

## **\*\*SUMMARY OF MATERIAL MODIFICATIONS\*\***

November, 2006

To All Employees and Dependents:

This Summary of Material Modifications is an amendment to your Summary Plan Description (SPD) booklet effective November 1, 2005, to formalize language incorporating recent Trustee actions regarding your Plan.

### **COVERAGE FOR CERTAIN OVER-THE-COUNTER ITEMS**

Effective November 1, 2006, the Trustees have amended the Plan to allow coverage under Comprehensive Major Medical Benefits for certain over-the-counter items under specified conditions. The following language will be added for Plans 1 and 2 on page 28 of the SPD and for Plan 3 on page 39 of the SPD under charges for additional services and supplies:

Over-the-counter splints, braces, and stockings when prescribed by a Physician for a medical condition and an itemized bill that includes the patient's name is obtained from the supplier.

### **SUBROGATION AND REIMBURSEMENT**

The following new language replaces the "Right of Subrogation and Reimbursement" section on pages 46 through 48 of your SPD effective October 24, 2006.

The Plan has a first priority subrogation and reimbursement right if it provides benefits resulting from or related to an injury, occurrence, or condition for which the eligible person has a right of redress against any third-party.

What does first priority right of subrogation and reimbursement mean? It means that if the Plan pays benefits which are, in any way, compensated by a third-party, such as an insurance company, you agree that when a recovery is made from that third-party, the Plan is fully reimbursed out of that recovery for the benefits the Plan previously paid. If you do not agree to the Plan's subrogation and reimbursement rules, benefits will not be paid.

For example, the subrogation and reimbursement right may apply if you are injured at work, in an automobile accident, at a home or business, in an assault, or in any other way for which a third-party has or may have responsibility. If a recovery is obtained from a third-party, such as an insurance company, the Plan will be paid first and to the full extent of the benefits it paid. The eligible person receives payment only after the Plan is fully reimbursed.

The rights of subrogation and reimbursement are incorporated into this Plan for the benefit of each participant in recognition of the fact that the value of benefits provided to each participant will be maintained and enhanced by enforcement of these rights.

### **Subrogation and Reimbursement – Rules for the Plan**

The following rules apply to the Plan's right of subrogation and reimbursement:

- a) Subrogation and Reimbursement Rights in Return for Benefits: In return for the receipt of benefits from the Plan, the eligible person agrees that the Plan has the subrogation and reimbursement rights as described in this Subrogation and Reimbursement section. Further, the eligible person will sign a form acknowledging the Plan's subrogation and reimbursement rights prior to payment, or further payment, of benefits. Benefits will not be paid if the eligible person refuses to sign the acknowledgment. The Plan's subrogation and reimbursement rights to benefits paid prior to Plan notice of a subrogation and reimbursement right are not impacted if the eligible person refuses to sign the acknowledgment.
- b) Constructive Trust or Equitable Lien: The Plan's subrogation and reimbursement rights grant the Plan an equitable lien on the proceeds of any recovery obtained by the eligible person from a third-party, whether by settlement, judgment, or otherwise. When a recovery is obtained, the recovery proceeds are held in trust for the Plan. The Plan then imposes a constructive trust or equitable lien on the recovery proceeds in trust or in any other way prejudices or adversely impacts the Plan's subrogation and reimbursement rights, the Plan reserves the right to, among other things, pursue all available equitable action and offset any future benefits payable to the eligible person under the Plan.
- c) Plan Paid First: Amounts recovered or recoverable by or on the eligible person's behalf are paid to the Plan first, to the full extent of its subrogation and reimbursement rights, and the remaining balance, if any, to the eligible person. The Plan's subrogation and reimbursement right comes first even if the eligible person is not paid for all of their claims for damages. If the Plan's subrogation and reimbursement rights are not fully satisfied directly by a third-party, the Plan's right to reimbursement may be enforce to the full extent of any recovery that the eligible person may have received or may be entitled to receive from the third-party.

- d) Right to Take Action: The Plan's right of subrogation and reimbursement is an equitable one and applies to all categories of benefits paid by the Plan. The Plan and any other Plan member can bring an action (including in the eligible person's name) for specific performance, injunction, or any other equitable action necessary to protect its rights in the cause of action, right of recovery, or recovery by an eligible person. The Plan will commence any action it deems appropriate against an eligible person, an attorney, or any third-party to protect its subrogating and reimbursement rights. These subrogation and reimbursement right applies to claims of eligible dependents covered by the Plan regardless of whether such dependent is legally obligated for expenses of treatment.
- e) Applies to All Rights of Recovery or Causes of Action: The Plan's subrogation and reimbursement rights apply to any and all rights of recovery or causes of action the eligible person has or may have against any third-party.
- f) No Assignment: The eligible person cannot assign any rights or causes of action they may have against a third-party to recover medical expenses without the express written consent of the Plan.
- g) Full Cooperation: The eligible person will cooperate fully with the Plan and do nothing to prejudice or adversely affect the Plan's subrogation and reimbursement rights. Benefits will be denied if the eligible person does not cooperate with the Plan.
- h) Notification to the Plan: The eligible person must promptly advise the Plan Administrator, in writing, of any claim being made against any person or entity to pay the member for their injuries, sickness, or death. Further, the eligible person must periodically update the Plan regarding the claim and notify the Plan of a settlement prior to reaching a compromise of their claims.
- i) Third-Party: Third-party includes, but is not limited to , all individuals, entities, federal, state or local governments, and insurers (including, but not limited to, liability, medical expense, wage loss, worker's compensation, premises liability, no-fault, uninsured or underinsured motorist insurers), who reimburse, compensate or pay for a member's losses, damages, injuries, or claims relating in any way to the injury, occurrence, conditions, or circumstances leading to the Plan's payment of benefits. This right of subrogation and reimbursement exists regardless of whether the policy of insurance is owned by the eligible person.
- j) Apportionment, Comparative Fault, Contributory Negligence, Make-Whole, and Common-Fund Doctrines Do Not Apply: The Plan's subrogation and reimbursement rights include all portions of the eligible person's claims regardless of any allocation or apportionment that purports to dispose of any portion of the claims not otherwise subject to subrogation, including, but not limited to, any apportionment for pain and suffering, wage loss, partial or total disability, or to a spouse for loss of consortium. The Plan's subrogation and

reimbursement rights are not affected, reduced, or eliminated by comparative fault, contributory negligence, the make-whole and common-fund doctrines, or any other equitable defenses.

- k) Attorney's Fees: The Plan will not be responsible for any attorney's fees or costs incurred by the eligible person in any legal proceeding or claim for recovery, unless prior to incurring such fees or costs, the Trustees agree in writing to pay all or some portion of attorney's fees or costs.
- l) Course and Scope of Employment: If the Plan has paid benefits for any injury which arises out of and in the course and scope of employment, the Plan's right of subrogation and reimbursement will apply to all awards or settlements received by the eligible person regardless of how the award or settlement is characterized and regardless of whether the Plan has intervened in the action. If attorney's fees are awarded to the eligible person's attorney from the Plan's recovery, the eligible person will reimburse the Plan for the attorney's fees.

Please keep this Summary of Material Modifications with your Summary Plan Description (SPD) booklet for future reference. If you have any questions, feel free to contact the Fund Office.

Yours very truly,