer any questions Monday through Friday, 9:00 am to 4:00 pm. In-house counseling is by appointment only. You may also visit the FSA Web site at [www.nyc.gov/olr](http://www.nyc.gov/olr) for program information and to send your questions via e-mail. and the domestic partner is, for tax purposes, a legal dependent of the participant, then the participant can receive the \$1,000 family incentive payment.

## CLAIMS AND ERISA RIGHTS

Claims Forms are available through the FSA Administrative Office and must be filed along with documentation (for HCFSAs only) supporting your claim(s).

A written notice will be provided to any participant or beneficiary whose claim for any benefit is denied. This notice shall include the reason for denial, with reference to the specific plan provision that pertains to the situation.

You are entitled to request a review of any claim that has been denied. The review will be made within a reasonable period of time not to exceed 60 days or, if a hearing is required, 120 days from the date of the request.

Request for review of claims that have been denied should be directed to:

The City of New York  
Office of Labor Relations  
Tax-Favored Benefits Program  
40 Rector Street, 3rd Floor  
New York, NY 10006-1705

Any legal process should be served on the Plan Administrator of FSA at the same location.

As a participant in the City of New York and Related Agencies and Instrumentalities FSA Program, you may be entitled to certain rights and protection under the Employee Retirement Income Security Act of 1974 (ERISA).

ERISA provides that all Plan participants shall be entitled to:

- Examine, without charge, at the Plan Administrator's Office and the Benefits Department, all Plan Documents, and copies of all other documents filed by the Plan with the U.S. Department of Labor, such as detailed annual reports and Plan descriptions.
- Obtain copies of all Plan Documents and other Plan information upon written request to the Plan Administrator who may make a reasonable charge for the copies.
- Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of the summary annual report.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of employee benefit plans. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries.

No one may terminate your employment or otherwise discriminate against you in any way to prevent you from obtaining Plan benefits or exercising your rights under ERISA.

If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan Administrator review and reconsider your claim.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within thirty (30) days, you may require the Plan Administrator to provide the materials and pay you up to \$100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits, which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court.

The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

If you have any questions about your Plan that are not handled satisfactorily by your Benefits Department, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest area office of the U.S. Labor-Management Services Administration, Department of Labor.

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) RIGHTS (FOR HCFSA ONLY)

THIS INFORMATION DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

The New York City Health Care Flexible Spending Account Program (the "Plan") is required by law to take reasonable steps to ensure the privacy of your personally identifiable health information and to inform you about:

- The Plan's uses and disclosures of Protected Health Information (PHI);
- Your privacy rights with respect to your PHI;
- The Plan's duties with respect to your PHI;
- Your right to file a complaint with the Plan and to the Secretary of the U.S. Department of Health and Human Services; and
- The person or office to contact for further information about the Plan's privacy practices.

The term "Protected Health Information" (PHI) includes all individually identifiable health information transmitted or maintained by the Plan, regardless of form (oral, written, electronic).

