

## SERENITY BEHAVIORAL HEALTH SYSTEMS

**SUBJECT:** FAMILY LEAVE  
**POLICY NUMBER:** HR-8.00  
**EFFECTIVE DATE:** May 1998  
**SUPERSEDES:** N/A  
**LAST REVISION DATE:** March 2010

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### **POLICY:**

It is the policy of Serenity Behavioral Health Systems (SBHS) to comply with the Family Medical Leave Act of 1993 (FMLA) and all applicable revisions. FMLA provides job-protected leave with or without pay to eligible employees

### **USE OF PAID OR UNPAID LEAVE:**

SBHS may require an employee to use available annual, sick, personal leave, and/or compensatory time when appropriate. When not required by written SBHS policy, an employee will be allowed to substitute available annual leave, sick leave (as appropriate), personal leave, or available compensatory time for unpaid Family Medical Leave (FML). In either case, any paid leave used by the employee will run concurrently with FML. FML cannot run concurrently with FLSA compensatory time. If compensatory time is requested it must be used prior to the use of annual leave. Any remaining FML taken after all paid leave and compensatory time has been exhausted must be taken on an unpaid basis. An employee's total FML, paid or unpaid, may not exceed 12 weeks in the rolling 12-month period.

### **USE OF FML:**

SBHS cannot deny the use of FML when the provisions of this policy have been met. It is unlawful to interfere with, restrain, or deny the exercise of (or attempts to exercise) any right provided by the FMLA. Further, it is unlawful to discharge or discriminate against employees for opposing any practice made unlawful by the FMLA or for involvement in any proceeding relating to the FMLA. This policy does not, however, insulate any employee from disciplinary action based on conduct or performance deficiencies.

### **QUALIFYING REASONS:**

Both male and female employees may be eligible for FML for any of the following reasons:

- A. Pregnancy and birth of the employee's child; (Pregnancy is considered a serious health condition under FMLA, and all pregnancy related absences from work [e.g., morning sickness, prenatal examinations, birth, etc.] qualify for FML and sick leave.)

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- B. Care of the employee's newborn child; (When the birth mother [female employee] is released by the attending health care provider to return to work, sick leave cannot be used for further absence unless the newborn child has a serious health condition which supports the use of sick leave.)
- C. The placement of a child with the employee for adoption or foster care, and to care for the child after placement;
- D. A serious health condition, which makes the employee unable to perform the essential functions of the position; or
- E. A family member means the employee's spouse, biological child, adopted or foster child, stepchild, legal ward, or a child of an employee standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of mental or physical disability, a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child under age 18. ("In loco parentis" means having day-to-day responsibilities to care for and financially support a child. "Parent" does not include parents-in-law.)

**EMPLOYEE ELIGIBILITY:**

SBHS is prohibited from extending FML Benefits to ineligible employees.

- I. Eligible employees are allowed up to 12 weeks of unpaid FML during any rolling 12-month period, measured backward from the first day of each approved FML, in accordance with the FMLA, under certain circumstances.
  - A. Have been employed with SBHS for a minimum of twelve (12) months (the twelve (12) months do not need to be consecutive; there can be a break in service).
  - B. Have been present at work for a minimum of 1,250 hours during the twelve (12) months immediately before the beginning of FML (does not include holidays or time away from work on paid or unpaid leave); and
  - C. Have a qualifying reason for taking family leave.
  - D. Time spent by reservists on active duty in the U. S. Armed Forces should be included in calculating hours worked to determine eligibility for FML.
- III. Eligibility for FML due to the placement of a child with the employee for adoption or foster care may begin prior to the date of placement if absence from work is needed for the placement to proceed. Eligibility ends 12 months after the date of placement.

