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HealthFlex Coverage and Same-Sex Marriages, Civil Unions and Domestic Partnerships

Many U.S. states and certain localities and municipalities have enacted laws relating to same-sex marriages and marriage-like unions. These unions can affect employee health benefit plans, such as HealthFlex (the Plan), based on the language of the applicable statute and other laws of the state.

Three factors generally determine whether a same-sex partner of a participant may be covered in HealthFlex: (i) the type of union permitted under state law (e.g., marriage, civil union, comprehensive domestic partnership or limited domestic partnership); (ii) the decisions of the plan sponsor; and (iii) the clergy or lay status of the participant. Federal law also has an effect on these benefits. Further, *The Book of Discipline (The Discipline)* and the rulings of the Judicial Council of The United Methodist Church must be taken into account when evaluating health benefits for same-sex couples.

Same-Sex Marriages

Like most employee benefit plans, HealthFlex defines a spouse as an individual to whom a participant is legally married under laws of the state in which the participant resides. The Plan defers to state family law. Until the Defense of Marriage Act of 1996 (DOMA) was enacted, federal law, including the Internal Revenue Code (Code), similarly deferred to state law definitions of marriage and spouse. HealthFlex will treat the same-sex spouse of a participant the same as an opposite-sex spouse, to the extent required by state and federal law.

As of January 5, 2015, 36 states and the District of Columbia—Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming—permit same-sex couples to marry. Several trial courts have ruled that same-sex marriage bans in several states are unconstitutional, including Arkansas, Kentucky, Ohio, Michigan, Tennessee and Texas. The status of same-sex marriages in these states may be uncertain for some time while these rulings are appealed to higher courts.

Generally, a same-sex spouse in these states may be enrolled in HealthFlex in the same manner as opposite-sex spouses. However, plan sponsors should consider the impact of *The Discipline* and Judicial Council Decision Nos. 1030, 1075 and 1264, explained below, in determining how the cost of coverage is paid. In addition, clergy who enter same-sex marriages may encounter significant consequences under *The Discipline*.

Civil Unions and Comprehensive Domestic Partnerships (Civil Partners)

A plan sponsor may elect, through its adoption agreement, to offer coverage for a same-sex partner of an employee who has entered a civil union or domestic partnership, which, under the law of the state in which the employee resides, provides the substantive and procedural rights, privileges and immunities of marriage. Dependents of Civil Partners would also be covered to the extent permitted under federal law and to the extent they are eligible under other applicable provisions under the Plan. Such coverage shall be subject to the limitations of federal law (i.e., with respect to the Code), the conditions described in Judicial Council Decision Nos. 1030, 1075 and 1264, and *The Book of Discipline*, as explained below.

As of January 5, 2015, the following states have such laws regarding civil unions or comprehensive domestic partnerships: California, Colorado, District of Columbia, Hawaii, Illinois, Maine, Nevada, New Jersey, Washington and Wisconsin. The state of Wisconsin has a domestic partner law that does not confer all the rights and privileges of marriage upon the partners. However, the Wisconsin law does provide most of the important decision-making and property rights of marriage; e.g., joint property rights, maintenance rights, health care decision-making rights and state family/medical leave rights.

HealthFlex plan sponsors must execute *Exhibit D* as part of their adoption agreement to make this coverage available to Civil Partners and their dependents. Generally, coverage will be effective January 1 of the year following the date the election is made (i.e., the first day of the next Plan year). However, the Plan may allow a plan sponsor to adopt such coverage mid-year.

Other Same-Sex Unions—Local Domestic Partnerships

Some localities and municipalities have established domestic partner registries. HealthFlex does not permit plan sponsors covering jurisdictions that are subunits of states recognizing limited domestic partnerships to adopt coverage of same-sex partners.

Tax Treatment of Benefits under the Tax Code

DOMA limited a marriage to opposite-sex couples for the purposes of all federal laws, including the Internal Revenue Code and the Employee Retirement Income Security Act (ERISA). Therefore, federal laws did not recognize state-sanctioned same-sex marriages, civil unions or domestic partnerships before the Supreme Court decision in *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013), which ruled that Section 3 of DOMA is unconstitutional.

In *Revenue Ruling 2013-17*, as a result of *Windsor*, the Internal Revenue Service (IRS) ruled that same-sex couples who are *legally married* in jurisdictions that permit their marriages will be treated as *married* for all federal tax purposes. The ruling applies regardless of whether the couple *resides* in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage. The ruling applies to all federal tax provisions where marriage is a factor, including employee benefits, such as employer health plan coverage.

Under the Tax Code, health insurance benefits for same-sex spouses will no longer be considered taxable income to the employee (participant). If an employer pays for the coverage of a same-sex spouse under HealthFlex (i.e., pays the same share of the premium as it does for an opposite-sex spouse), then the fair-market value (i.e., the difference in premium) of that additional coverage is no longer treated as imputed taxable income to the employee. However, for state income tax purposes, the treatment of the coverage as either excluded from taxation or imputed taxable income will depend on the marriage and tax laws of the state of residence.

In addition, under federal law, same-sex spouses are treated as tax dependents. Therefore, employees may make pre-tax contributions to a cafeteria plan and receive reimbursement for medical expenses from flexible spending accounts with respect to the same sex spouse.

