

**MODIFICATION OF “USE-IT OR LOSE-IT” RULE**  
**FOR CAFETERIA PLANS EFFECTIVE OCTOBER 31, 2013**

**IRS NOTICE: 2013-71**

1. The “Rollover” (also known as carryover). This new change effective October 31, 2013 allows for any Unreimbursed Medical Expense Reimbursement Participant to “Rollover” up to \$500.00 from the current plan year to the next plan year without regard to the annual cap of \$2,500.00.
2. Definitions required by law. Each Employer and Employee MUST understand the difference in “Grace Period Extension” and the “Run out Period”. The Grace Period Extension is (also currently requires an amendment to your plan document) an election/amendment to your plan document that allows employees to continue to incur reimbursable expenses **up** to 75 day beyond the end of the current plan year. The “Run out Period” is the 90 days beyond the plan year in which employees to file a claim for expenses incurred in the old plan year.
3. Elections/amendments immediately affect the Unreimbursed Medical Expense Reimbursement Account and the Dependent Care Reimbursement Account and ARE separate elections/amendments. The Employer may elect the “Rollover” for the Unreimbursed Medical Expense Account, but it is not available for the Dependent Care Reimbursement Account, however, the “Grace Period Extension” may be elected/amended for the Dependent Care Reimbursement Account.
4. Any plan amendment choice elected/amended by the Employer is applied equally to all participants and affects all employees and MUST be communicated to all affected employees.
5. **Very important!** Beginning 2014 under ACA, Cafeteria Plan can no longer reimburse medical premiums that provide “major medical coverage” the probable exception may be Medicare premiums. In Hawaii, under the Pre-Paid Health Act of 1974, all Hawaii employers must offer health insurance and pay the bulk of the premium, except for certain exemptions, however, with the advent of the “new” health exchange, this does not change the 1974 Hawaii State Law, but will not allow any employee who by law must purchase medical insurance, due to lack of sufficient hours to gain employer sponsored medical coverage, is also preempted from pre-taxing coverage from the Health Exchange. This major change can directly affect ERISA, COBRA and HIPAA as well as many other plan related areas. Additionally, any company with an HSA will need to consult with their Plan Administrator for the changes created by the new “Rollover”.
6. **Making sure your medical plan is an “Excepted Benefit” Plan.** Hawaii is somewhat unique since it has in effect the 1974 Pre-Paid Health Act in force. Virtually all employers will not have issues for their medical premium plans, as they contribute by law in excess of the Excepted Benefit rules. The exception can be come from those participants who pay the “family portion” or “Two party Plan” premiums. This however, may not apply to the Unreimbursed Medical Expense Reimbursement Account and therefore will need to be carefully evaluated.
7. How does the “Rollover” work and what can be rolled over? There are multiple examples, however, the basic idea behind the IRS’s change is that they believe more employees will participate without the “fear” of losing their money. A good thought and a good idea. Example could be if an former non-participating employee were to decide to participate in the next plan year, \$20.00 per month. He/she files no claims and elects to “rollover” the \$240.00 to the following plan year, but decides not to participate with contributions, they could again if no claims rollover to the third plan year the same money, however, each employer must recognize that each year, even without new contributions, that employee is still an active participant that could file a claim. For administration purposes, their account must be established with the “rollover” funds and be ready to process and pay claims. Most administrators will continue to charge fees for that person as an active participant.
8. Insufficient guidance from IRS and no current software is the next concern each employer will need to face. Most software companies are indicating three to six months before they can produce a working

addition to software. Our software is custom software that we have been quoted upwards of \$25,000.00 to make the adjustments for the new Regulation. As the IRS will continue to provide updates, changes and guidance, we can only anticipate more software corrections. We apologize for any delays beyond our control.

9. Coming to you soon. ACA has created several new taxes to your health plan provider. The first you should be aware of is the Annual Health Insurance Tax estimated at around 2.3% for 2014, escalating up to 3.7% by 2023. Additionally, the Transitional Reinsurance Program Assessment Fee covering all participants and those covered under their policy (spouse & children) at an estimated amount of \$5.25 per person per month. And finally, the Patient Centered Outcomes Research Institute fee of \$2.00 per member per month (this one may not be passed on to the employer by the provider, depending on who your carrier is).

**Our mission is to provide your company with the best up-to-date information to keep your plan in compliance. We appreciate your business and hope for your continued success in the future.**

Mahalo,

Shawn D Kajiyama CLU, ChFC

President

Bene-Flex Hawaii, Inc.

Encl. 1 Election to amend (must be accompanied by the regulation, download at [www.beneflexhawaii.com](http://www.beneflexhawaii.com))

**AMENDMENT TO IRC SECTION 125**

**CAFETERIA PLAN**

\_\_\_\_\_ **(COMPANY NAME)** does hereby amend our existing IRC Section 125 Cafeteria Plan as follows:

We elect:

1. Not to make any changes in respect to IRS notice 2013-71 effective October 31, 2013
2. We elect to amend this plan to allow for the "Rollover" provision as describe in IRS Notice 2013-71 effective October 31, 2013
3. We elect to amend this plan to allow for the "Grace Period Extension" as described in IRS Notice 32013-71 effective October 31, 2013

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, we the employer elect to amend our IRC Section 125 with option #\_\_\_\_\_

Signed by: \_\_\_\_\_

Officer's Name and position: \_\_\_\_\_