

Plan Recoveries

SCHEDULE OF PLAN BENEFITS

The Plan Administrator makes the following Plan Elections:

- The attorney representing the Covered Person (may) (will not) be required to also represent the Plan by Contract as a joint-client.
- The Plan (will) (will not) follow the so-called *Common Fund* practice as it relates to attorney fees involved in the claims settlement.
- The Plan (will) (will not) follow the so-called *Make-Whole* practice.
- The Plan (will) (will not) treat a claim in dispute as regards Plan recoveries as an Indeterminate Benefit.

PLAN DOCUMENT

Right of Plan Recoveries

Introduction

The Plan shall recover any payments made to or on behalf of any Covered Person arising out of any claim, cause of action or legal settlement of any kind which may accrue to such Covered Person, or such person's successors in interest (including by way of illustration and not limitation, personal representative, executors, legal representatives, heirs, and assigns) because of, or arising as a result of any of the following:

- Any illness, injury, disease or other condition incurred or suffered by the Covered Person for which any party may be liable or legally responsible by reason or contract, tort or other legal cause.
- A medical malpractice settlement for which the Plan reimbursed the Participant for the cost of the medical procedure(s) giving rise to such malpractice settlement.
- A reduction in the charges of the provider for which the Plan reimbursed the Participant because of a medical error, regardless of whether any liability was assessed against the provider.
- A court award (typically, but not necessarily because of a class action type of settlement) by which a Covered Participant may be given a *disgorgement* payment.
- A reduction in Plan obligations because of ministerial-type errors.

In addition to the Plan's subrogation rights, as a condition of participation under the Plan, each Covered Person shall agree to reimburse the plan from any monies or other property recovered from any party by judgment, settlement or otherwise for any illness, injury, disease or other condition or event(s) for which benefits were provided under the plan, to the extent of such benefit payments.

Cooperation by the Covered Person

A Covered Person must cooperate in every way including claims investigation, completing promptly and accurately the Right of Recovery Agreement, recovery of overpayments, furnishing information and assistance, executing and delivering necessary instruments as may be required and not to prejudice the rights of the Plan. Failure to cooperate or prejudicing any right of the Plan may result in a loss of benefits. Specifically, the Plan may require, as a condition to the payment of any benefits, that the Participant direct in writing that such Participant's attorney in any legal action instituted by such participant, to fairly represent both the interest of such participant and the interest of the Plan. The Plan reserves the right to appoint an attorney in its own right as an alternative to its using such Participant's attorney.

In the event that a settlement is made by another person or insurance company to the Participant or one of the Covered Dependents prior to the Plan's rights being recognized and honored, the liability of the Plan shall be reduced by the amount of such settlement.

Administering Subrogation

The Schedule of Benefits sets forth four methodologies by which the Plan Administrator (or the Plan Supervisor, if appropriate) will equitably adjuduate Plan Recoveries. Each of these methodologies are further described below:

Methodology Number 1. As set forth on the Schedule of Benefits, the Plan Administrator at its sole discretion, may require in order to achieve equity between all plan beneficiaries that the attorney for the Covered Person (or the equivalent thereto) must agree by contract to represent both the interests of the Plan and the interests of such Covered Person.

Methodology Number 2. The Plan will or will not follow the so-called *Common Fund* theory as regards such plan recoveries as set forth in the Schedule of Benefits.

Methodology Number 3. The Plan Administrator (or Plan Supervisor if appropriate) will or will not follow the *Make-Whole* rule as set forth in the Schedule of Benefits.

Methodology Number 4. As set forth in the Schedule of Benefits, the Plan Administrator (or Plan Supervisor, if appropriate) may or may not, as a matter of equity, declare a Plan Recovery to be an Indeterminate Benefit and postpone payment thereof until the equitable determination of such benefit has been made.

