Hardin County Board of Developmental
Disabilities POLICY

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Title: Personnel – Benefits & Leave		
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Reviewer/Job Title: Superintendent or designee		

PERSONNEL
BENEFITS AND LEAVE

(A) SICK LEAVE POLICY

(1) An employee may request sick leave for absences resulting from illness or funeral purposes as described below, provided they follow the "Notification of Absence" policy. Sick leave can only be used as described below, and is not intended to be “extra days off.” Sick leave may be requested for the following reasons:

(a) Illness, injury, or pregnancy-related condition of the employee;

(b) Exposure of an employee to a contagious disease which could be communicated to and jeopardize the health of other employees;

(c) Examination of the employee, including medical, psychological, dental, or optical examination, by an appropriate licensed practitioner;

(d) Illness, injury, or pregnancy-related condition of a member of the employee’s immediate family where the employee’s presence is reasonably necessary for the health and welfare of the employee or affected family member; or

(e) Examination, including medical, psychological, dental, or optical examination, of a member of the employee’s immediate family by an appropriate licensed practitioner where the employee’s presence is reasonably necessary.

(2) For purposes of sick leave the "immediate family" is defined as only: mother, father, brother, sister, child, spouse or significant other (one who stands in place of the spouse and resides with employee), grandparent, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, stepparents, stepchildren, stepsiblings, legal guardian, or other person who stands in the place of a parent.

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(3) The superintendent maintains the right to investigate any employee's absence. The physician certification must be authorized by the treating physician's office and verify that the employee was unable to work during the absence.

(4) For each completed hour in active pay status, an employee earns .0575 hours of sick leave. For purposes of this policy active pay status is defined as hours worked (including overtime), hours on vacation, hours on holiday leave, and hours in paid sick leave. Sick leave is not accrued during an unpaid leave of absence.

(5) Part-time employees accrue sick leave on a proportionate basis to the hours paid each pay period.

(6) The amount of sick leave time anyone (1) employee may accrue is unlimited.

(7) Sick leave shall be charged in minimum amounts of 1 hour increments

(8) Employees absent on sick leave shall be paid at the same basic hourly, daily, or biweekly rate as when they are working.

(9) An employee requesting sick leave for the purpose of medical, dental, or optical examination appointments shall notify their supervisor or designee of the fact as far in advance as possible, in order that scheduling and work priorities might be adjusted accordingly. An employee requesting leave for other legal purposes shall inform their supervisor or designee of the fact and the reason by his or her scheduled starting time. The employee must contact their supervisor per department procedures and within the approved timeframes. Failure to comply with these minimum notification requirements or other sick leave policy may result in denial of sick leave. Prior to starting work, the employee shall formally request sick leave approval by completing his or her portion of the HCBDD's "Request for Leave" form. If medical attention was required, the employee may be required to submit a physician's certificate statement stating the employee was unable to work during the absence. For sick leaves that extend to 3 days a physician's certificate statement is required

(10) For the purpose of attending to ill or injured immediate family members, the procedure defined in (8) eight above will be adhered to.

(11) Employees must submit to any medical examination, nursing visit, or other inquiry that the HCBDD deems necessary in order to verify the proper use of sick leave, and the HCBDD will pay for such examination.

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(12) Vacation leave may be used for sick leave purposes, at the employee's request and the approval of the superintendent or designee, per the defined vacation policy. Employees who have exhausted all sick leave, family medical leave, and vacation leave credits, may, at the discretion of the superintendent, be granted a personal leave of absence without pay for a period not to exceed six (6) months. Illnesses exceeding six (6) months will be treated as disability leave as outlined in policy. Employees on extended sick leave or leave of absence, in excess of 30 days, shall give a status report to Director of Operations at least every 30 days.

(13) An employee fraudulently obtaining sick leave, or anyone found falsifying sick leave records, shall be subject to disciplinary action in accordance with policies outlined in this manual. Employees found guilty of fraudulently obtaining such leave shall be required to reimburse the HCBDD the sick leave paid to them, and will be subject to appropriate discipline up to and including termination.

(14) Altering a physician's certificate or falsification of a written, signed statement shall be grounds for immediate dismissal.

(15) **Adoption leave:** An employee may use sick leave to cover an absence due to the placement of a child with the employee for adoption per FMLA Guidelines. An employee shall fill out the "Request for Leave" form and receive approval prior to taking such leave.

(16) **Credit for prior public service:** Employees who transfer between county departments or agencies, or who were previously employed by another public agency, or who are reappointed or reinstated, will be credited with the unused balance of accumulated sick leave, provided the time between separation, reappointment, or transfer does not exceed 10 years and provided the employee has not cashed in any portion of that balance under the Ohio Revised Code. The words "public agency" as used above means those entities required to provide sick leave under the Ohio Revised Code, including the state, counties, municipalities, all boards of education, civil service townships, etc., within the state. Villages, private industry councils, non-civil service townships, libraries organized as nonprofit corporations, and other entities not required to provide sick leave under the Ohio Revised Code are not "public agencies" for purposes of this policy. Notwithstanding the above or the Sick Leave Conversion Policy herein, if any "person removed for conviction of a felony" within the meaning of the Ohio Revised Code is "subsequently reemployed" by the HCBDD, such person is only qualified to accrue sick leave as if the individual were a new employee receiving no credit for prior service.

(13) The requirements for allowing sick leave transfers have been the subject of differing interpretations and legislative revisions. Therefore, to the extent the HCBDD has already allowed employees to transfer in sick leave credit prior to the adoption of this

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policy, that credit is not negated with respect to employees already credited as of the adoption of this policy or revision.

(B) SICK LEAVE CONVERSION

(1) A HCBDD employee may elect at the time of retirement from active service and with 10 or more years of service with the state, any political subdivision, or a combination thereof, to be paid for one-fourth (¼) the value of the employee's accrued but unused sick leave credit not to exceed 30 days of accrued but unused sick leave.

(2) As used in this section, "retirement" means disability or service retirement under any state or municipal system in this state.

(3) Such payment shall be based on the employee's rate of pay at the time of retirement.

(4) Such payment shall be made only once and shall eliminate all sick leave credit accrued by the employee.

(5) Eligible HCBDD employees retiring from active service shall request such payment in writing, in order to initiate the payment process.

(6) The beneficiary of a deceased employee shall be eligible for the sick leave conversion benefits for which the employee would have otherwise qualified in accordance with Paragraph (A) above. Such payment shall be made in accordance with the Ohio Revised Code, or paid to the employee's estate.

(C) VACATION

(1) Full-time and Part-Time employees working 200 days or more are entitled to paid vacation leave according to the following eligibility guidelines (reference ORC section 325.19 Vacation Leave for accrual hours):

- End of Year 1- earn **3.1 hours** of vacation per each biweekly pay period (2 weeks)
- End of Year 7- earn **4.6 hours** of vacation per biweekly pay period (3 weeks)
- End of year 14- earn **6.2 hours** of vacation per biweekly pay (4 weeks)
- End of year 24- earn **7.7 hours** of vacation per biweekly pay (5 weeks)

(2) For the purpose of computing vacation, one (1) year of service shall be considered

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26 biweekly pay periods. During the employee's first year of employment, the employee cannot take vacation prior to the first anniversary date of hire.

