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How does this change to the definition of marriage impact claims handling?

Since *Spotlight* reviewed the legalization of same-sex unions in the [March 18, 2012 edition](#), the pace of legislative and judicial activity surrounding this issue has quickened.

Currently, 17 states plus the District of Columbia allow same-sex couples to marry. Several states have expanded the legal rights available to spouses in same-sex relationships through civil unions and domestic partnerships. On June 26, 2013 the United States Supreme Court ruled in [Windsor v. United States](#), No. 12-307 that section 3 of the federal Defense of Marriage Act (DOMA), which defines marriage, is unconstitutional. Since this decision, several state attorney generals have announced that they will no longer defend their state's same-sex marriage bans.

This issue of *Spotlight* provides an update on the issue of same-sex marriage and claims handling considerations.

Same-Sex Marriage Overview

In the states that recognize these unions, the legal status of same sex marriages is identical to opposite sex marriages.

The first states that allowed same-sex marriage did so as a result of court decisions—Massachusetts in 2004, Connecticut in 2008 and Iowa in 2009. However, most states and the District of Columbia enacted same-sex marriage laws through legislation. Below is a summary of changes in the states over the past two years on this fast moving issue:

2012	Washington	Legislation establishing same-sex marriage was approved February 2012, but opponents gathered enough signatures to put the issue on the November 2012 ballot. Voters upheld the law and same-sex marriages began on Dec. 6, 2012.
	Maryland	Gov. O'Malley signed same-sex marriage legislation into law on March 1, 2012. However, opponents of the legislation obtained enough signatures to file a referendum challenging the law during the November 2012 election. The law was upheld by the voters and became effective on Jan. 1, 2013.
	Maine	During the November 2012 election, voters approved a ballot measure legalizing same-sex marriage. The measure became effective Dec. 29, 2012.

	New Jersey	The legislature passed a same-sex marriage bill in February 2012, but the measure was vetoed by Gov. Christie. A legal challenge was raised to the state's law that only provided civil unions for same-sex couples and a lower court ruled that the state had to allow same-sex couples to marry beginning Oct. 21, 2013. After the New Jersey Supreme Court denied an appeal for delay, Gov. Christie announced that the state would drop its appeal making same-sex marriage legal in New Jersey.
2013	Rhode Island	Gov. Chafee signed legislation that legalized same-sex marriage, eliminated the availability of civil union and also recognized civil unions and same sex marriage from other states on May 2, 2013. This bill became effective Aug. 1, 2013.
	Delaware	Gov. Markell signed into law on May 7, 2013 same-sex marriage legislation that also recognized civil unions and same sex marriage from other jurisdictions. The law became effective July 1, 2013.
	Minnesota	Following the defeat of a constitutional prohibition of same-sex marriage during the November 2012 election, the legislature passed a bill allowing same-sex marriage May 2013. The law went into effect on Aug. 1, 2013.
	California	On June 26, 2013, the U.S. Supreme Court declined to decide the California challenge to Proposition 8, concluding that it had no authority to consider the question in the case. The effect of that decision was to reinstate the federal district court decision overturning Proposition 8, thus allowing same sex marriage in California.
	Hawaii	During a special session held October and November 2013, same-sex marriage was passed after both houses agreed to the addition of an amendment that strengthened the exemption of religious organization from being required to provide facilities, goods or services for the marriage or celebration of the marriage if it violates their religious beliefs. Gov. Neil Abercrombie signed the bill on Nov. 13, 2013, and it became effective on Dec. 2, 2013.
	Illinois	Gov. Pat Quinn signed Senate Bill 10 into law on Nov. 20, 2013 and same-sex marriages will be available beginning June 1, 2014. A ruling by a U.S. District judge allowed residents of Cook County, Illinois, to begin marrying on Feb. 21, 2014.
	New Mexico	The New Mexico Supreme Court ruled on Dec. 19, 2013, that same-sex couples are allowed to marry. The ruling went into effect immediately.

Of the 33 states that still prohibit same-sex marriage, 29 have done so through constitutional provisions. Efforts to overturn state constitutional prohibitions have been initiated in the federal courts and have moved, or are about to move, into four federal appellate courts.

- The Virginia case, *Bostic v. Rainey*, is expected to be appealed to the U.S. Court of Appeals for the 4th Circuit in Richmond, Virginia.
- The Oklahoma case, *Bishop v. U.S.*, 04-cv-848, U.S. District Court, Northern District of Oklahoma (Tulsa) is to be heard before the U.S. Court of Appeals for the 10th Circuit in Denver, Colo., along with the Utah case, *Kitchen v. Herbert*, 13-cv-00217, U.S. District Court, District of Utah (Salt Lake City). Oral arguments are scheduled to be heard separately for these two cases April 2014.
- The Nevada case, *Sevcik v. Sandoval*, 12-17668, will be heard before the U.S. Court of Appeals for the 9th Circuit in San Francisco, Calif.