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- IV. FML for a serious health condition is limited to the time determined to be medically necessary by the health care provider.
  - A. FML to care for a family member with a serious health condition ends if the family member dies. The date of death is the last day that qualifies for FML.
  - B. Human Resources may approve leave after the date of death of an employee's family member in accordance with SBHS HR-7.01 – Annual, Sick, and Personal Leave.
  - C. A leave of absence without pay may also be considered in accordance with SBHS policy.
- V. In accordance with Federal regulations, when both husband and wife are eligible employees, they are limited to a combined total of twelve (12) work weeks of FML in a calendar year for the following reasons:
  - A. Birth of the employee's child,
  - B. Care of the employee's newborn child;
  - C. Placement of a child with the employee for adoption or foster care, or to care for the child after placement; or
  - D. Care of the employee's parent with a serious health condition.
  - E. Each spouse is entitled to use the difference between the amount of FML he or she has taken individually for one of the above reasons and the twelve (12) work week maximum for other qualifying reasons.
- VI. Military Family Leave is for an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.
  - A. Eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

**SERIOUS HEALTH CONDITION:**

- I. A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves:

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- A. Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any further treatment in connection with the inpatient care; or
- B. Continuing treatment by a health care provider which includes any one (1) or more of the following:
  - 1. A period of incapacity of more than three (3) consecutive calendar days, and any additional treatment or period of incapacity relating to the same condition that also involves:
    - a. Treatment two (2) or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or other referred health care services provider, or
    - b. Treatment by a health care provider at least once which results in a regimen of continuing treatment (e.g., prescription medication) under the supervision of the health care provider;
  - 2. Any period of incapacity due to pregnancy, or for prenatal care;
  - 3. Any period of incapacity or treatment due to a chronic serious health condition, which requires periodic treatment, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, migraines, etc.);
  - 4. Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease);
  - 5. Any period of absence to receive multiple treatments (including recovery period) either for restorative surgery after an accident or other injury or for a condition that would likely result in incapacitation of more than three (3) calendar days if not treated (e.g., chemotherapy for cancer, dialysis for kidney disease, etc.).
- C. Substance abuse may meet the criteria for a serious health condition. FML may be taken for substance abuse treatment or to care for a child, spouse, or parent who is receiving substance abuse treatment. FML for substance abuse treatment does not prevent the SBHS from taking appropriate disciplinary action against an employee for conduct or performance deficiencies.

**HEALTH CARE PROVIDER:**

- I. “Health care provider” includes the following:
  - A. Doctors of Medicine or Osteopathy;
  - B. Podiatrists, dentists, clinical psychologists, optometrists;
- II. Chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
- III. Nurse practitioners, nurse-midwives, licensed clinical social workers;
- IV. Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts;
- V. Any health care provider from whom the State Health Benefit Section will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
- VI. Health care providers listed above who practice in a country other than the United States.

**TIME FRAMES:**

- I. Eligible employees are entitled to up to twelve (12) work weeks of FML during any rolling twelve (12) month period.
- II. The twelve (12) workweeks of FML are based on an employee’s regular work schedule. For example, full-time employees who regularly work five days per workweek will be charged one (1) workweek of FML for every five days absent from work. Similarly, part-time employees who regularly work three (3) days per work week will be charged one (1) work week of FML for every three (3) days absent from work. If a holiday(s) occurs during a week of FML, the holiday(s) counts toward FML as if it were a workday.
- III. An employee on FML is eligible to accrue paid leave.

**POSTING FMLA NOTICE:**

- I. Information regarding FML and procedures for filing complaints of violations is included in the FMLA notice, Your Rights Under The Family Medical Leave Act of 1993. (See Attachment I).

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- II. SBHS work locations are to permanently post the notice in prominent locations where notices to employees and applicants are customarily displayed and are to post such revised notices as they become available.

**NOTICE AND CERTIFICATION REQUIREMENT:**

- I. When the need for FML is foreseeable, an employee must provide SBHS with at least 30 calendar days advance written notice of the requested leave. Otherwise, the employee must provide the maximum notice practicable, generally within one to two business days of the employee's knowledge of the probable need for leave. The notice of leave should be made in writing by completing a "Family and Medical Leave Request Form" 363, including the reason for the leave and the amount of time required. Employees must attempt to schedule medical treatments so as not to unduly disrupt the agency's operations whenever possible.

- A. If an employee takes leave for the adoption, or foster placement of a child and to care for the child, the employee must have the "Certification of Adoption or Foster Care" Form 713 completed by the official authorizing the adoption or foster care within 15 calendar days of the leave request, unless this is impossible despite diligent efforts.