(3) All employees accrue vacation at a ratio based on the number of regularly scheduled hours per pay period divided by 76.92 multiplied by the hours listed in C above. (76.92 is used because full employment at HCBDD is based on 250 days or an average of 76.92 hours per pay period. Formulas: # days * # hrs per day / 26 pay periods **= # hrs per week**; # hrs per week/ average hours per week = **ratio**; ratio * accrual rate = individual vacation accrual per pay period)

Examples:

Employee is regularly scheduled to work 65 hours per pay period; the accrual would be based on the ratio 65/76.92..

Employee is regularly scheduled to work 80 hours per pay period but takes 10 hours off without pay; the accrual would be based on the ratio 70/76.92.

(4) Full time and part time employees working less than 200 days per year accrue vacation leave at the following rate:

- 1 day after 7 years of service
- 2 days after 14 years of service
- 3 days after 24 years of service

(5) Active pay status is defined as hours actually worked, paid sick leave, vacation leave, and authorized paid holidays. Vacation credits are not earned while an employee is in inactive service such as leaves of absence, disciplinary suspensions, etc.

(6) Additional vacation leave is not accrued through the accumulation of paid overtime.

(7) Vacation scheduling is subject to the approval of the supervior.

(8) Vacation leave is to be taken in minimum units of one half (.5) hour or as otherwise approved by the supervisor. Requests for vacation are to be submitted a minimum of 24 hours in advance to the supervisor on the leave request form.

(9) Vacation leave is to be taken within the year in which it is earned. Employees may be compensated at the current rate of pay for vacation leave they have accumulated during the year ending on the employee's anniversary date. This leave must be cashed in within 30 days following the anniversary date. Beyond this time, the employee may not cash in vacation time from the previous year. It can only be taken as time. The amounts an employee may cash in are as follows:

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Amount of vacation earned	Amount Available to Cash-in
Up to 120 hours per year	Up to forty (40) hours
Up to 160 hours per year	Up to eighty (80) hours

(10) An employee requesting to carry over vacation must submit the "Request to Carry Over Vacation" to the Director of Operations prior to the end of the year during which the vacation accrued. At the end of each year, on the employee's anniversary date, all earned vacation leave, in excess of three years accrual, will be forfeited and deleted.

(11) An employee may not take his or her vacation leave prior to it being earned.

(12) Employees who resign or retire are entitled to compensation at their current rate of pay for any authorized earned but unused vacation leave to his or her credit at the time of separation. This applies even if an employee leaves the HCBDD and is rehired by another Hardin County appointing authority.

(13) Seniority for the purpose of calculating vacation is determined according to the total prior service the employee has with any county, the state (including a member of the Ohio National Guard), a city, village, township, city or local school district, or park district, per the Ohio Revised Code. Prior service need not be continuous; however, completion of a total of one (1) year of service is required before eligibility for vacation leave is established. The employee is responsible for providing written verification from previous qualified employers for any qualifying employment. Employees with at least one (1) year of qualifying prior service, as established herein, are not required to serve one (1) year with the HCBDD to be eligible to use vacation. Such individual is entitled to begin accruing, and using, vacation benefits immediately upon employment with the HCBDD.

(14) An employee who has **retired** in accordance with the provisions of OPERS or any retirement plan offered by the state, and who is subsequently hired by HCBDD after June 24, 1987, shall not have his prior service with the county, state, or any political subdivision of the state counted for the purpose of computing vacation leave. Vacation accrual for such employee shall be based only upon the service he is currently accruing with HCBDD.

(D) PROFESSIONAL DEVELOPMENT LEAVE

(1) The policy of the HCBDD is to develop and maintain the agency's human resource assets. Therefore, each employee will be granted professional development leave that does not exceed 5 days annually and has a direct correlation to HCBDD business.

(2) The leave shall be inclusive of travel time and expenses i.e. from the HCBDD offices to the location of the approved training, if the training event does not require a full work day, as defined in HCBDD policy, the employee is required to complete their work day at an approved location. All professional development

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must be approved by the Superintendent or designee.

(3) Additional development time requested by the superintendent or designee will be considered Administrative Leave and will not be considered Professional Development Leave.

(E) TUITION REIMBURSEMENT

(1) Each full-time employee of the Hardin County Board may be granted limited tuition reimbursement to attend accredited coursework based on the availability of funds. Reimbursement for coursework shall be contingent upon employee's enrollment in specialized coursework to stimulate and support their professional growth. Coursework must have a direct correlation to HCBDD business.

(2) Prior written approval of the Superintendent or designee on the standard leave form must be obtained prior to utilizing tuition reimbursement. Any individual will be personally responsible for all costs incurred for coursework attendance of the above nature if prior approval is not obtained. Requests for attendance should be submitted thirty (30) days prior to attendance, when possible. Requests for attendance must include the cost of such coursework and a course description to assure that the coursework shall have a direct correlation to HCBDD business. Reimbursements will be approved contingent upon the obtaining and documentation submittal of a grade of at least a C (2.0) or passing in a pass/fail course.

(3) Based upon the availability of funds, the Board may provide for each employee an annual (calendar year) tuition reimbursement of up to $1500. Costs for registration, textbooks, lab fees, lodging, meals and/or transportation shall not be reimbursable. All requests for reimbursement shall be itemized and submitted to the Superintendent or designee on the proper forms. Reimbursement requests must include the original receipts and documentation which includes the submittal of a grade of at least a C (2.0) or passing in a pass/fail course. Reimbursement is considered taxable under the IRS guidelines and will be reimbursed through the employee's regular payroll check.

(4) Tuition reimbursement may not be accumulated and may only be granted in the maximum amounts approved on an annual basis.

(F) PERSONAL LEAVE

(1) All employees of HCBDD may utilize up to three (3) personal days per program year based on their normal hours of employment per day. Personal days are credited on July 1 of each successive calendar year. Employees hired between January 1 and March 31 are entitled to one (1) personal day prior to the new program year. Employees hired after March 31 become eligible for personal days at the beginning of the following program year. Personal days shall not accumulate from one program year to the next and are not eligible to be paid out upon separation from HCBDD.

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(2) Each employee shall be required to submit to his supervisor at least three (3) days prior to the requested personal time, the appropriate leave from indicating the date and time for the leave. The supervisor may waive the required notification in specific circumstances.

(3) Intermittent employees and part-time employees working less than 22.5 hours per week are not eligible for personal leave.

(4) Personal leave, as described in this policy, must be taken in minimum units of one (1) hour.

(5) Personal leave may not be utilized after the date on which a notification of resignation is submitted.

(6) For purposes of this policy, the program year is defined as the period of time between July 1 of any year and June 30 of the following year.

(7) Approval of personal leave shall be based on the ability of program to maintain adequate programming to the enrollees by conforming to program operation schedules.

(8) Personal Leave shall not be granted (approved) for use during mandatory annual program wide in-service days.

(9) Emergency requests shall be reviewed on an individual basis.

(G) FUNERAL LEAVE

(1) Any eligible employee may be granted usage of earned sick leave upon approval of the superintendent or designee for up to five (5) working days in the event of the death of an immediate family member. For purposes of this policy the "immediate family" is defined as only: mother, father, stepparent, brother, sister, child, stepchildren, stepsibling, spouse, or significant other (significant other as used in this definition means one who stands in place of a spouse and resides with the employee), grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, legal guardian or other person who stands in place of the employee's parent. For purposes of requesting funeral leave, the employee is required to follow the provisions outlined in the Sick Leave Policy of this manual regarding requests for sick leave.

