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## **BENEFIT RIGHTS of SAME-SEX MARRIED COUPLES IN NEW MEXICO**

(Updated May 2015)

### **1. What Is Same-Sex Marriage?**

Same-sex marriage is the lawful union of two individuals of the same sex in matrimony, as authorized under state law. It is also referred to, e.g., as "same-gender" marriage.

### **2. Does New Mexico Law Authorize Same-Sex Marriages?**

**Yes.** On December 19, 2013 our state Supreme Court ruled that same-sex marriage is lawful, and that the individuals in such marriages and their children are entitled to the same "rights, protections, and responsibilities" resulting from the marital relationship as are available to opposite-sex married individuals under all New Mexico laws.

### **3. How Does Same-Sex Marriage Affect State Benefits?**

Married couples and their children have a broad range of rights and responsibilities under New Mexico laws in matters including property ownership, inheritance, consumer protections, parenting, and health care decision-making. They also have many rights and responsibilities under state *benefits* --- among the most important being the health coverage, life insurance, and pensions, available to governmental (including school and college) employees and retirees; and the Medicaid program.

### **4. Does New Mexico's Authorization of Same-Sex Marriages Affect *Federal* Benefits?**

**Yes.** In June 2013 the *United States* Supreme Court ruled that same-sex married couples are entitled to the same benefits and responsibilities under federal laws that are available to opposite-sex married couples; *provided* their marriage was recognized as

lawful by the state or country in which it was celebrated. The decision invalidated the federal Defense of Marriage Act (“DOMA”), which had barred such equal treatment.

### **5. What Do We Mean By “Federal” Benefits?**

Some of the benefits most important to New Mexicans are authorized and administered under federal law, including: Social Security; Medicare; SSI; Veterans’ benefits; benefits for active-duty and retired members of the Military; benefits for Federal Civil Service employees and retirees; some Higher Education financial assistance; and subsidies and exemptions under Affordable Care Act insurance coverage requirements. Benefits like “SNAP” (a/k/a Food Stamps) and “LIHEAP” home energy assistance can be considered federal because they are established and funded almost exclusively by federal dollars.

### **6. Are The Benefit Rights of Same-Sex Married Couples And Their Children Under *New Mexico* Laws Being Implemented?**

**Yes.** However, like other married individuals same-sex married individuals will need to report their family and dependents statuses to any agencies, individuals, and courts implementing pertinent state law rights. They may often need to be persistent in raising rights because it will likely take time for the knowledge of some officials, and the language in diverse *forms*, to catch up with these rights. Our state Supreme Court ruled that any terms in New Mexico law denoting a marital relationship, including terms like “family,” “husband,” “wife,” and “widow” must apply to same-sex married individuals.

### **7. Are The Benefit Rights of Same-Sex Married Couples And Their Children Under *Federal* Law Being Implemented?**

**Generally, Yes.** The equal rights of same-sex married couples under virtually all federal benefits (**see #5**) *are* being *fully* enforced for New Mexicans, provided they married in any state authorizing same-sex marriage. As a result of our state Supreme Court decision, this applies to all New Mexicans in same-sex marriages. As noted in #8 however, there are a number of exceptions that apply to Social Security and Medicare.

### **8. Are The Benefit Rights of Same-Sex Married Couples and Their Children Under SOCIAL SECURITY, SSI, and MEDICARE Being Enforced?**

**Yes, but *with exceptions*.** Starting in late 2013, the Social Security Administration (SSA) began implementing those rights in stages. However SSA continually encouraged individuals to apply for benefits, so they could get retroactive benefits as additional bases of coverage were approved.

**Social Security:** As of late 2014, approval of claims for most benefits for which same-sex marriage can be a factor had been authorized. The main exceptions appear to be for benefits involving *divorced* spouses. However, SSA’s determination as to whether

and *when* individual states first authorized same-sex marriages, and the program's long-standing, arcane "domicile" rules create complications. For example, claims for *spousal* benefits and *surviving spouse* claims are authorized; *provided*: (a) the marriage was celebrated in a state that had *already* recognized same-sex marriages; and (b) at the time of application (or while it is pending final adjudication) the other spouse on whose earnings records coverage is based is (or at the time of death was) "domiciled" in a state that recognizes same-sex marriage.

**SSI:** All or most claims for SSI in which same-sex marriage can be a factor are authorized --- *provided*: the couple is married per Social Security rules, *or* was legally married in a state where both spouses have their "permanent home" --- and income and resource counting methodologies applicable to spouses apply as well.

**Medicare:** Eligibility for Medicare is most often based on eligibility for Social Security benefits. Accordingly, the same limitations on the approval of claims for benefits noted in the **Social Security** discussion apply to Medicare, including Medicare-only applications. This can also affect, for example, eligibility for Medicare based on End Stage Renal Disease (ESRD). In addition, all or most major rights and protections for Medicare applicants and beneficiaries for which marriage is a factor apply to same-sex married families. This includes, for example, "Extra Help" financial assistance with Medicare prescription drug costs.

### **9. Are the rights of Same-Sex Married Couples and their Children under Medicaid Being Enforced?**

Yes. This applies to all aspects of the Medicaid program, including, for example, the "spousal impoverishment" protections for individuals seeking nursing facility or home and community based services coverage. The federal Medicaid agency has ruled that same-sex marriages must be treated equally with opposite-sex marriages for all Medicaid purposes; *provided* the marriage is recognized in the state in which the applicant or beneficiary resides. As a result of our state Supreme Court decision, this clearly applies to New Mexico.

### **10. How Are Federal and State Taxes Affected?**

Same-sex married couples are being treated equally with opposite-sex married couples for *all* federal tax purposes; if their marriage was celebrated in a state that recognizes same-sex marriages --- even if their state of residence does not. If a couple marries by December 31, they are usually considered married for the entire year. Same-sex married couples can obtain pertinent relief *retroactively* for up to three prior years, *e.g.*, by filing amended returns. New Mexico *income* tax returns rely on individuals' federal tax returns to determine taxable income; due to our state Supreme Court's decision, for

2013 and forward at least, equal treatment applies to all New Mexico taxes. Consultation with a qualified tax expert may be warranted.

### **11. Is Same-Sex Marriage Always Advantageous For Benefits Purposes?**

Not always. For example the income and assets of one spouse can affect their eligibility for some benefits, their income tax liabilities, their Medicare premium amounts, and more. Whether the impact is advantageous or not will depend on the amount of each spouse's income and assets. Any such consequences affect *all* married couples, and are an aspect of same-sex marriage equality. They are consequences about which many individuals have traditionally sought information and consultation before marrying.

**Senior Citizens' Law Office is funded in part by the City of Albuquerque Area Agency on Aging, New Mexico Community Foundation, McCune Charitable Foundation, the New Mexico Civil Legal Services Commission, and the Con Alma Health Foundation.**