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# **Senior Citizens’ Law Office, Inc.**

**4317 Lead Ave. SE, Suite A**

**Albuquerque, NM 87108**

**(505) 265-2300**

**www.sclonm.org**

**BENEFIT RIGHTS of SAME-SEX MARRIED COUPLES IN NEW MEXICO  
(Updated Effective February 15, 2014)**

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.

1. **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.

1. **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.

1. **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.

1. **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; and some Higher Education financial assistance. 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.

1. **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.

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

The equal rights of same-sex married couples under *most* federal benefits (***see* #**5) *are* being *fully* enforced for New Mexicans, so long as they married in any state recognizing their same-sex marriage. The main exceptions are *Social Security, SSI, and Medicare*.

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

**Yes**, but only in stages, by the Social Security Administration (SSA). As claims for coverage on different bases are approved, coverage and benefit payments can be retroactive at least to the June 26, 2013 date of the U.S. Supreme Court ruling.

**Social Security:** Last July SSA placed a hold on all claims for benefits involving same-sex marriages. Since then the agency has begun approving claims just for: (1) Social Security *spousal* benefits for elderly (*i.e.,* age 62 and older) spouses; and (2) *surviving spouse* claims; *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. *But as noted below, even these claims are not yet being processed for New Mexicans***!**

**SSI:** In January 2014 SSA began approving claims for SSI benefits involving same-sex married spouses; *provided*: the couple is married per Social Security rules, *or* was legally married in a state where both spouses have their “permanent home.” *But as noted below, even these claims are not yet being processed for New Mexicans***!**

SSA will eventually process benefit claims under additional bases. **But *action* on *all* Social Security and SSI claims *for same-sex married New Mexicans* is *still* on hold until SSA’s lawyers give the agency a go-ahead to begin processing them.** Nonetheless**, s**ame***-***sex married individuals should apply for benefits without delay.

**Medicare:** Eligibility for Medicare is based on eligibility for Social Security benefits. Accordingly, the same limitations on the approval of claims for benefits noted in the **Social Security** discussion above apply to Medicare, including Medicare-only applications. Since “spouses” cannot qualify for Medicare *as spouses* until age 65, all or most same-sex married spouses who satisfy the marriage and domicile conditions should be eligible when they reach that age and their applications are processed.

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

The Medicaid program is often referred to as a federal-state “partnership,” because it is governed by both federal and state law, and funded by both federal and state dollars. In September 2013, the federal Medicaid agency 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.

1. **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. Consultation with a qualified tax expert is recommended. 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 should apply to all New Mexico taxes.

1. **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.

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