(2) In the case of extended family, niece, nephew, aunt or uncle, the employee may be granted usage of sick leave upon the approval of the Superintendent or designee for up to three (3) days, dependent upon required travel time.

(H) CIVIL LEAVE POLICY

(1) Employees called for court jury duty to testify in a court of law shall complete a request for leave of absence form and attach a copy of the subpoena.

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(2) The employee shall submit the completed Request for Leave of Absence form to the Director of Operations and shall indicate which option for payment the employee chooses.

(3) Upon the employee's return, depending upon the employee's choice of options, the Director of Operations shall turn the monies received for court or jury duty over to the county auditor.

(4) The Request for Leave of Absence form shall be retained in the employee's personnel file. The Director of Operations shall ensure that the employee is compensated for court or jury duty in the proper manner, based upon the employee's chosen option.

(I) MILITARY LEAVE

(1) **Active duty leave:** Military leave is governed by both state and federal laws. In general, any employee with more than 90 days tenure who voluntarily or involuntarily enters any of the armed services of the United States shall be granted a military leave of absence without pay. If not accepted for active duty, the employee shall be reinstated to the employee's former position without loss of seniority or status or reduction in pay. Employees who complete their active duty obligation (without voluntarily reenlisting or extending that obligation) are entitled to their previous position within 30 days after their written request, provided such request is submitted within the statutorily required period following discharge or release from active duty. If temporary physical disability precludes the employee from performing the previous job, the employee shall be allowed up to one (1) year from the date of application to overcome such disability and return to work. Employees returning to previously held positions under these provisions shall receive credit for military service in areas affecting seniority status, rank, rating, increments, qualifications, etc., as though they had been continually employed.

(2) **Military Reserve leave:** The Ohio Revised Code requires that permanent public employees, who are members of Ohio National Guard, Ohio Organized Militia, or other reserve components of the armed forces of the United States be authorized up to 176 hours of leave (or for a "public safety employee" seventeen (17) 24-hour days or 408 hours) without loss of pay per calendar year for military duty or training. This payment is in addition to the gross uniformed pay and allowances the employee receives from the military.

Military Reserve leave in excess of 176 hours: Any permanent public employee called to military duty for a period in excess of the 176 hours because of an executive order issued by the President of the United States, because of an act of Congress, or because of an order to perform duty issued by the governor pursuant to the Ohio Revised Code, is entitled to be paid the difference between the employee's gross monthly wage or salary

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and the gross uniformed pay and allowances up to $500.00 per month. If the gross uniformed pay and allowances equals or exceeds the employee's regular gross monthly wage or salary normally paid by the HCBDD, the employee is not entitled to any additional compensation from the HCBDD after being compensated for the initial 176 hours per calendar year.

(4) **Request for leave:** Employees are required to submit to the HCBDD a copy of the published orders authorizing the military duty or a written statement from the appropriate military commander authorizing such duty. Employees requesting such leave will also be required to complete and submit a request for leave.

(5) Employees are required to submit to their department head a copy of their military orders and a completed Request for Leave form outlining the anticipated duration of the military leave.

(J) ASSAULT LEAVE

(1) The HCBDD adopts a policy of assault leave by which an employee who is absent due to physical disability resulting from an assault, which occurs in the course HCBDD business, will be maintained on full pay status for the length of time required to recuperate. The length of absence will not exceed the period prescribed by an Ohio Licensed Medical Practitioner. Absence will not count against the employee's accrued vacation, sick or personal leave per the Ohio Revised Code.

(2) Any cost accrued by the employee, as a result of the assault, that is not covered by typical means (Workers Compensation and/or HCBDD provided insurances) will be reimbursed by the HCBDD.

(K) COMMUNITY SERVICE LEAVE

(1) The HCBDD hereby establishes a total of thirty (30) Community Service Days for the agency that will be available to any employee based upon established procedures, guidelines, and priorities. The purpose of these days is to (1) give staff paid time off that (2) will allow them the opportunity to "give back" to the Hardin County community without having to use other paid leave days such as Personal or Vacation Days. These days are not intended to supplant the normal use of Personal Days or vacation days. But rather, they are intended to demonstrate the Board's commitment to being a valued contributing member of the community by allowing staff to do just that, give back to the community.

(2) At least 3 days shall be available each quarter and requests to use a Community Service Day shall be submitted by interested employees and will be reviewed and approved by the Superintendent or a person/committee so designated by the Superintendent. Procedures and guidelines will be established by the Superintendent in order to implement this policy but shall require as a minimum:

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(a) Community Service Days are not to be awarded in lieu of volunteer work performed by staff outside their normal working hours;
(b) Community Service Days may be approved in increments of half hour units;
(c) Community Service Days may not be awarded alongside another personal or vacation day unless the time off is requested for the same reason as the Community Service Day;
(d) No more than 16 hours may be given to any single employee during a program year.

(L) WORKERS' COMPENSATION POLICY

(1) State law provides that all employees are covered by workers' compensation for injuries that arise out of or in the course of employment.

(2) All injuries which arise out of or in the course of employment shall be reported and compensated for under this workers' compensation section and not under the HCBDD's health insurance plan.

(3) **Injury and near miss reports:** When an employee is injured during the course of employment, the employee's supervisor shall direct the employee to complete the staff incident form in the Works program. These forms shall be completed regardless of the apparent seriousness of the injury and whether or not medical attention is required. Such forms shall be completed by the employee and forwarded to the employee's supervisor within 24 hours of the injury. The supervisor shall review and add any additional information and complete the necessary form(s).

(4) **Application for payment of compensation and medical benefits:** When, in addition to medical attention, an employee's injury results in an employee's absence from work for seven (7) days or more, the employee may complete an *"Application for Payment of Compensation and Medical Benefits"* if such employee desires compensation for lost wages. This form shall be given to the Human Resource Manager for completion. This form shall then be forwarded to the auditor's office for compensation, with a copy to the risk manager.

(5) **Return to work:** The HCBDD must be advised and continually updated if an employee continues to be absent due to a work-related injury. Employees are responsible for providing to HCBDD their estimated date of return. If it is determined that an individual has the ability to return to work with, "light" duties, the HCBDD will make every attempt to accommodate the requirement.

(6) **Documentation:** Any documents received from the injured employee, the employee's physician, the hospital, or the state regarding workers' compensation claims must be immediately forwarded to the HCBDD Director of Operations.

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(7) **Wages on injury date:** Employees who are injured during the course of employment and who must leave work before completing their work period shall be paid at their regular rate for the balance of time left in their scheduled workday.

(8) The HCBDD has three (3) options on how the injured employee is paid if time off work has occurred:

(a) Allow the injured employee to apply for temporary total (TT);
(b) Repurchase of used sick leave; and
(c) Pay wage continuation.

(9) **Repurchase of used sick leave:** An employee injured during the course of employment, and who makes application for workers' compensation payments, may elect to use accrued sick leave in accordance with HCBDD policy prior to receiving payments from workers' compensation. Employees shall sign an agreement directing all workers' compensation payments to the HCBDD as reimbursement for such payments and shall have a proportionate amount of their sick leave restored upon receipt of the workers' compensation payments by the HCBDD. Additional vacation and sick leave are not earned while an employee is on workers' compensation.

(11). **Simultaneous payments:** Employees are prohibited from receiving payments for sick leave (but may receive other paid leave) while simultaneously receiving payment from Workers' Compensation.

