STATE OF NEW YORK

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PA# 11-15
PA EX# 11-13

TO: Participating Agency Health Benefits Administrators

FROM: Employee Benefits Division

SUBJECT: The Marriage Equality Act

DATE: August 16, 2011

The Marriage Equality Act, signed by Governor Cuomo, became effective on Sunday, July 24, 2011. The Act amends the Domestic Relations Law to provide that a marriage that is otherwise valid shall be valid in New York regardless of whether the parties to the marriage are of the same or different sex. No State government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage shall differ based on the parties to the marriage being of the same or different sex.

Since NYSHIP has recognized same-sex spouses for eligibility purposes since May 1, 2007, NYSHIP benefits and eligibility for benefits have not changed as a result of the Marriage Equality Act.   However, the Act does affect the tax treatment of NYSHIP benefits for same-sex spouses who are not federally qualified dependents. Prior to the Act, these spouses were subject to imputed income for both Federal and State income tax purposes. The Act changes the tax treatment of NYSHIP benefits by the State.

The New York State Department of Tax and Finance has issued guidance regarding the tax treatment of provisions of the Marriage Equality Act. (See Technical Memorandum, TSB-M-11(7) M, date July 29, 2011 which is available at www.tax.ny.gov.) The Act applies to all taxes administered by the Tax Department; as a result, effective July 24, 2011, NYSHIP benefits for same sex spouses no longer result in imputed income for NYS tax purposes. Imputed income assessed prior to that date still applies. Please visit the Tax Department's website at www.tax.ny.gov for more information about tax treatment relating to marriage.

Enrollees whose same-sex spouses are not qualified as dependents under Section 152 of the Federal IRS Code continue to be subject to imputed income for Federal tax purposes; the value of the benefits provided to non-federally qualified dependents is imputed income for the enrollee, and Federal income tax must be paid on that value. If the spouse is a qualified dependent for Federal Tax purposes and the enrollee submits a Dependent Tax Affidavit Form attesting to that status, imputed income and the corresponding tax are no longer applicable.

Possession of a valid marriage certificate from a jurisdiction that allows same-sex couples to legally marry is sufficient proof to qualify the spouse for benefit programs administered by the Department if the marriage is not more than a year old. In addition to **New York**, the states that allow same-sex couples to legally marry are **Connecticut**, **Iowa**, **Massachusetts**, **New Hampshire**, and **Vermont**. **Washington, DC** also allows same-sex couples to marry. Same-sex couples were legally permitted to marry in **California** only from **June 16, 2008 until November 5, 2008**. Any same-sex couple that legally married during this period is currently recognized as married by the State of California. The countries that allow same-sex couples to marry are **The Netherlands**, **Belgium**, **Spain**, **Canada**, **South Africa**, **Norway**, **Sweden**, **Portugal**, **Iceland** and **Argentina**.

As with any spouse, if the marriage has been in effect for more than one year, current proof of financial interdependence must be provided. Additionally, as with all requests to add a dependent to a NYSHIP contract, the spouse's birth certificate, social security card and Medicare card, if applicable, must be presented along with the proof of marital status. (Procedures for Enrolling Same-Sex Spouses - see NY07-18A, PE07-11A, and PA07-08.)

Please encourage enrollees to contact their accountant, attorney or tax professional with any questions related to the tax treatment of same-sex spouses. If you have additional questions, you may contact your processor.