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MEMORANDUM

**NY 08-28
PE 08-21
PA 08-14**

TO: NY, PE, and PA Health Benefits Administrators
FROM: Employee Benefits Division
SUBJECT: Same Sex Spousal Eligibility Reminder
DATE: September 3, 2008

Effective May 1, 2007, the New York State Department of Civil Service revised its policy to recognize any same-sex marriage that is legal in the jurisdiction where it was performed for the purposes of providing spousal benefits eligibility under all benefit programs administered by the Department. Employee Benefits Division Policy Memo # 129r1, which established this policy change, is available on HBA Online and provides full details.

Absent any contrary indication, the possession of a valid marriage certificate from the jurisdictions that are noted in this memo in which same sex marriages are performed is sufficient proof to qualify the spouse for benefit programs administered by the Department. In addition to the originally recognized jurisdictions (Canada, South Africa, Belgium, and Massachusetts); marriages that are performed in Norway and California are now recognized.

Recognition of same sex spouses is mandatory for the State and all other entities participating in any benefit programs administered by the Department including all Participating Agencies (PAs) and Participating Employers (PEs).

While not recognized as marriages, valid civil unions continue to be acceptable as part of proof requirements to qualify for domestic partner coverage. Coverage of domestic partners is mandatory for State agencies, but continues to be optional for PAs and PEs at the discretion of the employer.

As is the case for those covering domestic partners, enrollees whose same sex spouses are not qualified as dependents under Section 152 of the Federal IRS Code cannot have pre-tax premium deductions for the dependents, even if they cover other dependents who are qualified. Also, the value of the benefits provided to non-federally qualified dependents is imputed income for the enrollee, and tax must be paid on that value. If the spouse or domestic partner is a qualified dependent for Federal Tax purposes, and the enrollee files a Partnership and Financial Interdependence Form (PS-425.3), pretax premium deductions are allowed and imputed income and the tax are not required.

Please contact your agency processor if you have further questions.