(12) **Accommodation of disabled employee:** When confronted with an employee claiming a disability under the Workers' Compensation system, who is disabled as defined in the ADA, the HCBDD will consider making a reasonable accommodation that would allow the employee to continue performing the essential functions of the employee's position.

(M) LEAVE OF ABSENCE WITHOUT PAY

(1) Upon the written request of a permanent employee, the superintendent may grant the employee a leave of absence without pay.

(2) The maximum duration of a leave of absence without pay for personal reasons of the employee shall not exceed six (6) months.

(3) The maximum duration of a leave of absence without pay for purposes of education, training, or specialized experience which would benefit the HCBDD, or for other related reasons, shall not exceed one (1) year.

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(4) The authorization of a leave of absence without pay is solely a matter of administrative discretion, and each request will be decided by the superintendent based upon its own merits.

(5) Any employee on a leave of absence shall be entitled to continuing membership in the group health insurance plan; however, such employee shall pay the full amount of the premium for as long as such employee remains on leave and as long as the employee chooses to retain the insurance coverage.

(6) Upon returning from a leave of absence, the employee is to be placed in their original position, or another position at a similar level of responsibility and with the same pay rate should the original position be abolished.

(7) When an employee fails to return to work upon the expiration of an authorized leave of absence without pay, that employee shall be considered as having resigned from the position.

(8) An employee who has received an authorized leave of absence without pay does not earn sick or vacation leave credit.

(9) If it is determined that an employee is abusing the leave of absence and not actually using the leave for the purposes specified, the superintendent or designee may cancel the leave and provide the employee with a written notice directing the employee to report for work.

(10) All leaves of absences are to be submitted on the request for leave form with any supporting documentation attached.

(N) DISABILITY LEAVE/SEPARATION

(1) This section outlines the conditions under which a disability leave or disability separation may be granted to classified employees, and procedures for administering their use. It is intended to outline the procedures to be followed after determining that no reasonable accommodation can be made which would allow the employee to perform the essential functions of the employee's position or other available vacant position for which the employee is qualified.

(2) **Voluntary reduction:** When an employee becomes physically unable to perform the essential functions of the employee's position even with a reasonable accommodation, but is still able to perform the duties of a vacant lower level position, the employee may voluntarily request reduction to the lower level position. Such request shall be in writing, shall state the reason for the request, and, if approved by the superintendent, will be attached to the implementing personnel action.

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(3) Involuntary disability separation or termination for failure to report for work: Involuntary disability separation is effective in the following cases:

(a) If an employee becomes unable to perform the essential job duties of the employee's position, subject to the Americans with Disabilities Act, and if the employee has exhausted family and medical leave and other available leaves, the superintendent or designee may involuntarily disability separate the employee; and

(b) If an employee on disability leave is unable to return to work when the employee's disability leave is exhausted, then the superintendent or designee shall involuntarily separate (for disability) the employee if the employee cooperates under this procedure, or remove the employee for being absent without leave if the employee does not cooperate. The superintendent shall do so by completing an Ohio Revised Code order indicating the reasons as "incompetency, neglect of duty, and nonfeasance" with an adequate explanation to make clear the underlying reasons are the employee's failure to report for work able to perform the essential functions of the employee's position. However, if the employee refuses to submit to an examination or to provide proof of disability, grounds for terminating employment shall be neglect of duty, nonfeasance, and failure of good behavior for failure to report for work without approved leave.

(4) Medical examination: Medical examinations are either required or permitted in relation to involuntary disability separation as follows:

(a) When required: When requested by the superintendent or designee, a medical or psychological examination conducted by a licensed practitioner selected by the HCBDD, substantiating the disabling illness, injury, or condition, shall be required prior to involuntarily separating the employee unless the employee is hospitalized at the time the employee is involuntarily separated. The HCBDD shall bear the cost of the examination. Both the HCBDD and the employee shall receive the results of that examination and related documents, subject to the Ohio revised Code.

(b) When permitted: The superintendent or designee may require an employee to submit to a medical or psychological examination in order to determine the employee's capability to perform the essential job duties of the employee's position with or without a reasonable accommodation. Such examination shall be conducted by a licensed practitioner as determined by the HCBDD. Prior to examination, the HCBDD must supply the examining practitioner with facts relating to the perceived

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disabling illness, injury, or condition and must supply additional information including physical and mental requirements of the employee's position, and responsibilities defined in job description. The cost of the examination shall be paid by the HCBDD. Both the superintendent and the employee shall receive the results of the examination and related documents subject to the Ohio Revised Code.

(c) Failure to appear for examination or refusal to submit: The refusal to submit to the examination, the unexcused failure to appear for an examination, or the refusal to release the results of an examination will subject the employee to removal.

(5) Right to pre-separation conference rights of appeal:

(a) The HCBDD shall institute pre-separation proceedings when the results of a medical or psychological examination conducted as provided by subsection D have been received and the HCBDD initially determines an employee is incapable of performing the essential job duties of the employee's assigned position with or without a reasonable accommodation, and initially determines the employee is not eligible to receive benefits under a program provided by the HCBDD. Under such proceedings, a conference shall be scheduled and a 72 hour advanced written notice shall be provided to the employee. If the employee does not waive the right to the conference, then at the conference the employee has a right to examine the HCBDD's evidence of disability, to rebut such evidence, and to present testimony and evidence on the employee's own behalf.

(b) If the HCBDD determines, after weighing the testimony presented and evidence admitted at the pre-separation conference, that the employee is capable of performing the essential job duties, then the pre-separation conference shall cease and the employee shall be considered to be fit to perform the essential job duties of the employee's position. If the HCBDD determines, after weighing the testimony presented and the evidence admitted at the pre-separation conference, that the employee is unable to perform the essential job duties, then the superintendent shall issue to the employee an Ohio Revised Code order of involuntary disability separation, as described above.

(c) An employee so separated shall have the right to appeal in writing to the State Personnel Board of Review within 10 days following the superintendent's service upon the employee of the order of involuntarily disability separation.

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(d) The superintendent or designee shall notify the employee, at the time of the involuntary disability separation, of the required procedures to apply for reinstatement

(6) <u>Right to reinstatement rights of appeal</u>:

(a) An employee may make a written request to the superintendent for reinstatement from an involuntary disability separation. The request shall be accompanied by substantial, credible medical evidence that the employee is once again capable of performing the essential functions of the employee's job. Such requests shall be made not more than once every three (3) months and not later than two (2) years following the beginning of the disability separation, or a leave of absence followed by a disability separation.

(b) When an involuntarily separated employee presents to the superintendent or designee substantial, credible medical evidence as provided by (E)(1) above, showing the employee is once again capable of performing the essential job duties of the employee's assigned position with or without a reasonable accommodation, the superintendent shall either reinstate the employee or require the employee to submit to a medical or psychological examination conducted as provided by subsection (C)(2) above.

(c) The superintendent shall reinstate the employee after receiving the results of the examination if the superintendent or designee determines the employee is once again capable of performing the essential duties of the employee's assigned position with or without a reasonable accommodation.

(d) The superintendent or designee shall institute pre-reinstatement proceedings if the superintendent or designee has received the results of the examination and initially determines the employee remains incapable of performing the essential job duties of the employee's assigned position with or without a reasonable accommodation. Under these proceedings, a hearing shall be scheduled and adequate advanced written notice shall be provided to the employee. If the employee does not waive the right to the hearing, the employee has a right at the hearing, to examine the HCBDD's evidence of continuing disability, to rebut such evidence, and to present testimony and evidence on the employee's own behalf.