- 1) You may request the Plan to restrict uses and disclosures of your PHI to carry out treatment, payment or health care operations, or to restrict uses and disclosures to family members, relatives, friends or other persons identified by you who are involved in your care. However, the Plan is not required to agree to your request.
- 2) You have a right to inspect and obtain a copy of your PHI contained in a "Designated Record Set," for as long as the Plan maintains the PHI. "Designated Record Set" includes the medical records and billing records about individuals maintained by or for a covered health provider; enrollment, payment, billing, claims adjudication and case or medical management record systems maintained by or for a health plan; or other information used in whole or in part by or for the covered entity to make decisions about individuals. Information used for quality control or peer review analyses and not used to make decisions about individuals is not in the Designated Record Set.
  - If access is denied, you or your personal representative will be provided with a written denial setting forth the basis for the denial, a description of how you may exercise those review rights and a description of how you may complain to the Secretary of the U.S. Department of Health and Human Services.
- 3) You have the right to request the Plan to amend your PHI or a record about you in a Designated Record Set for as long as the PHI is maintained in the Designated Record Set.
  - The Plan has 60 days after the request is made to act on the request. A single 30-day extension is allowed if the Plan is unable to comply with the deadline. If the request is denied in whole or in part, the Plan must provide you with a written denial that explains the basis for the denial. You or your personal representative may then submit a written statement disagreeing with the denial and have that statement included with any future disclosures of your PHI.
- 4) At your request, the Plan will also provide you with an accounting of disclosures by the Plan of your PHI during the six years prior to the date of your request. However, such accounting need not include PHI disclosures made: (1) to carry out treatment, payment or health care operations; (2) to individuals about their own PHI; (3) prior to the compliance date.
  - If the accounting cannot be provided within 60 days, an additional 30 days is allowed if the individual is given a written statement of the reasons for the delay and the date by which the accounting will be provided.
- 5) You may exercise your rights through a personal representative. Your personal representative will be required to produce evidence of his/her authority to act on your behalf before that person will be given access to your PHI or allowed to take any action for you. Proof of such authority may take one of the following forms:
  - A power of attorney for health care purposes, notarized by a notary public;
  - A court order of appointment of the person as the conservator or guardian of the individual; or
  - An individual who is the parent of a minor child.

The Plan retains the discretion to deny access to your PHI to a personal representative to provide protection to those vulnerable people who depend on others to exercise their rights under these rules and who may be subject to abuse or neglect. This also applies to personal representatives of minors.

If you believe that your privacy rights have been violated or would like to request any of the information listed above, you may contact the Plan in care of the following officer: HIPAA Compliance Officer, 40 Rector Street, 3rd Floor, New York, NY 10006.

You may also file a complaint with the Secretary of the U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201.

## ADMINISTRATIVE INFORMATION

**Plan Name:** The City of New York and Related Agencies and Instrumentalities Health Care Flexible Spending Account and Dependent Care Assistance Program

**Plan Type:** A Health Care Flexible Spending Account, intended to qualify under Sections 125(d) and 105(e) of the Internal Revenue Code. A Dependent Care Assistance Program, intended to qualify under Sections 125 and 129 of the Internal Revenue Code. Both Plans are self-administered.

**Effective Date:** January 1, 1994 for the Health Care Flexible Spending Account and July 1, 1992 for the Dependent Care Assistance Program

**Plan Year:** January 1, 2010 through December 31, 2010

**Enrollment Period:** September 21, 2009 through November 13, 2009

**Plan Administrator:** The City of New York  
Office of Labor Relations  
Tax-Favored Benefits Program  
40 Rector Street, 3rd Floor  
New York, NY 10006-1705  
(212) 306-7760

**Plan Number:** 504 for the Health Care Flexible Spending Account and 503 for the Dependent Care Assistance Program

**Employer ID Number:** 13-6400434

**Future of the Plan:** The City of New York intends to continue this Plan indefinitely, but reserves the right to modify, suspend, or terminate this Plan at any time.

**Employment Rights:** This Plan is not an employment contract. The City of New York reserves the right to hire, promote and/or terminate the employment of any person based on business needs, which are determined at the sole discretion of the City.

**Participating Employers:** The City of New York, the City University of New York, the New York City Health and Hospitals Corporation, the New York City Housing Authority, the New York City Off-Track Betting Corporation, the New York City School Construction Authority, the Queensborough Public Library, the Brooklyn Public Library and the New York City Department of Education.

**Summary Plan Description:** This SPD is intended to outline the terms of coverage available to you. The complete terms of this Plan are set forth in the Plan Document. Every effort has been made to make this Summary as accurate as possible. In the event that anything described in this SPD is in conflict with the Plan Document, the Plan Document will prevail.

**Agent for Service of Legal Process:** The Plan Administrator



*The City of New York  
Office of Labor Relations  
Employee Benefits Program - Tax-Favored Benefits  
40 Rector Street, 3rd Floor, New York, NY 10006  
212-306-7760  
TTY 212-306-7629  
[nyc.gov/olr](http://nyc.gov/olr)*

