



Gay Marriage Licenses Now Being Issued: An Early FAQ

Background:

On May 15, 2008, the California Supreme Court ruled that California's ban on same gender marriage was unconstitutional. Thus, couples of the same gender must be allowed to marry.

The new ruling requires that county clerks issue and record marriage licenses to same gender couples in exactly the same manner as issued to opposite gender couples.

1. *Will our healthcare insurance carriers accept same gender marriages as a legal marriage?*

The impact of California Supreme Court's decision begins at 5:01 p.m. on June 16, 2008 when same gender marriages can be performed. Most Carriers will accept same gender spouses as dependents qualified for coverage in your group and individual health plans including your specialized plans whenever we receive notification that they were married on or after June 16 and request to enroll the new spouse. At this time Anthem Blue Cross and Blue Shield of California will both treat same sex spouses as legally married provided they have received their marriage license on or after June 16, 2008.

2. *My new spouse has dependent children. May I enroll them now as my dependent children under the plan?*

Under all insurance contracts, dependents must be dependents of the employee and meet the terms of the contract's dependent child definition. Potentially these children may qualify as "step children," a commonly accepted class under most insurance contracts. Or they may qualify as a child related to the employee by marriage, but only if the Issuer takes the position to acknowledge the same-sex marriage. Again, the answer will be up to the Issuer. If accepted, then, the Issuer would also recognize the dependents immediate open enrollment right by underwriting rule rather than under HIPAA. As a federal law, HIPAA's definition of spouse cannot include same-sex spouses.

3. *What about Federal Law; is it impacted?*

No. Same gender married couples will not have any of the rights of a spouse under federal law (income tax, social security, etc.) because federal law does not recognize

same gender spouses. For example, employee benefits provided to same gender spouses are taxable income under federal law as they currently are for domestic partners. Most critically, as is currently true for domestic partners, same gender spouses are NOT qualified beneficiaries under COBRA and cannot exercise COBRA rights on their own. They will qualify for CalCOBRA continuation coverage (AB205) if their employer has between 2 and 19 employees.

4. Can employees make pre-tax contributions with regard to their new spouse (and children)?

No. Pre-tax arrangements (Premium Contribution Plans, Cafeteria Plans) are sanctioned by the Internal Revenue Code (IRC), and the IRC will not recognize same-sex marriage. It would violate the federal In Defense of Marriage Act (DOMA).

5. Will this affect an employee's rights to continue premium payments under FMLA or CFRA?

The California Family Rights Act (CFRA) appears to have the duty to honor request for leave to "care for one's spouse," whether they are opposite sex or same sex thus allowing the employee to continue employee contributions for health care during the leave. Some consultants speculate that an employee could exercise rights under CFRA (maximum 12 weeks) for taking care of a same-sex spouse and then assert other leave rights under FMLA (12 weeks) resulting in a 24-week leave in a 12 month period.

6. Does this decision impact enrollment in all plans?

Yes, all commercial group and individual plans that define a dependent as a lawful spouse will accept a same gender spouse as a "spouse."

This is an early analysis of the potential treatment of enrollment and departure issues involving same-sex spouses. In the coming weeks, Issuers will make their own rules regarding the ability to enroll a same-sex spouse or dependent children in California. Regardless of the decisions Issuers make, the federal rules will remain intact.

We will keep you informed as this matter develops.

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