

# BENEFITS ALERT

Rose & Kiernan, Inc.

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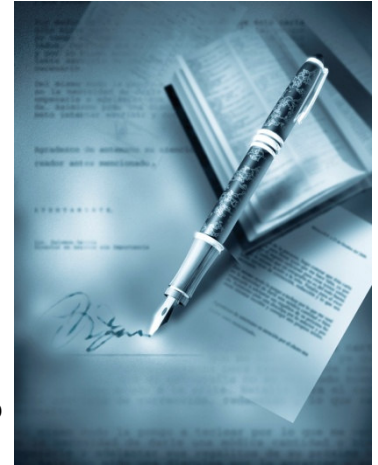


## Same Sex Marriages Now Legal in NYS

The New York legislature passed and Governor Cuomo signed a bill on June 24<sup>th</sup> legalizing same sex marriages in New York State. The bill goes into effect 30 days after the signing. The questions have started to come in from clients as to what, if anything, they need to do with their health insurance plans to be in compliance with the law. The short answer is there is nothing to do but keep in mind that NYS law doesn't alter Federal laws and regulations.

### First, insured plans:

NYS insured plans have been required to recognize same sex marriages legally performed in other states since 2008. Your contract's definition of married subscriber or employee should automatically cover same sex marriages performed in NYS after July 23, 2011 so no amendment is needed. Any special rights in a benefit plan that extend to spouses will apply to same sex spouses.



If an employee has been married in a state or jurisdiction that already legalized same sex marriages (Connecticut, Iowa, Massachusetts, New Hampshire, Vermont and Washington D. C.) the fact that they get remarried in NYS is not a qualifying event to make changes to their insurance plan. They will have to wait until open enrollment.

### Self funded plans:

ERISA pre-empts the State law as it applies to self funded plans. Therefore, based on the Federal Defense of Marriage Act (DOMA), ERISA covered employers are not required to recognize same-sex marriages for purposes of their ERISA-governed, self-funded medical plans and, therefore, do not have to extend health care coverage to an employee's same-sex spouse. This doesn't prohibit a self funded plan from extending coverage to a domestic partner or married same sex couple if they choose.

Self funded employers not subject to ERISA, such as governmental plans, do not have the ERISA pre-emption and will need to recognize the same sex marriage for their plans.

### Taxes:

If an employer does elect to extend coverage to a same-sex spouse, the tax codes that allow spousal coverage to be provided on a pre-tax basis still **would not** apply to a same sex couple. Accordingly, for tax purposes, the portion of the premium applicable to the same sex spouse's benefit would be taxable to the employee as it was prior to the NYS law being passed. Since NYS income taxes follow the definition of marital status used to establish the **federal** income tax, such benefits would be subject to New York State income taxes as well. We expect further guidance from the NYS Dept of Taxation and Finance on this but for now, NYS income taxes must still be applied to the spouse's benefit along with all other payroll taxes.

### Exemptions:

The legislation does allow an exception for religious organizations as follows: "A religious entity as defined under the education law or section two of the religious corporation's law, or a corporation incorporated under the

benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a not-for-profit corporation operated, supervised, or controlled by a religious corporation... shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of a marriage" defined by this bill.

*This Summary is provided to you for general information purposes only and does not include references to other legal resources (e.g., supporting regulations, or formal or informal opinions) unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plan.*

*Updated: July 8, 2011*