



AFTER DOMA

WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

MEDICAID

Medicaid is a health insurance program for very low-income people who meet certain guidelines. Medicaid also provides insurance coverage for long term care, such as when someone needs nursing home care. Many states have additional specific programs that are also called Medicaid, such as pre-natal care coverage for pregnant women.

Each state has its own Medicaid program that is partially funded by the federal government. Most states call this program “Medicaid,” but some states have their own name for their Medicaid program (for example, in California it is called Medi-Cal). Each state has different rules about who can get Medicaid and what is covered, although there are some federal requirements that states must all follow. Even if you qualify in one state, you may not qualify in a different state if you move. The best way to determine the specific eligibility standards used in your state is to visit www.healthcare.gov or www.medicaid.gov.

Who qualifies for Medicaid?

Medicaid is run and designed by each state, so each state has different rules about who qualifies and what benefits you can get. In some states, very few people qualify for Medicaid, and the benefits are very limited. In general, Medicaid is currently available to very low-income people who are a child, pregnant, a parent or relative caretaker of a child; have a disability; or are elderly. Because eligibility may depend on being recognized as a parent, in states where same-sex parents are not recognized under the law, non-biological parents may not be able to qualify for Medicaid.

Medicaid will change drastically in many states in 2014. Beginning in 2014, many states will make Medicaid available to all very low-income people regardless of whether they have a child, a disability, or are elderly. This change is required under the Affordable Care Act (also called Obamacare), but under the recent U.S. Supreme Court ruling about the Affordable Care Act, not every state has to expand Medicaid under this law. In states that choose not to expand Medicaid, the old eligibility rules will still apply. Even in states that expand Medicaid, there may be some smaller programs that are called “Medicaid” that will not change under this law.

Beginning in 2014, all states will change how they calculate financial eligibility for Medicaid – although some Medicaid programs will still follow the old rules. These new financial eligibility rules will be based on your Modified Adjusted Gross Income (MAGI), which is calculated using your federal income tax return. If you file federal taxes as married filing jointly, both of your incomes will be considered in determining your Medicaid eligibility under the MAGI rules. See guidance on Federal Taxes for more information.

Who will be recognized as married for Medicaid purposes?

Because the federal government pays for part of Medicaid, there are federal rules that restrict how states run this program. Many states that have marriage equality did not

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American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN.

treat same-sex married couples as married for many Medicaid programs, although several states have already been recognizing marriages between same-sex spouses for Medicaid purposes.

- **If your state recognizes your marriage:** Now that Section 3 of the federal Defense of Marriage Act (DOMA) has been overturned, every state that recognizes marriages between same-sex couples will recognize their marriages for all Medicaid purposes.
- **If you are in a civil union or registered domestic partnership and your state recognizes your relationship:** You may be treated as married for Medicaid purposes. We do not yet know if you will file federal taxes jointly with your partner. But if you do file taxes jointly, both of your incomes will be considered for most Medicaid income eligibility calculations, which could make you ineligible. See guidance on Federal Taxes for more information.
- **If you live in a state that doesn't recognize your relationship:** You will probably not be recognized as married for Medicaid purposes, although some states may decide to provide hardship protections to a partner of a person in long term care.

The federal government has also allowed states to provide the same protections given to the spouses of people who are receiving long term care to any domestic partner, regardless of whether they are in a formally recognized relationship. These protections can be very significant – they can allow the partner who is not in long term care to remain in the family home and allow the partner to keep more joint assets. Most states have not yet decided whether to provide these protections to domestic partners.

How does being married impact my Medicaid eligibility?

Because this program is limited to very low-income people, who is considered to be a part of your family for purposes of determining your family income and assets impacts your eligibility for Medicaid. As explained above, how your income is calculated for most Medicaid programs will change in 2014.

For people receiving long term care coverage through Medicaid (such as coverage for nursing home care), Medicaid provides protections for the healthy spouse's assets.

CAUTION: *For many couples, being married is not beneficial for Medicaid purposes and can result in losing eligibility for benefits. But, being married can be beneficial if one spouse is receiving long-term care coverage through Medicaid. People receiving Medicaid should speak to an attorney if possible about their benefits before deciding to marry.*

I have been told that I have to identify the biological father of my child to receive Medicaid. Is this true?

Federal law currently requires people who receive Medicaid because they are parents to “cooperate” in efforts to identify the biological father of their child – the federal law requiring this is written in gendered terms and assumes that a biological father must be identified. Parents who have conceived using a known sperm donor may be required to identify their sperm donor as the father of their child in order to receive benefits. If you live in a state with laws that say a sperm donor is not a parent (and you followed those laws) or if a court has already ruled that your donor is not a parent, you should not have to identify him as a father – although you may have to push the agency to recognize this. But, if your donor could be a legal parent under your state's laws, you may be required to identify

him as a legal father. Identifying your sperm donor as a father can have severe results – it can mean that he will be recognized as the legal second parent of your child for all purposes under the law, including the ability to seek custody or visitation, and can prevent a non-biological parent who is raising the child from being recognized. If you are facing this situation, please contact one of the legal groups listed at the end of this publication for more information.

How can I apply for Medicaid?

The application process will be different in each state. Currently, in most places, there will be a county office where you can apply, or you may be able to apply online. Beginning in 2014, you will be able to apply online and determine your eligibility through the Health Insurance Marketplace. For more information, and to see if you are eligible for Medicaid coverage in your state, please visit www.healthcare.gov.



FOR MORE INFORMATION, CONTACT

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

LAMBDA LEGAL

lambdalegal.org

GAY & LESBIAN ADVOCATES & DEFENDERS

glad.org

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

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