- B. If an employee takes leave for his/her own or a family member's serious health condition, the employee must have the treating health care provider complete the "Certification of Serious Health Condition" Form 369 within 15 calendar days of the leave request, unless this is impossible despite diligent efforts. The certification must state the date on which the condition started, the probable duration of the condition, and the appropriate medical facts regarding the condition. In some cases, SBHS may require a second or third opinion from another health care provider at SBHS's expense. SBHS may require periodic recertification of a serious health condition during a leave, and periodic reports during the leave regarding an

employee's status and intent to return to work. In addition, SBHS may require an employee to provide certification of the ability to return to work at the end of a leave.

- II. Employees requesting FML due to pregnancy, childbirth, adoption or foster care are to provide to supervisors and human resources the completed Certification Of Pregnancy/Child Birth Form 366. These forms need to be submitted only one time, unless the circumstances regarding pregnancy/child birth change to the extent that updated information is needed.
- III. Employees requesting FML due to a serious health condition must provide to supervisors and the Human Resources Department a Certification of Adoption or Foster Care Form 713, completed by the attending health care provider. When a single serious health condition requires multiple absences (e.g., asthma, chemotherapy, etc.), a separate medical statement is not required for each absence.

**RESPONSE TO REQUEST FOR FAMILY MEDICAL LEAVE:**

The Human Resources Department is responsible for designating leave, whether paid or unpaid, as qualifying for FML. Once a request for FML has been made, SBHS will provide a written response to the employee within 2 business days, or as soon as practicable. The written response will indicate whether the request is denied or approved, or whether additional information is needed. If the request is denied, a notice of denial should be provided indicating the reason for denial.

- I. If the request is approved, a notice of approval should be provided explaining:
  - A. That the leave will count against the employee's annual FML entitlement;
  - B. Any requirements for furnishing medical certification and the consequences for failing to do so;

- C. The employee's right to substitute paid leave and any conditions related to the substitution;
  - D. Any requirements for making premium payments to maintain health benefits, the arrangements for making such payments, and the consequences for failing to do so;
  - E. Any requirements for presenting fitness for duty certificates prior to returning to work; and
  - F. The employee's right to restoration to the same or equivalent job upon return from leave.
- II. If information provided is insufficient, SBHS may conditionally approve the FML conditioned on receiving appropriate documentation.
- III. SBHS is responsible for determining whether any extended leave requested by an employee is for an FML qualifying reason and may ask such questions as may be necessary to make the determination. If the leave is for an FML qualifying reason, SBHS has two days from becoming aware to designate the leave as FML.

**CONCERNS WITH PROCESS:**

Employees who believe that their FML requests have not been processed correctly should discuss their concerns with supervisors or the Human Resources Department.

**DESIGNATING FAMILY MEDICAL LEAVE:**

- I. An employee who believes that their rights have been violated under this policy may file a complaint with United States Department of Labor. Retaliating against anyone because a complaint was filed regarding an alleged violation of the FML policy is strictly prohibited. An employee who believes that he/she has been retaliated against for making a complaint must notify United States Department of Labor as soon as possible. SBHS will act promptly to assure compliance with its anti-retaliation policy.

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- II. It is the responsibility of the Human Resources Manager or Benefits Coordinator to designate FML as appropriate. If FML is determined appropriate, employees are to be placed on FML even when they do not submit a request. Supervisors or Human Resources may learn that an absence, or part of an absence, from work qualifies for FML either during or after the period of absence. In these circumstances, FML should be designated as follows:
- A. When supervisors and/or human resources learn that an employee is eligible for FML during a period of absence, any portion of the absence from work, which qualifies for FML should be designated as such. When FML is designated, medical certification is still required to confirm that the absence qualifies as FML.
  - B. Generally, absences from work may not be retroactively designated as FML after an employee has returned to work. However, FML may be designated retroactively under the following circumstances:
    - 1. When the employee was absent for a FML reason and SBHS did not learn of the reason for the absence until the employee's return, the retroactive designation must be made within fifteen (15) calendar days of the employee's return to duty.
    - 2. When SBHS knows the reason for leave but has not been able to confirm that the leave qualifies under the FMLA, the FML designation must be made promptly upon receipt or appropriate certification.
    - 3. When the reason for the absence is known beforehand by SBHS (e.g., pregnancy/childbirth) employees are not to be retroactively placed on FML after they return to work.