(e) If the superintendent or designee determines, after weighing the testimony presented and evidence admitted at the pre-reinstatement hearing, that the

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employee is once again able to perform the essential job duties of the employee's assigned position with or without a reasonable accommodation, then the superintendent shall reinstate the employee. If the superintendent or designee determines, after weighing the testimony presented and evidence admitted at the pre-reinstatement hearing, that the employee is not able to perform the essential duties of the employee's assigned position with or without a reasonable accommodation, then the superintendent shall not reinstate the employee.

(f) If the superintendent or designee determines an employee, who has been involuntarily separated, has committed an act which is inconsistent with the employee's disability, illness, or injury, then that act may be considered by the superintendent or designee when determining an employee's eligibility for reinstatement.

(g) Once the superintendent or designee properly determines an employee is to be reinstated, the employee has a right to be assigned to a position in the classification the employee held at the time of involuntary disability separation. If the classification the employee held at the time of involuntary disability separation no longer exists or no longer is utilized by the HCBDD, then the employee shall be placed in a similar classification. If no similar classification exists, the employee may be laid off in accordance with the layoff procedures outlined elsewhere within this manual and may exercise any displacement rights which may exist under such procedures.

(h) If the employee has been granted disability benefits by a state retirement system, the requirements of this rule shall apply for up to five (5) years, except a licensed practitioner shall be appointed by the Ohio Public Employee's Retirement Board and application for reinstatement shall not be filed after the date of service eligibility retirement.

(i) An employee refused reinstatement as provided in subsection (E)(5) shall be notified in writing of the refusal to reinstate and of the right to appeal in writing to the State Personnel Board of Review within 30 days of receiving notice of the refusal to reinstate.

(j) An employee who fails to apply for reinstatement within two (2) years following an involuntary disability separation, or a leave of absence followed by an involuntary disability separation, shall be deemed permanently separated from service except as otherwise provided above.

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(O) HOLIDAYS

(1) All full-time and part-time county employees are entitled to the following legal holidays:

New Year's Day… .....January 1
Martin Luther King Day.....Third Monday in January
President's Day… ..... Third Monday in February
Memorial Day….....Last Monday in May
Juneteenth .....June 19
Independence Day….....July 4
Labor Day… .....First Monday in September
Columbus Day… .....Second Monday in October
Veterans Day….....November 11
Thanksgiving Day….....Fourth Thursday in November
Day after Thanksgiving .....Fourth Friday in November
Christmas Day .....December 25

(2) If the holiday falls on Sunday, it will be observed on the following Monday; if it falls on a Saturday, it will be observed on the preceding Friday.

(3) If a holiday occurs while a full-time or part-time employee is on vacation or sick leave, vacation or sick leave will not be deducted from the employee's accrued balance.

(4) In observance of each authorized holiday, employees will normally be granted the day off work. Full-time and part-time employees shall receive straight time pay for each authorized holiday, based upon the number of hours normally scheduled for that day. Seasonal, temporary, and intermittent employees, however, shall not be granted holiday pay.

(5) A full-time employee who is required to work one (1) or more of these holidays to provide necessary minimum staff coverage may receive regular wages plus holiday pay or an alternative day off with regular pay, as determined by the Superintendent.

(P) ABSENCES

(1) Every employee is important to the successful operation of the HCBDD. Regular and predictable attendance and punctuality are essential functions of every employee's job.

(2) Absenteeism increases the workload of other employees and affects the quality of services. An employee is absent for purposes of this section if the employee fails to report to work for an entire scheduled workday and such absence has not been excused (as defined herein), or does not qualify for family medical leave. When utilizing sick leave or unpaid leave, it is the responsibility of the employee to request that the leave be charged against family and medical leave, and/or to provide sufficient and necessary information and documentation to the HCBDD so that the leave (family and medical

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leave) may properly be charged.

(3) When an employee begins to show patterns or trends of absences, the supervisor should review and address these individuals using the disciplinary process.

(4) FLSA nonexempt employees will not be paid for the period of time the employee has been absent if such absence has not been covered with approved leave. Employees are required to use their sick time for an absence that meets the definition of sick time if they have time in their account. Supervisors may make exceptions for employees who might make up time missed for a physician appointment within that same day. There are exceptions where to deduct pay for FLSA-exempt employees.

(a) Absences without adequate and proper notification to the supervisor, as discussed herein, will result in an employee being counseled, disciplined, and subject to termination in accordance with HCBDD policy.

(Q) UNAUTHORIZED LEAVES

(1) Any HCBDD employee who is absent from duty without authorized leave and notice to the department manager or designee, shall be subject to disciplinary action up to and including termination.

(R) FAMILY AND MEDICAL LEAVE POLICY

(1) **Statement of Policy.** Eligible employees may request time off for family and/or medical leave of absence with job protection and no loss of accumulated service provided the employee meets the conditions outlined in this policy and returns to work in accordance with the Family and Medical Leave Act of 1993.

(2) **Definitions.** As used in this policy, the following terms and phrases shall be defined as follows:

(a) Family and/or medical leave of absence: An approved absence available to eligible employees for up to twelve (12) weeks of unpaid leave per year under particular circumstances. Such leave may be taken only for the following qualifying events:

(i) Upon the birth of an employee's child and in order to care for the child;

(ii) Upon the placement of a child with an employee for adoption or foster care;

(iii) When an employee is needed to care for a family member who has a serious health condition;

(iv) When an employee is unable to perform the functions of his

position because of the employee's own serious health condition; and

(v) Qualifying service member leave.

(b) Service-member Leave: The spouse, parent or child of a member of the U.S. military service is entitled to twelve (12) weeks of FMLA leave due to qualifying exigencies of the service-member being on "covered active duty" or receiving a "call to covered active duty." In addition, a spouse, child, parent or next of kin (nearest blood relative) of a service-member is entitled to up to twenty-six (26) weeks of leave within a "single twelve (12)-month period" to care for a service-member with a "serious injury or illness" sustained or aggravated while in the line of duty on active duty. The "single twelve (12)-month period" for leave to care for a covered service-member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period established for other types of FMLA leave.

(c) Per year: A rolling twelve (12) month period measured forward from the date an employee uses any leave under this policy.

(d) Serious health condition: Any illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care;

(ii) Any period of incapacity of more than three consecutive calendar days that also involves:

Two or more treatments by a health care provider, the first of which must occur within seven (7) days of the first day of incapacity and both visits must be completed within thirty (30) days; or

Treatment by a health care provider on one occasion that results in a regimen of continuing treatment under the supervision of a health care provider.

(iii) Any period of incapacity due to pregnancy or for prenatal care.

(iv) A chronic serious health condition which requires at least two "periodic" visits for treatment to a health care provider per year and continues over an extended period of time. The condition may be periodic rather than continuing.

(v) Any period of incapacity which is permanent or long term and for

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which treatment may not be effective (i.e., terminal stages of a disease, Alzheimer's disease, etc.).

(vi) Absence for restorative surgery after an accident/injury or for a condition that would likely result in an absence of more than three days absent medical intervention. (i.e., chemotherapy, dialysis for kidney disease, etc.).

