

## **Covering Domestic Partners Under Your Group Medical Plan**

There has been an increasing trend by employers to offer healthcare coverage to an employee's domestic partner and his/her dependent children. This expanded eligibility definition requires certain Federal and State compliance procedures. The following provides insight into the inclusion of domestic partner coverage in your healthcare contracts and its effect on federal laws including the tax-free status of employer provided medical benefits, Cafeteria Plans, COBRA Continuation Rights and HIPAA Special Enrollment Rights.

### **Domestic Partner Healthcare Coverage**

Health insurers who are not mandated by state law to provide same-sex healthcare coverage may still allow employers to add a domestic partner provision to their insurance contract. Such a provision can be added at a group's inception of coverage or at their annual renewal. Like standard health contracts, carriers establish minimum requirements to determine member eligibility under a domestic partner provision. Based upon our experience, the following eligibility requirements for domestic partners are usually enforced:

1. Each domestic partner is unmarried, at least eighteen (18) years of age, resides with the other partner, and intends to continue to reside with the other partner.
2. Each domestic partner possesses a valid driver's license listing a common address.
3. Each domestic partner is not related to the other partner by adoption or blood.
4. Each is the sole domestic partner of the other and has been a member of the domestic partnership for the last six months.
5. The partnership meets the requirements of any applicable federal, state, or local laws or ordinances for domestic partnerships.
6. The partnership demonstrates proof of financial interdependence by submission of one or more of the following documents;
  - a. Joint mortgage or lease
  - b. Designation of one of the partners as beneficiary in the other partner's will
  - c. Durable property and health care powers of attorney
  - d. Joint title to an automobile, or joint bank or credit account

This list is not exhaustive and can vary based on the insurance carrier. Typically, it is the employer/plan sponsor's responsibility to monitor member and dependent eligibility under health plans. Self verification is true for all employees including those enrolling for domestic partner coverage. As a result, the Employee Benefits Institute of America (EBIA) suggests employers require a domestic partnership affidavit be completed verifying the domestic partnership meets the insurance carrier's eligibility requirements. Verification should be done at the beginning of each plan year and it is recommended the company require written notification of any changes in the partnership, such as termination of the relationship. Because not all insurance carriers are the same, you should understand the specific eligibility requirements of your carrier before implementing domestic partner coverage.

### **Employee Benefit Taxation and Cafeteria Plans**

For employers who decide to include domestic partners under a group medical plan, there are benefit taxation and Cafeteria Plan compliance guidelines to follow. The federal Defense of



By meeting these tests, and not being an ineligible individual, a domestic partner meets the federal definition of a Code §152 dependent as a qualifying relative.

However, the children of an employee's domestic partner will probably not qualify as Code §152 dependents of the employee except under very limited circumstances. Dependents of Code §152 dependents are ineligible under the qualifying relative tests described above. Therefore, the employer must impute income and cannot allow pre-tax contributions for the health coverage associated with a domestic partner's dependents.

It is advised by EBIA and the Society for Human Resource Management (SHRM) that plan sponsors conduct self-audits to ensure their plan documents are consistent with the intended dependent coverage and if needed, reflect coverage for Code §152 Dependents. If necessary, administrative forms and procedures, Summary Plan Descriptions, and employee communications might need to be updated as well to be consistent with your domestic partner program.

### **COBRA Continuation Rights**

The Consolidated Omnibus Budget Reconciliation Act, or COBRA, grants an individual the right for group health continuation coverage if they experience a qualifying event and lose their group health insurance coverage sponsored by a qualifying employer. Qualifying employers are those who employ 20 or more individuals 50% of the prior year. Under COBRA, only covered employees, spouses and dependent children can qualify for continuation of their group insurance plans. There is no provision in the law which grants same sex domestic partners *independent* COBRA election rights. However, although independent election rights do not exist for domestic partners, it is the belief of EBIA that an employee can continue to cover a domestic partner if the ex-employee elects COBRA for themselves and the domestic partner upon the employee's termination or reduction of hours. Likewise, an ex-employee on COBRA can choose to enroll a domestic partner under COBRA during the annual open enrollment period if an active employee has the ability to do so. To date, the only COBRA continuation coverage available for a domestic partner occurs when the employee elects to cover them.

### **HIPAA Special Enrollment Rights**

Among the protections the Health Insurance Portability & Accountability Act (HIPAA) provides are Special Enrollment Rights when an employee loses coverage or acquires additional dependents through marriage, birth or adoption. These special enrollment rights apply to employees and their dependents, but they do not always allow for the protection of domestic partners. For HIPAA purposes, the definition of marriage is controlled by DOMA, while the definition of a dependent is controlled by the group medical plan. (EBIA Web Seminar April 2007) The acquisition of a dependent via the start of a domestic partner relationship is not protected under HIPAA because DOMA does not recognize same sex couples as husband or wife. Therefore, the start of the relationship is not considered a marriage and not a triggering special enrollment right. The domestic partner would have to wait until the plan's open enrollment period to become covered under the benefits. Just the opposite, a loss of coverage by a domestic partner does trigger a special enrollment right if the partner meets the plans definition of a dependent. Furthermore, if the domestic partner meets the definitions of a Code 152 dependent, the employee can take advantage of the pre-tax treatment of benefits and contributions.

### **Summary**

Healthcare coverage for domestic partners has gained more momentum in recent years and benefits administrators need to be aware of how such coverage affects their medical plan administration. If the coverage is available under state law or insurance carrier provisions, employers can offer domestic partner medical coverage to their employees. Domestic partners are not considered legal spouses under federal regulations, and implementing such coverage can have

an affect on federal income taxation, Section 125 Cafeteria Plans, COBRA Continuation Rights and HIPAA Special Enrollment Rights. It is important for a benefits administrator to be aware of the possible impact the coverage has on these areas and to update benefit materials such as SPD's, communications and administrative procedures. We would encourage any employer intending to implement domestic partner coverage to seek qualified legal counsel to make sure all aspects of the plan are in compliance with the law and any tax advantages available.

If you have any questions on the above information please contact Andrew Grace at 610-889-9500, extension 105 or [andrew.grace@conestoga.biz](mailto:andrew.grace@conestoga.biz).

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#### **NOTICE**

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