Make-Whole Doctrine (Creative Forms of Settlement)

Where the *Make-Whole* Doctrine is not to be followed, as shown in the Schedule of Benefits, the Plan Administrator (or the Plan Supervisor, where appropriate) may, in its sole and absolute discretion, determine whether or not to pursue the Plan's rights of recovery and reimbursement. Any recovery from such other party as the result of a judgement, settlement or otherwise, by or on behalf of such Covered Person shall be applied first in all events to reimburse the Plan for any and all payments made under the Plan with respect to such Covered Person, regardless of (a) the amount of damages claimed by the Covered Person which are recovered against such other party (b) any characterization of the payments by such other party as for the Covered Persons damages (such as personal injuries or future education or training or pain and suffering) other than health care expenses, or (c) the Covered Person recovering the money or other property, being a minor. Where the *Make-Whole* Doctrine is to be followed, the Plan Administrator will follow and abide by the terms of judgment or settlement relative to such recovery.

Notwithstanding the foregoing, any payments received by or with respect to a Covered Person from any insurance company pursuant to a policy under which such Covered person is the owner (or a dependent of the owner of such policy) and a named insured may also be subject to this Section. The Plan shall pay fees and costs associated with the enforcement of the Plan's rights. No Plan benefits will be paid until liability has been established by the Plan Administrator and the form and structure of the Participant settlement to the Covered Plan has been established and agree to by the Plan Administrator (or Plan Supervisor where appropriate). Such form and structure will, at a minimum, allocate the settlement between the following:

- Recovery by or reimbursement of the Plan
- Attorney fees
- Educational
- Pain and suffering
- Economic loss to Participant
- Annuity to fund future income.

Common Fund Doctrine (Attorney Fees)

The Plan will aggregate all claims otherwise payable that are covered by the Right of Recovery Agreement; such claims will be subject to coordination by the Plan with the Plan taking an always secondary position. In determining Allowable Expenses for recovery purposes, the Plan Administrator (or Plan supervisor where appropriate) may or may not reduce such Allowable Expenses by a collection/settlement adjustment (attorney fees, e.g.) as set forth in the Schedule of Benefits. Such adjustment (a reduction of allowable expenses shall never exceed 33%).

Use of Trust for Equity Purposes

The Covered Person agrees to do whatever is necessary to enable the Plan's right of recovery to be exercised. The Covered Person shall hold in trust and reimburse the Plan for any payment it made for which the Covered Person may recover damages, regardless of the damages designation in any settlement agreements, document or court order.

Each Covered Person shall agree to promptly furnish the Plan Administrator (or Plan supervisor, if appropriate) such information concerning such person's right of recovery from any other party, and to fully assist and cooperate with the Plan Administrator (or Plan Supervisor, if appropriate) in protecting and obtaining the Plan's recovery and reimbursement rights. The Covered Person shall further agree not to allow the Plan's recovery and reimbursement rights to be limited or harmed by any other acts or failures to act on the Covered Person's part. In such event, the Plan Administrator (or Plan Supervisor, if appropriate) shall be authorized in its sole discretion to suspend or terminate the payment or provision of any further benefits to or for the benefit of the Covered Person. Where the plan benefits may not be correctly determined, they should be deemed to be Indeterminate Benefits and treated as such. Such treatment is set forth elsewhere in this Plan Document.

The settlement by the Plan of such claims will be governed by three practices:

Practice Number 1

During the period of investigation, or prior to the execution of the Right to Recovery Agreement by the Covered Person or prior to the final settlement at which time the total Allowable Expenses are determinable, the Plan will aggregate and process but not pay such claims.

Practice Number 2

Once the *Allowable Expenses* are determined with the collection/settlement adjustment (if any) the claims will be paid with the Plan following its elections as regards Make-Whole and Common Fund rules.

Practice Number 3

This practice applies when (a) the investigation is complete and the Right to Recovery Agreement is signed but (b) the amount of *Allowable Expenses* (if any) are not determined. The claim at this time will be deemed an Indeterminate Benefit and treated as provided herein.