# This is an attachment to State HR Policy 60.000.15 Family and Medical Leave that specifically addresses FMLA leave for a serious health condition. The agency must follow the provisions of the main policy plus this attachment when administering FMLA leave for a serious health condition.

1. An eligible employee receives up to 12 weeks of FMLA leave to tend to the employee’s own serious health condition or the serious health condition of an eligible family member.
2. Refer to the main policy for procedures for an employee to request FMLA leave for a serious health condition and the agency’s requirements when responding to a request.

# Definitions:

* 1. **Serious Health Condition**: An illness, injury, impairment, or physical or mental condition that involves one or more of the following:
     1. Hospital care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or as a consequence of inpatient care.
     2. Absence plus treatment: A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves one or both of the following:
        1. Treatment received in person, two or more times, by a health care provider, a nurse, or a physician’s assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of or referred by a health care provider.
        2. Treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider.
     3. Any period of incapacity for pregnancy, pregnancy-related illness, or for prenatal care (pregnancy disability). The following absences related to pregnancy disability qualify:
        1. Part-day or full-day absences for severe morning sickness.
        2. Periods of bed rest ordered by the physician of the pregnant employee.
        3. A reduced work schedule because of pregnancy complications.
        4. Routine prenatal visits to the doctor.
        5. Pregnancy disability, where the employee is incapacitated due to pregnancy or childbirth. (Pregnancy is a temporary condition and not a covered disability that requires reasonable accommodation under the Americans with Disabilities Act Amendments Act (ADAAA)). Note: An employee may take FMLA leave if needed to care for a pregnant family member1 who is experiencing pregnancy disability.
     4. Chronic conditions. A chronic condition is one which:
        1. Requires periodic in-person treatments by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider.
        2. Continues over an extended period of time, including recurring episodes of a single underlying condition.

1 See main policy for definitions of qualifying family members for a serious health condition.

1. May cause episodic rather than a continuing period of incapacity; for example, asthma, diabetes, epilepsy.
   * 1. Permanent or long-term conditions requiring supervision: A period of incapacity that is permanent or long-term due to a condition for which treatment is potentially ineffective. The employee or family member is under supervision of a health care provider, not necessarily receiving active treatment. Examples are Alzheimer’s disease, a severe stroke, the terminal stages of a disease.
     2. Multiple treatments (non-chronic conditions): Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider for one or both of the following reasons:
        1. Restorative surgery after an accident or other injury.
        2. A condition that in the absence of treatment or medical intervention will likely result in a period of incapacity of more than three consecutive calendar days. For example: chemotherapy or radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease.
     3. Other definitions relevant to whether a condition qualifies as a serious health condition:
        1. Incapacity: The inability to work, attend school or perform other regular daily activities due to a serious health condition or treatment for or recovery from a serious health condition.
        2. Treatment: Includes examinations to determine if a serious health condition exists and for evaluations of the condition. The definition does not include routine physical examinations, eye examinations or dental examinations.
        3. Regimen of Continuing Treatment: Includes a course of prescription medication such as an antibiotic or physical therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment does not include taking over-the-counter medications such as aspirin, antihistamines or salves, bed rest, drinking fluids, exercise, and other similar activities that could be initiated without a visit to a health care provider.

# Definition of Family Member Under FMLA:

* + 1. Parent: The employee’s biological or adoptive mother or father, or an individual who stood in loco parentis (in place of a parent) when the employee was a child.
    2. Son or Daughter (Child): A biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis who is 17 years of age or younger. The age limit does not apply if the child is incapable of self-care because of a mental or physical disability under the ADA as interpreted by the EEOC per 29 C.F.R. § 825.122(d)(2). The child:
       1. Has a disability as defined by the ADA
       2. Is incapable of self-care due to that disability
       3. Has a serious health condition and is in need of care due to that health condition

It is only when the above requirements are met that an eligible employee is entitled to FMLA protected leave to care for their child who is over 17 years of age. The Department of Labor clarified that age of a son or daughter at the onset of their disability is not relevant to determining a parent’s entitlement to FMLA leave.

* + 1. Spouse, as defined in the FMLA statute, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) Was entered into in a State that recognizes such marriages; or (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.
  1. Definition of Health Care Provider**:** A person performing within the scope of their professional license or certification with primary responsibility to provide health care to an eligible employee or family member.