**PAY STATUS/ BENEFITS:**

- I. Employees may use paid leave (annual, sick or personal), if appropriate, take leave without pay, or use a combination of both to cover the absence from work. Use of paid leave must comply with SBHS Personnel Policy HR-7.01 – Annual, Sick, and Personal Leave (e.g., sick leave can be used only for reasons that qualify for sick leave).
- A. Absences due to morning sickness and other pregnancy related absences (including the two (2) weeks immediately before delivery) generally qualify for use of sick leave by female employees.
  - B. The first six (6) weeks following the birth of a child generally qualify for use of sick leave by female employees. Additional use of sick leave, due to the

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birth of a child, must be supported by a medical statement (e.g., serious health condition of the mother or child). Fathers (male employees) would generally be eligible to use sick leave if their presence is needed due to the serious health condition of the mother or child.

- II. Absences related to adoption when the employee's presence is required for health-related reasons qualify for use of sick leave. Other FML absences related to adoption qualify for use of annual or personal leave or authorized leave without pay.
- III. Since leave donations are credited to recipients' sick leave balances employees who are on FML can only use donated leave for absences that qualify for use of sick leave.
- IV. While on FML, employees who have health insurance benefits through the State Health Benefit Plan are entitled to maintain their health insurance coverage at the employee rate. If premiums change while employees are on FML, they are responsible for paying the new premiums.
- V. In order to maintain health insurance and any benefits through the Flexible Benefits Program (e.g., Accidental Death and Dismemberment Insurance, Dental Insurance, etc.), employees on FML with pay (those using sick/donated, annual or personal leave) continue to pay premiums through payroll deductions.
- VI. Employees on FML without pay will be advised of the cost for maintaining health insurance and any benefits through the Flexible Benefits Program, arrangements for making payment and consequences for not making timely payments.
  - A. Employees on FML without pay must complete and submit the following forms to the SBHS Human Resource Benefits Coordinator to continue health insurance benefits:
    - 1. Request To Continue Health Benefits During Leave Of Absence Without Pay and
    - 2. Disability Certification, if appropriate.
  - B. Employees with at least one (1) year of participation in the Group Term Life Insurance Program under the Employees' Retirement System (ERS) may retain coverage while on FML without pay. A request to continue coverage must be made in writing to ERS prior to beginning the FML without pay. Coverage terminates if this written request is not received.

**SYSTEM ENTRY:**

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Supervisors, or Program Managers are to complete the Request For Personnel/Payroll Action Forms to place employees on FML with and/or without pay. These completed forms are to be submitted to the Human Resources Department.

**RECERTIFICATION OF SERIOUS HEALTH CONDITION:**

Employees on FML due to a serious health condition may be required to provide recertification of the serious health condition on a reasonable basis. Recertification cannot be required more often than every thirty (30)-calendar days.

**INTERMITTENT/ REDUCED LEAVE SCHEDULE:**

- I. FML may be taken intermittently or on a reduced leave schedule under certain circumstances. FML cannot exceed 480 hours in a calendar year.
  - A. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason (e.g., morning sickness, prenatal examinations).
  - B. A reduced leave schedule reduces employees' normal work hours per workweek or per workday.
- II. FML may be taken intermittently or on a reduced leave schedule when medically necessary or to provide care or psychological comfort to a qualifying family member with a serious health condition. A medical statement is not required for each absence when FML is taken intermittently. Documentation may be required initially, and recertification may be required no more than every thirty (30) calendar days.
- III. FML may be taken intermittently or on a reduced leave schedule to care for a newborn child or for placement of a child for adoption or foster care only with supervisory approval, unless the absence involves a qualifying serious health condition.
- IV. Employees who request FML on an intermittent or reduced leave schedule basis may be required to temporarily transfer to an available alternative position that better accommodates recurring periods of absence.
  - A. The alternative position must have equivalent pay and benefits, but is not required to have equivalent duties.
  - B. Employees must not be transferred to alternative positions in order to discourage the use of FML or to positions that represent a hardship (e.g., employees may not be transferred to a less desirable shift).

