

**SAME SEX DOMESTIC PARTNER
and
SAME SEX SPOUSE
FAQ's**

1) Please tell me more about the domestic partner/same-sex spouse health benefit being offered by the State of Maryland Employee Benefit Program?

Effective July 1, 2009, the State of Maryland Employee and Retiree Health and Welfare Benefit Program began covering **same sex domestic partners** and their eligible dependents who meet the criteria as outlined in the COMAR 17.04.13 regulations as eligible dependents under the Program. On July 1, 2010, the Program was updated to include **same sex spouses** as eligible dependents.

A summary of the eligibility requirements for domestic partners/same sex spouses and their dependent children can be located at www.dbm.maryland.gov/benefits.

2) Will our marriage be treated the same in Maryland if we are married in the District of Columbia, or in the states of Massachusetts, Connecticut, Iowa, Vermont, or New Hampshire, or in Canada or another foreign country in which same-sex marriages are legal?

Yes, so long as your same sex marriage was created in a jurisdiction where such marriages are valid, the marriage will be recognized by the Department of Budget and Management in administering the health benefits program, regardless whether you married in the District of Columbia, a U.S. state, or a foreign country.

3) Will all same sex domestic partners and same sex spouses be eligible for benefits?

Domestic Partners:

In order to be eligible for health benefits, an employee/retiree and the employee's/retiree's domestic partner must:

- be of the same gender;
- be at least 18 years old;
- not be related to each other by blood or marriage within four degrees of consanguinity under civil law rule;
- not be married, in a civil union, or in a domestic partnership with another individual;
- have been in a committed relationship of mutual interdependence for at least 12 consecutive months in which each individual contributes to some extent to the other individual's maintenance and support with the intention of remaining in the relationship indefinitely; and
- share a common primary residence.

Spouse: Any individual who is lawfully joined in marriage to an employee or retired employee as recognized by the laws of the State of Maryland is eligible for benefits. Based on advice from the Attorney General, same sex marriages will be recognized so long as the marriage was created in a jurisdiction where such marriages are legal.

4) What documentation will be required by the State employee/retiree in order to add a same sex domestic partner to the coverage? What documentation is required to add a spouse?

Domestic Partners:

The employee/retiree and his or her domestic partner must provide the following information:

- An affidavit of domestic partnership, signed by both the Employee/Retiree and the domestic partner (this form is located on www.dbm.maryland.gov/benefits); or;
- Documentation to verify a shared common primary residence such as a joint deed or mortgage agreement, utility or other household bill with both the name of the employee/retiree and the name of the domestic partner appearing; and
- Documentation to verify financial interdependence between domestic partners such as joint bank account or credit account, joint ownership or lease of a motor vehicle, etc.; and
- A Tax Affidavit if the employee/retiree wishes to establish that the domestic partner is a tax dependent so that the value of the domestic partner's coverage will not be added to your gross income for tax purposes. (Note: your partner may be asked to provide proof of income to verify tax dependency.)

Spouse:

The employee/retiree and his or her spouse must provide the following information:

- An Affidavit for Spousal Eligibility and Tax Status (this form is located on www.dbm.maryland.gov/benefits) signed by the Employee/Retiree; and
- Official State marriage certificate (must be a certified copy and dated by the appropriate State or County official, such as the Clerk of Court) from the court in the County or City in which the marriage took place.

5) Will the dependent child(ren) of same sex domestic partners or same sex spouses also be eligible for benefits?

Yes, under certain circumstances. In order for the dependent(s) of a same sex domestic partner/spouses to be eligible for health benefits, the dependent child(ren) must be one of the following:

- a biological child of the domestic partner/spouse;
- an adopted child of or a child placed with the domestic partner/spouse for adoption by the domestic partner/spouse;
- a grandchild of the domestic partner/spouse;
- a step-child of the domestic partner/spouse;
- a child under testamentary or court appointed guardianship, other than temporary guardianship of less than 12 months duration, of the domestic partner/spouse who resides permanently with the domestic partner/spouse and the employee or retired employee; or
- a child who is related to the domestic partner/spouse by blood or marriage and is solely supported by and permanently resides with the domestic partner/spouse and the employee or retired employee;

AND unmarried;

AND either under the age of 25, through the end of the month in which the child turned 25; or at the time of reaching the age of 25, is incapable of self-support because of a mental or physical incapacity that started before the child reached age 25 and is chiefly dependent for support on the domestic partner/spouse;

AND be the “qualifying child” or “qualifying relative” of the domestic partner/spouse.

6) Can parents of employees be covered under this new eligibility expansion?