1. **Health Care Provider includes**: a doctor of medicine or osteopathy authorized to practice medicine or surgery, podiatrists, clinical social workers, optometrists, chiropractors (limited to manual manipulation of the spine to correct subluxation shown to exist by x-ray,) nurse practitioners, nurse midwives and Christian Science practitioners.
2. **New Medical Certification:** An agency has the option to require an employee to provide medical certification from a health care provider that verifies the need for leave for a serious health condition for the employee or the employee’s family member. A new medical certification is obtained at the first occurrence of each family and medical leave condition and on the one-year anniversary for each at the time the employee takes leave for each condition. If the agency requires medical certification, the agency gives the Health Care Provider Certification PD 615A to the employee. The Health Care Provider Certification PD615A can be accessed electronically in the “Attachments” section on Page 1 of the policy. (An agency may not require medical certification for parental leave for the birth of a newborn, newly adopted or newly placed foster child.
   1. An employee must provide a required medical certification prior to taking leave or within 15 days after the agency requests the medical certification, whichever is later. In some extenuating circumstances, the agency may allow more than 15 days, when despite the employee’s diligent efforts, they are unable to provide the certification in 15 days.
   2. An employee may preliminarily designate FMLA leave pending the submission of a completed Health Care Provider Certification form.
      1. If an employee refuses to or does not provide a required medical certification per FMLA statutes and applicable collective bargaining agreement, the agency may deny the FMLA leave. Denied FMLA leave is not protected under the FMLA statutes.
      2. An agency may recoup from the employee insurance payments made on the employee’s behalf where the employee is not entitled to insurance.
   3. If the medical certification is incomplete or insufficient, an agency advises an employee in writing of the additional information needed to make the certification complete and sufficient. An agency allows the employee up to seven calendar days to obtain a complete and sufficient certification from the employee’s health care provider.
   4. Under FMLA only, if the agency has followed Section (4)(B) above, and still needs to authenticate or clarify a medical certification, an agency designee who is not the employee’s supervisor may, at the agency’s option, contact the employee’s health care provider to authenticate or clarify the medical certification (subject to any applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA).) If an employee refuses to provide necessary HIPAA authorization so that their health care provider can communicate with the agency designee, and the employee does not otherwise clarify the certification (if needed), the agency may deny FMLA leave.
   5. If an employee needs both OFLA and FMLA, and the agency needs to authenticate or clarify a medical certification a health care provider representing the agency may contact the employee’s health care provider, with the employee’s permission, for purposes of clarifying or authenticating the medical certificate. If an employee refuses to provide the necessary HIPAA authorization to their health care provider to communicate with the agency designee and does not otherwise clarify the certification (if needed), the agency may deny FMLA and OFLA leave.
   6. If an agency has reason to doubt the validity of a medical certification for an employee’s serious health condition, an agency has the option to require a second opinion under FMLA statutes. If the second opinion conflicts, an agency has the option to require a third opinion, which is binding.
   7. An agency pays uninsured expenses related to required medical certifications to determine if an employee’s reason for leave qualifies for OFLA and FMLA together. FMLA requires that an agency pay the uninsured expenses of required medical certifications for second and third opinions. The employee submits receipts for uninsured expenses according to the agency’s policy on reimbursements.
   8. An agency has the option to require a new medical certification when the employee requests leave for a new serious health condition for the employee or their family member, and at the beginning of each leave year for each qualifying condition (if the employee continues to have need for leave).
3. **Medical Recertification:** An agency may require updated medical information only when the circumstances of the original medical certification changed, such as:
   1. The original medical certification had an end date of less than one year and an employee requests an extension of leave.
   2. The circumstances (including the duration or frequency of absences) described in the previous certification change significantly.
   3. The agency receives information casting doubt on the employee’s stated reason for the absence.
   4. To determine if the employee must reimburse the agency for health care contributions paid on the employee’s behalf (if the employee does not return to work following FMLA or OFLA leave).
   5. Every six months for an ongoing condition in connection with an absence.
   6. No more than every 30 days (unless the initially requested leave period had an end date that was greater than 30 days) if none of the above circumstances apply.