



DEPARTMENT OF BUDGET & MANAGEMENT

**SAME SEX
DOMESTIC PARTNER**

**Frequently
Asked
Questions**

FOR JULY 2009 - JUNE 2010

SAME SEX DOMESTIC PARTNER *Frequently Asked Questions*

1) What is the new domestic partner health benefit being offered by the State of Maryland Employee Benefit Program?

Beginning July 1, 2009 (provided that final regulations are adopted by July 1, 2009), the State of Maryland Employee and Retiree Health and Welfare Benefit Program will include **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. A summary of the eligibility requirements for domestic partners and their dependent children can be found in the 2009-2010 Benefits Guide or at www.dbm.maryland.gov.

2) Will all same sex domestic partners be eligible for benefits?

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.

Please refer to the 2009-2010 State of Maryland Benefit Guide or link to www.dbm.maryland.gov. Click "State Employees" then "Health Benefits".

3) What documentation will be required by the State employee/retiree in order to add their same sex domestic partner to their coverage for July 1, 2009?

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); and
- 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.

See the 2009-2010 State of Maryland Benefit Guide or link to www.dbm.maryland.gov. Click "State Employees" then "Health Benefits".

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

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

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

AND be the "qualifying child" or "qualifying relative" of the domestic partner.

See the 2009-2010 Benefit Guide for the Qualifying Child test and Qualifying Relative test.

SAME SEX DOMESTIC PARTNER *Frequently Asked Questions*

5) 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.¹

6) 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. The State of Maryland's In-vitro Fertilization benefit criteria is located in the 2009-2010 Benefit Guide.

7) What documentation will I have to provide to cover my partner's child(ren)?

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

- An affidavit of domestic partnership, signed by both the Employee/Retiree and the domestic partner (this form is located on www.dbm.maryland.gov); and
- 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 (as listed in FAQ #4 on page 2); 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 (as listed in FAQ #4 on page 2); 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 child'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.

Details can be found in the 2009-2010 Benefit Guide.

8) Is my same sex domestic partner eligible for Life insurance?

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

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

For a limited time, yes. Your domestic partner 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 are not eligible for COBRA.

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

No, only the eligibility requirements for the State Employee and Retiree Health and Welfare Benefits Program administered by the Employee Benefits Division are being changed. The domestic partner benefits are available only for the medical/mental health, dental, prescription, Life and PA&D. Other benefits of State employment are not changed. See your personnel officer if you have questions about sick leave or other benefits.

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

No. Effective July 1, 2009, the State of Maryland COMAR regulations will only cover "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.

12) To cover my spouse, 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.

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.

13) 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?

No. Maryland law does not recognize same sex marriages. Md. Ann. Code, Family Law Art. §2-201. Your same-sex spouse may be covered as a same sex domestic partner if the eligibility requirements are met. Please see FAQ #3 on page 2.

14) What is my cost for adding my same sex domestic partner and/or the child (ren) of my domestic partner 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, and your partner's dependent child(ren), are taken on a post-tax basis unless your domestic partner and your domestic partner'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, 2009 premiums are located in the “Premium Rates” leaflet included in your Open Enrollment packet and include the pre and post-tax deductions. You and your domestic partner 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 and your domestic partner's dependent child(ren) if they are not your tax dependents. See FAQ #15.

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

Under the federal Internal Revenue Code, same sex domestic partners 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 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 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 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 including any cost for non-tax qualified children of your domestic partner. If your domestic partner 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.

16) What if my domestic partner (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).

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

Unless the same sex domestic partner and his or her children can be considered your tax 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 spouse and tax dependents.

18) What happens if my same sex domestic partner and I terminate our relationship?

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, you 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.

Domestic partner may be eligible for continuation coverage for up to 36 months when the domestic partner relationship ends. Please refer to the 2009-2010 Benefit Guide for an explanation of the continuation coverage that is available to domestic partners and the dependent children of domestic partners who lose health benefits coverage as a result of certain events.