In each of the above four cases the rulings are stayed pending appeal, meaning marriages cannot occur at this time. It is anticipated that the U.S. Supreme Court will be again asked to review this issue in 2015 or soon thereafter. Meanwhile, more action through legislation and ballot initiatives is expected to occur this year.

Civil Unions

A civil union is a category of law created to extend rights to same sex couples. These rights are recognized only in the state where the couple resides and no federal protection is included.

In 2013, the Colorado Legislature passed a bill to establish civil unions for same-sex couples. The bill also provides recognition of civil unions from other jurisdictions. Gov. John Hickenlooper signed [SB 11](#) into law on March 21, 2013, and it became effective on May 1, 2013.

Delaware and Rhode Island replaced their civil union provisions with same-sex marriage, as previously occurred in Connecticut, New Hampshire and Vermont.

In Hawaii civil unions remain available to same-sex and opposite-sex couples alike. The status of civil unions in Illinois and New Jersey are not yet clear with the legalization of same-sex marriage.

Domestic Partnerships

Domestic partnership is a civil contract between same-sex or opposite sex, unmarried, adult partners who meet statutory requirements. Laws vary among states, cities and counties for domestic partnerships. Several states register these partnerships.

Washington has recently announced that registered domestic partnerships for same-sex partners will be converted to marriages on June 30, 2014, if marriage has not occurred or the partnership has not been dissolved by that time. The conversion will not apply to the domestic partnerships of heterosexual couples.

Reciprocal Beneficiaries

A reciprocal beneficiary agreement is a consensual and signed declaration of relationship for two adults unable to marry each other. Reciprocal beneficiary laws in Colorado, Hawaii and Maryland allow some benefits of marriage such as workers' compensation survivor and health related benefits.

Claim Handling Considerations and Suggestions

The definitions of “spouse”, “dependent” and “marriage” are changing and these changes affect the handling of casualty claims as we determine who is an eligible dependent or has legal standing to file certain causes of action. It is important that we are mindful of the state laws and any case law in the particular jurisdiction relating to same-sex unions.

Some state insurance departments have issued bulletins regarding their compliance expectations. For example, the Minnesota Departments of Commerce and Health issued [Administrative Bulletin # 2013-3](#) to advise property and casualty insurers that any policy issued in Minnesota on or after August 1, 2013, providing dependent coverage for spouses must make that coverage available on the same terms and conditions regardless of the sex of the spouse. The bulletin reminds insurers that defining a spouse in a way that limits coverage to an opposite-sex spouse would be discriminatory and unfair, and a violation of Minnesota Statutes section 72A.20, subdivision 16.

When evaluating the eligibility of dependents one area of uncertainty involves same-sex couples that have a valid marriage, but move to a state that does not recognize their marriage. The U.S. Supreme Court decision in *Windsor* did not address Section 2 of DOMA, which does not require states to give effect to same-sex marriages performed under the laws of other states. In the past, most federal laws looked to the state of residence at the time benefits are sought, rather than where the marriage occurred.

In response to the U.S. Supreme Court DOMA decision, the U.S. Department of Labor published [Technical Release 2013-4](#) on September 18, 2013. This release indicates that the rule of recognition to be applied is based on the state where the marriage was celebrated, regardless of the married couple’s state of domicile. Guidance is also provided on the meaning of “spouse” and “marriage” as these terms appear in the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code that the department interprets.

This release likely also applies to the following four major disability programs administered by the Department of Labor's Office of Workers' Compensation Programs (OWCP):

- Longshore and Harbor Workers' Compensation Program and its extensions, including the Defense Base Act
- Energy Employees Occupational Illness Compensation Program
- Black Lung Benefits Program
- Federal Employees' Compensation Program

Additional recommendations include the following:

1. Ascertain who the employer shows as the spouse.
2. In addition to determining marriage or civil union, domestic partnership registration should be confirmed.
3. If interviewing a claimant in a jurisdiction that recognizes same sex unions, in addition to spouse add the terms “domestic partner or designated beneficiary” to the questions.
4. It might be necessary to find out when and in what state the marriage occurred.
5. Any questions or concerns should be discussed with your supervisor, team leader, manager or defense attorney.

Sometimes the performance of our duties as claims examiners is impacted by laws seemingly unrelated to insurance. It is important that we consider the impact of headlines and changes in the law to our handling of workers' compensation claims.