No, parents of State employees/retirees are not eligible for coverage. To be eligible for coverage under the health benefits program, an individual must be one of the following: legal spouse of the employee/retiree, same-sex domestic partner of the employee/retiree, dependent child of the employee/retiree or dependent child of the employee/retiree’s domestic partner/spouse.¹

7) Are same sex domestic partners eligible for the In-vitro Fertilization (IVF) benefit?

No. The State benefit plans provide the mandated coverage for IVF benefits; those benefits are limited to a married woman, as recognized by the laws of Maryland, and the husband’s sperm must be used. The State of Maryland’s In-vitro Fertilization benefit criteria is located on page 33 of the 2010-2011 Benefit Guide.

8) What documentation will I have to provide to cover my partner’s/spouse’s child(ren)?

In order to cover the dependent child(ren) of your domestic partner/spouse, you must provide the following documentation:

Domestic Partners:

- An affidavit of domestic partnership, signed by both the Employee/Retiree and the domestic partner (this form is located on www.dbm.maryland.gov/benefits);
- Documentation to verify a common primary residence such as a joint deed or mortgage agreement, utility or other household bill with both the name of the employee/retiree and the name of the domestic partner appearing; and
- Documentation to verify financial interdependence between domestic partners such as joint bank account or credit account, joint ownership or lease of a motor vehicle, etc.; and
- An affidavit, for each dependent child of the domestic partner, establishing that the child meets the eligibility requirements for a dependent child of a domestic partner (see FAQ 4 for a list of the requirements); and
- Documents (such as birth certificate, adoption papers, court order of custody, etc) to verify that the child meets the eligibility requirements for a dependent child of a domestic partner (see FAQ 4 for a list of the requirements); and
- If the employee/retiree wishes to establish that the dependent child of the domestic partner is eligible for pre-tax coverage (so that the value of the domestic partner’s coverage will not be added to your gross income for tax purposes), a Tax Affidavit establishing the child’s relationship to the employee/retiree.

Spouse: The required documentation for unmarried children is located on page 13 of the 2010-2011 Benefit Guide.

¹ The dependent parents of certain State employees or State police officers who are killed while employed by the State and receive a certain type of death benefit may be eligible for health benefits coverage.

9) Is my same sex domestic partner/spouse eligible for Life insurance?

Yes, the spouse rates apply to your domestic partner/spouse and the child rates apply to the dependent children of your domestic partner/spouse.

10) Is my domestic partner/spouse eligible to continue health benefits coverage if I pass away?

For a limited time, yes. Your domestic partner/spouse would be eligible for up to 36 months of continuation coverage. Note that, while similar, this is not COBRA continuation coverage because under federal law domestic partners/spouses are not eligible for COBRA.

11) Does this mean that all benefits of State employment (retirement benefits, sick leave, FMLA leave, etc.) will be extended to my same sex domestic partner or my same sex spouse and his/her children?

Not necessarily. The eligibility requirements for the State Employee and Retiree Health and Welfare Benefits Program administered by the Employee Benefits Division are addressed here. The domestic partner/spouse benefits are available only for the specific health and welfare benefits plans and are located at www.dbm.maryland.gov/benefits. Other benefits of State employment are subject to specific statutory language. See your personnel officer if you have questions about the availability of sick leave or other benefits.

12) Aren't all domestic partners the same as same sex partners?

No. There are "same sex" domestic partners and "opposite sex" domestic partners. Effective July 1, 2009, the State of Maryland COMAR regulations began covering "same sex" domestic partners under its employee and retiree benefit programs. In our communications about employee/retiree benefit programs, Domestic Partner always refers to same sex domestic partners.

13) To cover my spouse using pre-tax deductions, do we have to be married according to Maryland law?

Yes. In order to cover your legal spouse with tax-preferred coverage (using a pre-tax deduction and without any additional income imputed to you for the State subsidy), your marriage must be legally recognized in the State of Maryland and your spouse must be of the opposite gender. These criteria are based on requirements from federal tax law.

14) My same-sex partner and I were married in Massachusetts, which recognizes same sex marriage, before we moved to Maryland and I became a State employee. Can I cover my same-sex spouse as a "spouse" under the State employee health benefits program?

If you and your spouse were legally married under the laws of another jurisdiction, your spouse may be eligible for coverage under the health benefits Program. However, the same imputed income issues that apply for coverage of a domestic partner also apply to coverage of a same-sex spouse; this is because federal law does not recognize same-sex marriages and the federal tax-code only exempts health benefits coverage from the employee's taxable income in limited circumstances. The documentation requirements for adding a spouse, regardless of gender, require the submission of a certified copy of the marriage certificate (certifying that the marriage took place and is valid under that jurisdiction's laws); in addition, in order to establish pre-tax coverage, a tax affidavit is also required.