Any same-sex marriage legally entered into in one of the 50 states, the District of Columbia, a U.S. territory or a foreign country that recognizes same-sex marriage—e.g., Argentina, Canada, France, Mexico (certain states), South Africa or the United Kingdom—will be covered by the ruling. However, importantly, *Revenue Ruling 2013-17* does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law but not denominated a “marriage.”

Therefore under federal law, health insurance benefits for Civil Partners still should be considered *taxable* income to the employee (participant). If a plan sponsor or employer were to pay for the coverage of a Civil Partner under

HealthFlex, (i.e., pay the same share of the premium as it does for a spouse), then the fair-market value (i.e., the difference in premium) of that additional employer-paid coverage is treated as imputed income to the employee—subject to federal income and employment (FICA) taxes. However, for state income tax purposes, this coverage may be treated as tax-exempt (depending on the state’s income tax laws), so the employee may not be subject to state income tax on the value of the added coverage of a Civil Partner.

In addition, unless his or her Civil Partner qualifies as a tax dependent under Code §152 (which is a stringent standard), an employee may not make pre-tax contributions to a cafeteria plan on behalf of a Civil Partner, (i.e., the employee responsibility portion of the premium that is attributable to the Civil Partner coverage generally must be paid on an after-tax basis). An employee also may not receive reimbursement for medical expenses of the Civil Partner from flexible spending accounts (FSAs), unless the Civil Partner is a Code §152 dependent. An employee may receive reimbursements for eligible medical expenses of a Civil Partner from health reimbursement accounts (HRAs) under HealthFlex; however, the contributions to the HRA must be treated as imputed income to the participant, subject to federal income and employment taxes.

Church Considerations

The Discipline is not entirely clear on how to treat same-sex partners for health benefits purposes. HealthFlex plan sponsors may want to consider the following paragraphs when making decisions related to such benefits. *Discipline* ¶162J states that the Church is “committed to supporting those rights and liberties for all persons regardless of sexual orientation. We see a clear issue of simple justice in protecting the rightful claims where people have shared material resources, pensions, guardian relationships, mutual powers of attorney, and other such lawful claims typically attendant to contractual relationships that involve shared contributions, responsibilities, and liabilities, and equal protection before the law.” ¶162V states that “[h]ealth care is a basic human right.” But ¶161F states that the Church “does not condone homosexuality and considers this incompatible with Christian teaching.” And ¶162B states that the Church “support[s] laws in civil society that define marriage as the union of one man and one woman.”

Discipline ¶806.9 and ¶613.19 state that general Church funds should not be used to promote homosexuality. It is unclear precisely how this admonition applies to employer-provided health benefits for same-sex partners of participants. The Judicial Council has ruled, in Decision No. 1075, that an annual conference health plan providing health benefits to domestic partners of lay employees did not violate *The Book of Discipline*. The annual conference was in a state that had *not* established same-sex unions at the time. The plan required the employee to pay the full additional premium cost for the coverage of his or her partner. The Judicial Council upheld the plan because the annual conference council on finance and administration (CCFA) had approved the plan (i.e., the CCFA had determined that the plan did not violate ¶613.19). Similarly, in Decision No. 1030, the Judicial Council held that domestic partner coverage under an annual conference health plan was permissible because the CCFA had determined that it was not violating ¶613.19.

On April 28, 2014, the Judicial Council ruled in Decision No. 1264 that expanding the definition of “spouse” in the General Agencies Welfare Benefits Program [GAWBP, the health plan maintained by the General Council of Finance and Administration (GCFA) for the program agencies] to include same-sex spouses and Civil Union partners in states that have established civil unions is not a violation of ¶806.9 of *The Book of Discipline*. The Judicial Council ruled that GCFA was authorized by ¶806.9 to make this determination. Furthermore, for the GAWBP, the general agency paying the cost of health coverage for the employee and his or her spouse or partner does not violate ¶806.9. HealthFlex plan sponsors considering covering Civil Partners should consult with their CCFA and consider Decision Nos. 1030, 1075 and 1264.

Where clergy are involved, the matter also concerns the following paragraphs:

- ¶341.6 states that “ceremonies that celebrate homosexual unions shall not be conducted by our ministers and shall not be conducted in our churches.”
- ¶304.3 states that “self-avowed practicing homosexuals are not to be certified as candidates, ordained as ministers, or appointed to serve in the Church.” As such, plan sponsors should remind clergy participants of potential consequences under *The Discipline* regarding same-sex relationships, beyond the health plan.

Applicability of State Law

It is unclear whether every state law establishing same-sex unions applies to annual conference health plans (whether provided through HealthFlex or otherwise). Some of the laws have limited-scope religious exemptions. Though most of these exemptions simply excuse clergy from performing same-sex unions if they object, others are broader and could be read to exempt church plan employers that object to same-sex unions from providing coverage. These laws amend state insurance laws to require health insurers (and fully-insured church health plans) to cover same-sex partners. It has long been unclear whether state insurance laws apply to self-insured church plans like HealthFlex.

The Church Plan Parity and Entanglement Prevention Act exempts self-insured church plans from some state laws. Some state insurance codes expressly exempt self-insured church plans, e.g., in Florida, Minnesota, Oregon, South Dakota and Texas. Other states have broad jurisdiction statements in their codes, which a court might interpret to apply to church plans. Moreover, these state-based same-sex union laws also amend state employment discrimination laws, which may apply to church employers with respect to lay employees.