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- C. When the need for intermittent leave or a reduced leave schedule ends and employees are able to return to their normal work schedules, they must be returned to their former positions or equivalent positions.
  
- V. Only the amount of leave actually taken on an intermittent or reduced leave schedule basis maybe counted toward the twelve (12) workweeks of FML. For example, employees who normally work five (5) days per workweek and take off one (1) day for intermittent FML will be charged 1/5 workweek of FML. Similarly, full-time employees who reduce a workweek from forty (40) to twenty (20) hours are charged ½ workweek of FML.

**RETURN TO WORK:**

- I. Employees who have complied with the terms and conditions in the FML approval notice are entitled to return to the same position, or an equivalent position with the same pay and grade, benefits and comparable working conditions, at the expiration of FML.
  
- II. All employees returning to work from FML are required to submit documentation, completed by the health care provider, which certifies that the employee is capable of performing the essential functions of their position, with or without reasonable accommodation. Employees who do not provide a completed documentation will not be allowed to return to work.
  - A. Employees do not retain this entitlement if at the expiration of FML they are unable to perform the essential functions of the position, with or without reasonable accommodation, due to physical or mental condition.
  
  - B. Employees on FML do not have greater rights to return to work than they would have if they had continuously remained at work. For example, employees who are on FML during a staff reduction do not have a right to return to work if they are laid off due to staff reduction.
  
  - C. Nothing in this policy or the FMLA should be construed as limiting SBHS's right to discipline, terminate, or otherwise manage its employees as it deems appropriate. However, the use of FML cannot be considered as a negative factor in any employment decision.

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- III. Supervisors or Program Managers are to submit completed Request For Personnel/Payroll Action Forms to the Human Resources Department to return employees from FML.

**RECORD KEEPING:**

- I. All FML related employment records must be maintained for at least three (3) years and made available upon request by the U.S Department of Labor. These records include, but are not limited to the following:
- A. Correspondence between the employee, supervisor or program manager regarding FML;
  - B. Records of any dispute regarding designation of leave as FML; and
  - C. Any documents describing employee benefits or SBHS policies and practices regarding the taking of leave with and without pay.

**CONFIDENTIALITY:**

Medical information related to FML is confidential and is available to individuals on a “need to know” basis only.

The FMLA is a complex Federal Law that is used often and must be applied accurately.

**REFERENCES:**

- I. Federal Family Medical Leave Act (FMLA) 29 USC 2601 *ET seq.* U.S. Department of Labor 29 CFR Part 825
- II. Rules of the State Personnel Board, Rule 23

**ATTACHMENTS:**

Attachment I [Family Leave Notice—Your Rights Under The And Medical Leave Act of 1993](#)

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Attachment II	<a href="#"><u>Family And Medical Leave Request SBHS Form 363</u></a>
Attachment III	<a href="#"><u>Certification Of Pregnancy/Child Birth SBHS Form 366</u></a>
Attachment IV	<a href="#"><u>Certification Of Adoption or Foster Care SBHS Form 713</u></a>
Attachment V	<a href="#"><u>Certification Of Serious Health Condition SBHS Form 369</u></a>
Attachment VI	<a href="#"><u>Sample Approval Of Family And Medical Leave SBHS Form 338</u></a>
Attachment VII	<a href="#"><u>Sample Ineligible For Family And Medical Leave SBHS Form 420</u></a>
Attachment VIII	<a href="#"><u>Sample Designation Of Conditional Family And Medical Leave SBHS Form 565</u></a>
Attachment IX	<a href="#"><u>Sample Designation Of Family And Medical Leave Without A Request SBHS Form 561</u></a>
Attachment X	<a href="#"><u>Release To Return To Work SBHS Form 926</u></a>
Attachment XI	FML Information Sheet

**APPROVAL SECTION:**

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Committee Chairperson

\_\_\_\_\_  
Date

**RESCISSION SECTION:**

\_\_\_\_\_  
Chief Executive Officer

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Date

**REVIEW SECTION:**

\_\_\_\_\_  
Committee Chairperson

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Date

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Committee Chairperson

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Committee Chairperson

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Date