15) What is my cost for adding my same sex domestic partner/spouse and/or the child (ren) of my domestic partner/spouse to my health benefits plan?

Your out-of-pocket costs for the premiums are paid as follows: Payroll deductions for health plan coverage associated with your domestic partner/spouse, and your partner's/spouse's dependent child(ren), are taken on a post-tax basis unless your domestic partner/spouse and your domestic partner's/spouse's child(ren) are also your tax dependents under federal law. Payroll deductions associated with your coverage are taken on a pre-tax basis. The July 1, 2010 premiums are located at www.dbm.maryland.gov/benefits under "Premium Rates". The "Domestic Partner Premium Rates Including Imputed Income" link includes the pre and post-tax and imputed income calculations. You and your domestic partner/spouse will also be required to pay the copayments, deductibles and co-insurance payments that are required under the benefit plan.

Further, you will have additional tax consequences when you elect to cover your domestic partner/spouse and your domestic partner's/spouse's dependent child(ren) if they are not your tax dependents. (See the next question.)

16) What are the tax consequences of adding my same sex domestic partner/spouse and/or the children of my same sex domestic partner/spouse to my health benefits plan?

Under the federal Internal Revenue Code, same sex domestic partners/spouses are not automatically eligible for pre-tax or tax-preferred health benefits coverage. As a result, providing health benefits coverage for them will be considered income provided to you.

If your same sex domestic partner/spouse and his/her children do not meet the IRS dependency qualifications for pre-tax and tax-preferred coverage (refer to Sections 105, 106, 125 and 152 of the IRS code) the amount of the subsidy paid by the State attributable to the coverage of the partner/spouse and/or their child(ren) is treated as

taxable income to the employee. This is known as imputed income. You should consult with a tax expert to determine the tax-qualified status of these dependents and you may want to re-examine your Form W-4, Wage and Income Withholding Statement, in case you want to increase your withholding.

Also, these tax laws will not allow the portion of the employee's health care plan contribution attributable to the domestic partner's/spouse's benefits to be pre-tax. You will pay a **pre-tax** contribution for your coverage and a **post-tax** contribution for adding your domestic partner/spouse including any cost for non-tax qualified children of your domestic partner/spouse. If your domestic partner/spouse and his/her dependent children met the requirements of federal tax law, you will be able to provide pre-tax and tax-preferred coverage for them

17) What if my domestic partner/spouse (and/or his/her child) is a qualified tax dependent of mine?

Documentation verifying the tax dependency is required to avoid the post-tax treatment and imputed income application for health benefits coverage. Required documentation may include copies of your most recent income tax filing (with salary information redacted or blacked out). Please refer to the Affidavit for Domestic Partnership and Domestic Partner's Dependents or the Affidavit for Spousal Eligibility and Tax Status forms located at www.dbm.maryland.gov/benefits for more information.

18) Are claims incurred by my same sex domestic partner/spouse eligible for reimbursement through the Flexible Spending Account program?

Unless the same sex domestic partner/spouse and his or her children can be considered your dependents under the Internal Revenue Code, the answer is no. The Federal tax law restricts reimbursements to expenses incurred by an employee and his or her domestic partner/spouse and dependents.

19) What happens if my same sex domestic partner/spouse and I terminate our relationship?

If you and your legal spouse are divorced or if you and your same-sex domestic partner terminate your relationship, the spouse/domestic partner is no longer eligible for coverage as your dependent. You must take steps to remove the ineligible person from your coverage immediately. To remove any individual from coverage during Open Enrollment, no documentation is required.

Domestic Partners: By signing the Affidavit for Domestic Partners and Domestic Partner's Dependents you agree to notify the Employee Benefits Division immediately upon any changes in circumstances attested to in the affidavit. In addition, may not file another affidavit until at least one (1) year after termination of your domestic partnership (because a domestic partnership must have been in place for at least 12 months before a domestic partner is eligible for coverage). Documentation required to remove your domestic partner is as follows:

- Affidavit of Dissolution of Partnership; and
- Proof of cessation of cohabitation; or
- Proof of dissolution of financial interdependency.

Spouses: To remove a spouse from your plan outside of the Open Enrollment period, you must submit:

- Final limited divorce decree (must be signed by a judge); or
- Final divorce decree (must be signed by a judge).

Domestic partners/spouses may be eligible for continuation coverage for up to 36 months when the domestic partner/spouse relationship ends. Please refer to the 2010-2011 Benefit Guide for an explanation of the continuation coverage that is available to domestic partners/spouses and the dependent children of domestic partners/spouses who lose health benefits coverage as a result of certain events.