

## REGISTERED DOMESTIC PARTNERS AND WASHINGTON INSURED PLANS

A new Washington State law, referred to as the “Everything but Marriage Act” (the Act), is scheduled to take effect July 26, 2009.<sup>1</sup> This Act will require that registered domestic partners are treated the same as spouses for all purposes under Washington law. However, a group called the Washington Values Alliance has filed a referendum (R-71) seeking a public vote to repeal the Act. The group has until July 25, 2009 to collect enough signatures to place the issue on the November ballot. If successful, this will delay the effective date of the Act until after the election. We may not know if the group collected enough signatures to challenge the law until the weekend or early next week.

Assuming the Act becomes effective, insurance contracts written in Washington State, including group health plans and group life insurance contracts, will be required to treat state-registered domestic partners in the same manner as married spouses. This includes those domestic partners registered in Washington as well as domestic partners registered in any other state.

While much of the information is still developing, following are some frequently asked questions that may assist you in understanding these new requirements. We will continue to update this list as news develops.

### **Who is a Registered Domestic Partner in Washington?**

In order to register as a domestic partner in Washington State, both partners must:

- Share a common residence
- Both be at least 18 years of age
- Not be married to, or in a registered domestic partnership with someone else
- Be capable of consenting to the domestic partnership
- Not be nearer kin than second cousin
- Not be a sibling, grandchild, aunt, uncle, niece or nephew to the other partner, and
- Either be:
  - Of the same sex, or
  - At least one partner must be at least 62 years of age.

There is a process that domestic partners must go through to be a “registered domestic partnership” under Washington law. This includes completing the Declaration of

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<sup>1</sup> SB 5688 – link to the bill at <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/Session%20Law%202009/5688-S2.SL.pdf>

Domestic Partnership form, signing the form, having it notarized and submitting the form to the Secretary of State along with a registration fee.

Domestic partners registered in other states will be recognized in Washington as registered domestic partners and receive all the benefits allowed under the Washington law.

### **Our group health plan is insured in Washington; what does this new law mean for me?**

While many of the details are currently being worked out, the law requires insurers and insurance contracts to treat registered domestic partners as spouses under the terms of the insured policies. This requirement would apply to an insured group health plan or life insurance contract written in Washington. Therefore, those contracts will need to cover any registered domestic partner in the same manner as a covered spouse.

Many insured health plans already satisfy this requirement by extending coverage to domestic partners of employees. However, if an insured plan only offers coverage to a spouse (and not a domestic partner) the law appears to require that the insured coverage be extended to a registered domestic partner as if he/she were a spouse.

### **What is my carrier doing to comply with these new requirements?**

Kibble & Prentice is working closely with our carriers to determine what steps are being taken to comply with the Act. Recent guidance from the Washington Insurance Commissioner's Office (OIC) indicates carriers will not be required to change their current policy language to comply with the new requirements. However, the insurer will need to administer the policy in a manner that treats registered domestic partners the same as married spouses. Going forward, the OIC will require carrier contracts to specifically state that all provisions that apply to spouses apply equally to registered domestic partners.

The OIC's statements raise a number of issues, including how a registered domestic partner may enforce the requirement for coverage if it is not written into the terms of the plan, and the plan sponsor's ability to comply with ERISA's written plan requirement. Additional guidance from the carriers and OIC is needed in this area.

### **Will these changes be implemented at renewal or through a special enrollment period?**

While most state law changes impacting insurance plans are implemented at renewal, the Act appears to require immediate compliance. Therefore, it is likely that a special enrollment opportunity may be extended on or after July 26<sup>th</sup> to allow eligible registered domestic partners, who are not already receiving benefits under the insured plan, to enroll in coverage. Additional guidance from the carriers and OIC is needed in this area.

### **I am a self-insured employer; must I cover registered domestic partners?**

No, this is a Washington State insurance requirement. A self-insured plan is not subject to state insurance mandates. However, many self-insured group health plans already cover domestic partners as a function of plan design.

## **Do I need to make changes to the health FSA or HRA?**

No, this is a Washington State insurance requirement. The health FSA and HRA are not subject to state insurance mandates. Further, only qualified medical expenses of an employee, the employee's spouse or other tax dependent under federal law (Code Section 152) are eligible for reimbursement through these tax-favored arrangements. A registered domestic partner would need to be a tax dependent of the employee in order to have his/her expenses reimbursed from the employee's FSA or HRA.

## **For tax purposes, how will I treat the premiums associated with the registered domestic partner's coverage?**

This will depend on whether the registered domestic partner is a tax dependent under Code Section 152. Employer provided health coverage is "tax-free" if coverage is provided to the employee, the employee's spouse or tax dependent. If the registered domestic partner is not a tax dependent, the fair market value of the coverage is imputed as income to the employee less any employee after-tax contribution.

## **Where can I get more information?**

Additional guidance on this issue is anticipated should the referendum attempt fail. The OIC indicated they are working on a consumer information piece that should be released in the near future. We will keep you updated as information develops. The following Web sites also provide additional information on this issue.

### Washington Secretary of State Web Site

- [www.secstate.wa.gov/corps/domesticpartnerships/](http://www.secstate.wa.gov/corps/domesticpartnerships/)

### Washington Office of the Insurance Commissioner

- Home page [www.insurance.wa.gov/](http://www.insurance.wa.gov/)
- FAQ for Insurers on Domestic Partners Life & Health Insurance Produce Filing Requirements  
[www.insurance.wa.gov/insurers/rates\\_forms/domesticpartners\\_FAQ.shtml](http://www.insurance.wa.gov/insurers/rates_forms/domesticpartners_FAQ.shtml)

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