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**AGENDA ITEM DETAILS**

**Subject:** Consideration of Proposed Fiscal Year 2023 Fees for TexFlex<sup>SM</sup> Flexible Spending (FSA) Account Program

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**RECOMMENDED ACTION:**

Move that the Board of Trustees waive the TexFlex flexible spending (FSA) account program's administrative fee for employees enrolled in Plan Year 2023.

**Background/Analysis:**

***TexFlex FSA Background***

The state provides TexFlex FSA, the voluntary State of Texas flexible spending account program. Funded by participant contributions, the TexFlex FSA program offers participants the opportunity to pay certain eligible out-of-pocket expenses that are not reimbursed by any other source tax-free. The Internal Revenue Service (IRS) determines eligible expenses.

HealthSelect of Texas participants may also fund a TexFlex health care flexible spending account or limited-purpose flexible spending account by earning HealthSelectShoppERS<sup>SM</sup> rewards earned by researching and using certain medical providers. If they save the plan money by going to a lower cost provider, they earn a reward credited to their health care FSA or limited-purpose FSA.

**TexFlex Flexible Spending Account Program**

Texas Administrative Code Title 34, Part IV, Chapter 85 (Chapter 85) governs the TexFlex flexible spending account (FSA) program. These rules constitute the Plan document. Chapter 85 stipulates that the TexFlex program is intended to be qualified under the Internal Revenue Code § 125; and will continue as long as it qualifies under § 125 and is advantageous to state and higher education employees. PayFlex, the contracted plan administrator, maintains and administers the accounts.

**1. TexFlex Health Care FSA and Limited-Purpose FSA**

The TexFlex health care FSA and limited-purpose FSA reimburse account holders for eligible out-of-pocket health care expenses. The IRS determines the maximum annual contribution amount. The current employee contribution allowed amount is \$2,750 for Plan Year (PY) 2022. Under the HealthSelectShoppERS Rewards Program, employees can also earn up to \$500 in additional funds each plan year to be credited to their health care FSA or limited-purpose FSA.

HealthSelectShoppERS rewards are in addition to the employee contribution and do not affect the employee contribution plan year maximum.

An employee chooses how much to contribute from their paycheck to the health care FSA or limited-purpose FSA. The employee pre-tax contribution lowers the participant's taxable compensation. An employee can then use his/her credited health care FSA or limited-purpose FSA funds to pay for eligible out-of-pocket health care expenses such as copays, coinsurance, and other eligible out-of-pocket expenses. The entire employee annual contribution amount is available to the participant at the beginning of each fiscal year.

## 2. TexFlex Limited-Purpose FSA

The TexFlex limited-purpose FSA is a plan under the Internal Revenue Code designed to provide payment or reimbursement for eligible vision and dental out-of-pocket expenses not reimbursed by another source. This plan is available only to employees enrolled in the Consumer Directed HealthSelect<sup>SM</sup> plan.

## 3. TexFlex Dependent Care FSA

The TexFlex dependent care FSA provides payment or reimbursement for dependent day care expenses, not health care expenses. The IRS sets the maximum employee annual tax-deferred contribution amount, which is then subject to the plan's determined maximum annual contribution amount, currently \$5,000. An employee can use the contributions to the dependent care FSA to pay day care expenses for qualifying adults or children under the age of 13, and as allowed by the IRS.

## 4. Enrollment and Contributions

Participation in the TexFlex FSA program is voluntary. Enrollment occurs during the annual enrollment period and throughout the year subject to TexFlex rules. In accordance with federal law, the TexFlex FSA program is not available to retirees.