(e) Licensed health care provider: A doctor of medicine, a doctor of osteopathy, podiatrists, dentists, optometrists, psychiatrists, clinical psychologists, and others as specified by law.

(f) Family member: Spouse, child, parent or a person who stands "*in loco parentis"* to the employee.

(g) Covered Service-member: Means either:

(i) A member of the Armed Forces, including a National Guard or Reserve Member, who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness; or

(ii) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces, including a National Guard or Reserves Member, at any time during the five years preceding the date the eligible employee takes FMLA leave to care for the covered veteran.

(iii) Note: An individual who was a member of the Armed Forces (including National Guard or Reserves) and who was discharged or released under conditions other than dishonorable prior to March 8, 2012, the period of October 28, 2009 and March 9, 2012, shall not count toward the determination of the five-year period for covered veteran status.

(h) Outpatient Status: The status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving outpatient medical care.

(i) Next Of Kin: The term "next of kin" used with respect to a service-member means the nearest blood relative of that individual.

(j) Serious injury or illness, for purposes for the 26 week military caregiver leave means either:

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(i) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the covered service member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; and

(ii) In the case of a covered veteran, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:

A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; or

A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

(k) Covered Active Duty or Call to Covered Active Duty:

(i) In the case of a member of a Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country, (Active duty orders of a member of the Regular components of the Armed Forces generally specify if the member is deployed to a foreign country.

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(ii) In the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to specific sections of the U.S. Code, as outlined in 29 CFR § 825.126.

(l). Deployment to a foreign country: Deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the U.S., including international waters.

(m) Qualifying Exigency (for purposes of the twelve (12)-week qualifying exigency leave) includes any of the following:

(i) Up to seven days of leave to deal with issues arising from a covered military member's short notice deployment, which is a deployment of seven (7) or fewer days' notice;

(ii) Military events and related activities, such as official ceremonies, programs, or events sponsored by the military, or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;

(iii) Qualifying childcare and school activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis; enrolling or transferring a child to a new school; and attending certain school and daycare meetings if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;

(iv) Making or updating financial and legal arrangements to address a covered military member's absence, such as preparing powers of attorney, transferring bank account signature authority, or preparing a will or living trust;

(v) Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or a child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;

(vi) Rest and recuperation leave of up to fifteen (15) days to spend time

with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. This leave may be used for a period of 15 calendar days from the date the military member commences each instance of Rest and Recuperation leave;

Attending certain post-deployment activities within ninety (90) days of the termination of the covered military member's duty, such as arrival ceremonies, reintegration briefings, and any other official ceremony or program sponsored by the military, as well as addressing issues arising from the death of a covered military member;

(viii) Qualifying parental care for military member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age, when the parent requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living, as described in 29 C.F.R. § 825.126, and the need arises out of the military member's covered active duty or call to covered active duty status; and

(ix) Any qualifying exigency which arose out of the covered military member's covered active duty or call to covered active duty status.

(3) **Leave Entitlement**. To be eligible for leave under this policy, an employee must meet all of the following conditions:

(a) Worked for the agency for at least twelve (12) non-consecutive months, or fifty-two (52) weeks;

(b) Actually worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period immediately prior to the date when the FMLA leave is scheduled to begin; and

(c) Work at a location where the HCBDD employs fifty (50) or more employees within a seventy-five (75) mile radius.

(i) The entitlement to FMLA leave for the birth or placement for adoption or foster care expires at the end of the twelve (12) month period following such birth or placement.

(ii) Spouses who are both employed by the agency are jointly entitled to a combined leave total of twelve (12) weeks (rather than twelve (12) weeks each) for the birth of a child, upon the placement of a child with the employees for adoption or foster care, and for the care of

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certain family members with serious health conditions.

(4) **Use of Leave**. The provisions of this policy shall apply to all family and medical leaves of absence as follows:

Generally: An employee is only entitled to take off a total of twelve (12) weeks of leave per year under the FMLA. As such, employees will be required to utilize their accumulated unused paid leave (sick, vacation, etc.) in conjunction with their accumulated unused unpaid Family Medical Leave. Employees will be required to use the type of accumulated paid leave that best fits the reason for taking leave and must comply with all procedures for requesting that type of leave as stated in the relevant policy. Any time off that may legally be counted against an employee's twelve (12) week FMLA entitlement will be counted against such time.

(b) Birth of An Employee's Child: An employee who takes leave for the birth of his or her child must first use all available accrued paid vacation leave prior to using unpaid leave for the remainder of the twelve (12) week period. However, if the employee requests leave for the employee's own serious health condition as a result of the pregnancy or post-partum recovery period, the employee will be required to exhaust all of her sick leave prior to using unpaid leave for the remainder of the twelve (12) week period. *(Note: See section E below for information on disability leaves.)*

(c) Placement of a Child for Adoption or Foster Care: An employee who takes leave for the placement of a child for adoption or foster care must first use all available accrued paid vacation leave prior to using unpaid leave for the remainder of the twelve (12) week period.

(d) Employee's Serious Health Condition or Family Member's Serious Health Condition: An employee who takes leave because of his serious health condition or the serious health condition of his family member must use all available accrued paid leave prior to using unpaid leave for the remainder of the twelve (12) week period. Dependent on the circumstance, the HCBDD may require the utilization of FMLA upon the first request of leave.

(5) **FMLA and Disability/Workers' Compensation**. An employee who is eligible for FMLA leave because of their own serious health condition may also be eligible for workers' compensation if the condition is the result of workplace accident or injury. Regardless of whether the employee is using worker's compensation benefits, the HCBDD may designate the absence as FMLA leave, and count it against the employee's twelve (12) week FMLA entitlement if the injury or illness constitutes a serious health condition under the FMLA. In addition, as these may be compensated absences, if the employee participates in the worker's compensation program, the employee is not

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eligible to use paid leave of any type (except as supplemental benefits, if applicable and requested by the employee), nor can the HCBDD require him to do so, while the employee is receiving compensation from such a program.

(6) Procedures for Requesting FMLA Leave. Requests for FMLA leave must be submitted in writing at least thirty (30) days prior to taking leave or as soon as practicable prior to the commencement of the leave. If the employee fails to provide thirty (30) days' notice for foreseeable leave with no reasonable excuse for the delay, the leave may be denied until at least thirty (30) days from the date the HCBDD receives notice. The employee must follow the regular reporting procedures for each absence.

FMLA requests must be submitted on a standard leave form prescribed by the HCBDD. The HCBDD will determine whether the leave qualifies as FMLA leave, designate any leave that counts against the employee's twelve (12) week entitlement, and notify the employee that the leave has been so designated.

When an employee needs foreseeable FMLA leave, the employee shall make a reasonable effort to schedule the treatment so as not to unreasonably interfere with the HCBDD's operations.

(7) Certification of Need for FMLA Leave for Serious Health Condition. An employee requesting FMLA leave due to their family member's serious health condition must provide a doctor's certification of the serious health condition, which must designate that the employee's presence is reasonably necessary. Such certification shall be submitted at the time FMLA leave is requested, or if the need for leave is not foreseeable, as soon as practicable. An employee requesting FMLA leave due to the birth or placement of a child must submit appropriate documentation at the time FMLA leave is requested.

If the medical certification is incomplete or insufficient, the employee will be notified of the deficiency and will have seven (7) calendar days to cure the deficiency.

The HCBDD may require a second medical opinion prior to granting FMLA leave. Such opinion shall be rendered by a health care provider designated or approved by the HCBDD. If a second medical opinion is requested, the cost of obtaining such opinion shall be paid for by the HCBDD. If the first and second opinions differ, the HCBDD, at its own expense, may require the binding opinion of a third health care provider approved jointly by the HCBDD and the employee. Failure or refusal of the employee to submit to or cooperate in obtaining either the second or third opinions, if requested, shall result in the denial of the FMLA leave request.

Employees who request and are granted FMLA leave due to serious health conditions may be required to provide the HCBDD periodic written reports assessing the continued qualification for FMLA leave. Further, the HCBDD may request additional reports if the circumstances described in the previous certification have changed significantly (duration or frequency of absences, the severity of the condition, complications, etc.), or if the HCBDD receives information that casts

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doubt on the employee's stated reason for the absence. The employee must provide the requested additional reports to the HCBDD within fifteen (15) days.

(8) **Certification for Leave taken because of a Qualifying Exigency**. The HCBDD may request that an employee provide a copy of the military member's active duty orders to support the request for qualifying exigency leave. Such certification for qualifying exigency leave must be supported by a certification containing the following information: statement or description of appropriate facts regarding the qualifying exigency for which leave is needed; approximate date on which the qualifying exigency commenced or will commence; beginning and end dates for leave to be taken for a single continuous period of time; an estimate of the frequency and duration of the qualifying exigency if leave is needed on a reduced scheduled basis or intermittently; appropriate contact information for the third party if the qualifying exigency requires meeting with a third party and a description of the meeting; and, if the qualifying exigency involves Rest and Recuperation leave, a copy of the military member's Rest and Recuperation orders, or other documentation issued by the military which indicates the military member has been granted Rest and Recuperation leave, and the dates of the military member's Rest and Recuperation leave.

(9) **Intermittent/Reduced Schedule Leave**. When medically necessary, an employee may take FMLA leave on an intermittent or reduced work schedule basis for a serious health condition. An employee may not take leave on an intermittent or reduced schedule basis for either the birth of the employee's child or upon the placement of a child for adoption or foster care with the employee unless specifically authorized in writing by the Superintendent or designee. Requests for intermittent or reduced schedule FMLA leave must be submitted in writing at least thirty (30) days prior to taking leave, or, as soon as practicable.

To be entitled to intermittent leave, the employee must, at the time such leave is requested, submit additional certification as prescribed by the HCBDD establishing the medical necessity for such leave. This shall be in addition to the documentation certifying the condition as FMLA qualifying. The additional certification shall include the dates and the duration of treatment, if any, the expected duration of the intermittent or reduced schedule leave, and a statement from the health care provider describing the facts supporting the medical necessity for taking FMLA leave on an intermittent or reduced schedule basis. In addition, an employee requesting foreseeable intermittent or reduced schedule FMLA leave may be required to meet with the superintendent or designee to discuss the intermittent or reduced schedule leave.

An employee who requests and is granted FMLA leave on an intermittent or reduced schedule basis may be temporarily transferred to an available alternative position with equivalent class, pay, and benefits if the alternative position would better accommodate the intermittent or reduced schedule. An employee who requests intermittent or reduced schedule leave due to foreseeable medical treatment shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the HCBDD's operations.

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(10) Employee Benefits. Except as provided below, while an employee is on FMLA leave, the HCBDD will continue to pay its portion of premiums for any life, medical, vision and dental insurance benefits under the same terms and conditions as if the employee had continued to work throughout the leave. The employee continues to be responsible for the payment of any contribution amounts he would have been required to pay had he not taken the leave, regardless of whether the employee is using paid or unpaid FMLA leave. Employee contributions are subject to any change in rates that occurs while the employee is on leave.

The HCBDD will not continue to pay the HCBDD portion of premiums for any life, medical, vision and dental insurance benefits if, while the employee is on FMLA leave, the employee fails to pay the employee's portion of such premiums or if the employee's payment for his portion of the premium is late by more than thirty (30) days; the HCBDD shall provide the employee written notice, by mail, 15 days prior to ceasing the premium payment. If the employee chooses not to continue health care coverage during FMLA leave, the employee will be entitled to reinstatement into the benefit plan upon return to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition or circumstances beyond the employee's control, the HCBDD may seek reimbursement from the employee for any amounts paid by the HCBDD for insurance benefits the employee received through the HCBDD during any period of unpaid FMLA leave. Leave balances accrued by an employee prior to taking FMLA leave and not used by the employee as outlined in the section entitled "Use of Leave" will be retained by the employee.

FMLA leave, whether paid or unpaid, will not constitute a break in service. Upon the completion of unpaid FMLA leave and return to service, the employee will return to the same level of service credit as the employee held immediately prior to the commencement of FMLA leave. In addition, FMLA leave will be treated as continuous service for the purpose of calculating benefits which are based on length of service. However, specific leaves times (i.e., sick, vacation, and personal leave and holidays) will not accrue during any period of unpaid FMLA leave.

(11) Reinstatement. An employee on FMLA leave must give the HCBDD at least two business days' notice of their intent to return to work, regardless of the employee's anticipated date of return. Employees who take leave under this policy will be reinstated to the same or a similar position upon return from leave except that if the position that the employee occupied prior to taking FMLA leave is not available, the employee will be placed in a position which entails substantially equivalent levels of skill, effort, responsibility, and authority and which carries equivalent status, pay, benefits, and other terms and conditions of employment as the position the employee occupied prior to taking FMLA leave. The determination as to whether a position is an "equivalent position" will be made by the HCBDD.

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An employee will not be laid off as a result of exercising their right to FMLA leave. However, the HCBDD will not reinstate an employee who has taken FMLA leave if, as a result of a layoff within the agency, the employee would not otherwise be employed at the time reinstatement is requested. An employee on FMLA leave has no greater or lesser right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during her FMLA leave.

Prior to reinstatement, employees who take FMLA leave based on their own serious health condition shall provide certification from the employee's health care provider that the employee is able to perform the essential functions of his position, with or without reasonable accommodation.

(12) **Records**. All records relative to FMLA leave will be maintained by the HCBDD as required by law. Any medical records accompanying FMLA leave requests will be kept separate from an employee's regular personnel file. To the extent permitted by law, medical records related to FMLA leave shall be kept confidential. Records and documents created for purposes of FMLA containing family medical history or genetic information as defined by the Genetic Information Nondiscrimination Act of 2008 (GINA) shall be maintained in accordance with the confidentiality requirements of Title II of GINA, which permit such information to be disclosed consistent with the requirements of FMLA.

(S) CONTINUATION OF HEALTH CARE BENEFITS

(1) **Overview.** Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (hereinafter "COBRA"), requires employers to permit Covered Employees (an employee enrolled in an employer sponsored health insurance program), their dependent children and their spouses who lose their right to participate in employer sponsored group health programs to purchase group coverage at their own expense.
COBRA is limited to continuation of health related benefits. COBRA does not apply to life insurance, professional liability insurance, etc., nor does it waive open enrollment periods for employees who were not Covered Employees at the time of the Qualifying Event. Provided the Covered Employee was not terminated for gross misconduct, Covered Employees, their dependent children and their spouses may purchase continuation coverage as follows.