### TexFlex Flexible Spending Program Enrollment and Employee Contribution Elections Plan Years Beginning 2021 and 2022

	Enrollment (#)			Employee Contribution Elections (\$)		
	PY21 Enrollment	PY22 Enrollment	Change in Enrollment (%)	PY21 Contribution Elections**	PY22 Contribution Elections**	Change in Elections** (%)
Health care & Limited-purpose FSA	41,904	43,783	4.48%	\$53,771,152	\$50,397,918	-6.27%
Dependent Care FSA	2,360	3,227	36.74%	\$8,475,147	\$9,448,226	11.48%
Participation Both Plans	(1,490)	(2,310)	55.03%			
<b>TOTAL* (Employees)</b>	<b>42,774</b>	<b>44,700</b>	<b>4.5%</b>	<b>\$62,246,299</b>	<b>\$59,846,144</b>	<b>-3.86%</b>

*\*Total enrollment is not equal to the sum of health care, limited-purpose and dependent care FSA enrollment because some members are enrolled in health care FSA or limited-purpose FSA and a dependent care FSA.*

*\*\*Employee contribution elections represent annual pledges into the program and are reported commitments for the applicable fiscal year.*

### Plan Forfeitures

Any unused contributed funds exceeding the \$500 carry over limit (health care FSA and limited-purpose FSA only) or unused funds remaining at the end of the dependent care FSA grace period, are forfeited to the TexFlex Program. Forfeited funds are applied to plan administrative costs and are not available for use by the employee. This forfeiture feature is commonly referred to as the "use it or lose it" rule, and is an IRS requirement.

Specific to the health care FSA and limited-purpose FSA only, employees can "carry over" up to \$500 in unused funds to the next plan year. To be eligible for the "carry over" balance, the member must be enrolled in the health care FSA or limited-purpose FSA on the last day of the previous plan year (August 31).

As a result of the Consolidated Appropriations Act of 2021, the GBP implemented temporary provisions to the TexFlex FSA program as shown below. The temporary provisions have now expired.

- Removed FSA carryover limits for both 2020 and 2021 plan years.
- Adopted spend-down provisions for plan years ending 2020 and 2021, allowing claims submission up to the contribution amount for dates of service during the entire plan year. Previously, a COBRA election was required to do that.
- Adopted the special carry forward rule for dependent care FSA to age 14 (instead of to age 13) for dependents who aged out during the pandemic.
- Allow prospective FSA elections for PY21 only without a qualifying life event (QLE).

The Plan Year 2021 ending fund balance was \$24.5 million. This balance is the result of forfeitures accumulated over the years. ERS will determine the forfeiture amount for Plan Year 2021 in June 2022 to allow time to account for residual claims exceptions following the conclusion of the run-out period, and the potential impact of the Consolidated Appropriations Act of 2021.

### **Tax Savings and Premium Conversion**

TexFlex premium conversion allows participants to pay for their GBP coverage on a pre-tax basis. For those employees enrolled in a GBP health benefit plan with out-of-pocket premium cost (including spouse and/or dependent coverage), premium conversion is automatic. Paying for eligible monthly contribution costs on a pre-tax basis lowers the employee's taxable salary and reduces the employer's FICA tax, which is based on taxable salary. Life insurance contributions are paid on a post-tax basis so that any benefits paid will not be taxable to the beneficiary.

Premium conversion saved the State of Texas an estimated \$43.4 million in FICA taxes in FY21. The other TexFlex programs saved the state an additional \$4.7 million in FICA taxes. The money that the program saves for the State goes into general revenue.

Premium conversion saved participants \$128.5 million in FY21 by reducing FICA tax.

#### **1. Administration Fee**

The State does not provide any funding for TexFlex program operations. The TPA charges a monthly fee for administration for each employee enrolled in a TexFlex FSA.

Prior to Plan Year 2016, employees who participated in a TexFlex FSA paid an administrative fee each month. Beginning with Plan Year 2016, ERS enacted an administrative fee holiday and ceased charging a monthly administrative fee. Since that time, prior year forfeited account balances have been sufficient to cover TexFlex administrative costs. Use of forfeited account balances to subsidize administrative costs for all enrolled in the program is an allowable expense per federal regulations.

### **Staff Recommendation**

Staff recommends the Board waive the TexFlex flexible spending account program administrative fee for employees enrolled in the TexFlex Flexible Spending Account (FSA) Program and TexFlex Dependent Care FSA in Plan Year 2023.

#### **ATTACHMENTS:**

1. Slides – Proposed FY 2023 Fees for TexFlex Program