Qualifying Events. Eligibility for continuation coverage is triggered by the occurrence of a Qualifying Event that renders a Covered Employee, his/her dependent children or his/her spouse ineligible to participate in the Hardin County Board of Developmental Disabilities' ("Hardin County Board") health insurance programs. COBRA recognizes the following Qualifying Events:

(a) The Covered Employee's Voluntary separation from employment including resignation for any reason;

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(b) The Covered Employee's involuntary termination for any reason except "gross misconduct;"

(c) Reduction of the Covered Employee's work hours for any reason including change from full to part time employment, strike, layoff, or leave of absence;

(d) Death of the Covered Employee;

(e) The Covered Employee's loss of benefits by virtue of qualifying for Medicare;

(f) Change in family status due to the Covered Employee's Divorce or legal separation or emancipation of the Covered Employee's dependent child; and

(g) Bankruptcy of the Hardin County Board.

(3) **Qualified Beneficiary.** A Qualified Beneficiary is an individual who, on the day prior to the Qualifying Event, is covered under the Board's group health plan. Each Qualified Beneficiary may individually decide whether to enroll or forego continuation coverage under COBRA. COBRA recognizes the following people as Qualified Beneficiaries:

(a) The Covered Employee;

(b) The Covered Employee's spouse and

(c) The Covered Employee's dependent children.

(4) **Coverage Period.** Depending on the nature of the Qualifying Event and whether the Qualified Beneficiary was disabled, continuation coverage is available for periods of 18, 29 or 36 months.

(a) **18 month continuation.** Qualified beneficiaries may elect to continue coverage for up to 18 months following:

(i) The Covered Employee's Voluntary separation from employment including resignation for any reason;

(ii) The Covered Employee's involuntary termination for any reason except "gross misconduct;" or

(iii) Reduction of the Covered Employee's work hours for any reason including change from full to part time employment, strike, layoff, or leave of absence;

(b) **Extension due to disability.** A Qualified Beneficiary who is disabled as defined by Title II or XVI of the Social Security Act at the time of any of

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the Qualifying Events described in Section A.1, A.2, or A.3, may elect to continue coverage for up to 29 months following the Qualifying Event. The Qualified Beneficiary must provide the plan administrator a copy of the Notice of Disability issued by the Social Security Administration before the initial, 18 month continuation period expires and no more than 60 days after receiving the Notice of Disability from the Social Security Administration.

(c) **36 month continuation.** Qualified Beneficiaries may elect to continue coverage for up to 36 months following:

(i) Death of the Covered Employee;

(ii) The Covered Employee's loss of benefits by virtue of becoming eligible for Medicare; or

(iii) Change in family status due to the Covered Employee's Divorce or legal separation or emancipation of the Covered Employee's dependent child.

(5) Premiums

(a) Qualified Beneficiaries must pay the entire monthly premium for continuation coverage plus an administrative fee equal to 2% of premium.

(b) Qualified Beneficiaries are not required to submit a premium and administrative fee with their "COBRA Election Form." The first payment – which must include all premiums and administrative fees due from the day coverage ended through the day on which the Board received the "COBRA Election Form" – is due 45 days after submission of the "COBRA Election Form."

(c) Except for the initial payment, premiums and administrative fees are due on the first day of the month to which they apply. Premium and administrative payments are subject to a 30 day grace period. If the last day of the grace period falls on a day the Hardin County Board is not open for business, payment is due on the next working day. If the premium and administrative fee is not paid in full on or before the last day of the grace period, coverage is terminated and the Qualified Beneficiary is no longer eligible for continuation coverage.

(d) Premiums and administrative fees must be paid in full by money order, certified check or cashier's check payable to the Hardin County Board of DD. The Hardin County Board shall not accept partial payments, cash, personal checks or credit cards. A payment is made on the day the Hardin County Board receives the entire premium and administrative fee in the form of a money order, certified check or cashier's check.

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(e) Continuation insurance is not effective, and no benefits will be paid, for any period for which a Qualified Beneficiary has not paid his/her premium and administrative fee.

(6) <u>Notice and Timelines</u>

(a) The Hardin County Board or the plan administrator shall issue all notices to Qualified Beneficiaries required by this policy. Notices may be personally delivered or sent by first class or certified US mail, return receipt requested. Notice to a Covered Employee's spouse constitutes notice to each Qualified Beneficiary residing with the spouse.

(b) Notice from the Qualified Beneficiary to the Hardin County Board or the Plan Administrator shall be delivered to the Hardin County Board's administrative offices.

(c) For purposes of this section, "Continuee" means a Qualified Beneficiary who elected continuation coverage following a Qualifying Event.

(d) The following timelines govern this policy:

(ii) The HCBDD or Plan Administrator shall notify Qualified Beneficiaries of their COBRA rights by certified mail within 30 days following commencement of coverage under the plan.

(ii) Notice of continuation coverage rights arising out of Qualifying Events ***other than*** change in family status due to the Covered Employee's Divorce or legal separation or emancipation of the Covered Employee's dependent child shall be issued as follows:

- The Hardin County Board shall notify the plan administrator of the Qualifying Event no more than 30 days after that event occurs.
- The plan administrator shall notify each Qualified Beneficiary of his or her right to Continuation Coverage no more than 14 days after it is notified of the Qualifying Event.

(e) Notice of continuation coverage rights ***due to change in the Covered Employee's family status*** shall be issued as follows:

(i) The Covered Employee or a Qualified Beneficiary affected by the change in family status shall notify the Plan Administrator of the Qualifying Event no more than 60 days after it occurs.

(ii) The plan administrator shall notify each Qualified Beneficiary of his or her right to Continuation Coverage no more than 14 days after it is notified of the Qualifying Event.

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(f) Qualified Beneficiaries shall elect continuation coverage by submitting a "COBRA Election Form" to the Hardin County Board no more than 60 days following receipt of notice. Failure to elect continuation coverage within that time forever waives a Qualified Beneficiary's right to continuation coverage.

(g) Premiums and administrative fees for the period beginning the day coverage ends through the day on which the Hardin County Board received the "COBRA Election Form" are due 45 days after submission of the "COBRA Election Form.

(h) Qualified Beneficiaries seeking an extension due to disability shall provide the plan administrator a copy of the Notice of Disability issued by the Social Security Administration before the initial, 18 month continuation period expires and no more than 60 days after receiving the Notice of Disability from the Social Security Administration.

(i) Continuees shall be notified of all open enrollment periods. Notice shall include the open enrollment period's dates, the options offered and the monthly premiums and administrative fees for each option.

(j) Continuees shall be notified of all plan changes. Notice describing changes to the plan or premiums shall be sent as soon as practicable after the Hardin County Board learns of the change.

(7) <u>Termination of Coverage</u>

(a) Continuation coverage shall be terminated as follows:

(i) At the end of the Coverage Period;

(ii) On the date a Qualified Beneficiary becomes Medicare eligible unless his/her eligibility is due to End Stage Renal Disease (ESRD) or because he/she is classified as a "disabled active individual" under a "large group health plan;"

(iii) The first day for which timely payment is not made to the plan;

(iv) The day the Hardin County Board ceases to maintain any group health plan;

(v) The date a Qualified Beneficiary both becomes covered under another group health plan and is not subject to an exclusion or limitation with respect to any pre-existing condition;

(vi) 30 days after the date a Qualified Beneficiary receiving the 11 month COBRA extension due to disability is ruled no longer disabled or

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(vii) For Qualified Beneficiaries other than the Covered Employee and provided insurance was not otherwise terminated, 36 months after the Covered Employee qualifies for Medicare.

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