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COLLECTION:

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Public Liaison
Julian Potter
OA/Box Number: 18043

FOLDER TITLE:

Marriage [Folder 2]

2013-0028-F

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



HUMAN
RIGHTS
CAMPAIGN

919 18th Street NW
Washington, DC 20006
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phone 202 628 4160
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MEMORANDUM

DATE: November 2, 1999

TO: Jesse Hartness

FROM: Barbara Menard, Senior Policy Advocate *BM*

THROUGH: Winnie Stachelberg, Political Director

SUBJECT: Rights & Responsibilities of Marriage

Per your request, we have enclosed materials that outline the rights and responsibilities associated with marriage. These materials highlight the many benefits that are available to married couples that are not available to gay and lesbian couples.

In addition, we have enclosed copies of current legislative proposals that would extend "marriage-like benefits" (health care coverage, inclusion in FMLA, long-term care insurance coverage) to domestic partners. Finally, we have also included a memo regarding the expansion of sick leave for Federal employees. This policy, depending on how it is crafted, will have a direct impact on gay and lesbian Federal employees.

Enclosed please find:

- January 1997 GAO report on Federal benefits, rights and responsibilities associated with marriage.
- July 1998 Romer Commission report on the "rights and responsibilities" of same-sex relationships.

- Lambda Legal Defense and Education Fund fact sheet on the legal and economic benefits of marriage.
- HRC Memo and proposal relating to the expansion of sick leave for Federal employees.
- H.R. 2859, a bill that would provide health benefits to the domestic partners of Federal employees.
- H.R. 2104, a bill to expand the FMLA to cover domestic partners and other family members.
- H.R. 1111, a bill to authorize a program of long-term care insurance for Federal employees. This is one of the only proposals in this area to allow OPM the ability to define “covered family member,” which leaves open the possibility of coverage for domestic partners of Federal employees.

We are excited that examining the rights and responsibilities of marriage will be one of Julian’s first projects upon her arrival. HRC staff have worked extensively on this issue and are currently developing new proposals in this area.

We would like to request a meeting to brief Julian on the enclosed materials and our proposals at her convenience. I will call to schedule such a meeting, and look forward to working with you on this in the near future. If you have any questions prior to that meeting, or require any additional materials, please contact me at 202-216-1540.



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-275860

January 31, 1997

The Honorable Henry J. Hyde
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

The Defense of Marriage Act,¹ which became law on September 21 of last year, defines "marriage" as "a legal union between one man and one woman as husband and wife"; similarly it defines "spouse" as referring "only to a person of the opposite sex who is a husband or a wife." Because the Act makes both definitions apply "[i]n determining the meaning of any Act of Congress," it potentially affects the interpretation of a wide variety of federal laws in which marital status is a factor.

In connection with the enactment of the Defense of Marriage Act, you asked us, in your September 5, 1996, letter, to identify federal laws in which benefits, rights, and privileges are contingent on marital status. Your staff agreed that we should identify more generally all those laws in the United States Code in which marital status is a factor, even though some of these laws may not directly create benefits, rights, or privileges.

To find laws that meet these criteria, we conducted searches for various words or word stems ("marr," "spouse," "widow," etc.), chosen to elicit marital status, in several electronic databases that contain the text of federal laws. From the collection of laws in the United States Code that we found through those searches, we eliminated (1) laws that included one or more of our search terms but that were not relevant to your request² and (2) as agreed with your staff, any laws enacted after the Defense of Marriage Act. The result is a

¹Public Law 104-199, 110 Stat. 2419.

²For example, our search for the word stem "marr," designed to capture words such as "marriage" and "marry," also produced references to laws mentioning bone marrow transplants, the city of Marrakesh, and proper names containing the letters "marr."

collection of 1049 federal laws classified to the United States Code in which marital status is a factor.

This collection of laws is as complete and representative as can be produced by a global electronic search of the kind we conducted, but such a search has several limitations. Most significantly, it cannot capture every individual law in the United States Code in which marital status figures. However, we believe that the probability is high that it has identified those *programs* in the Code in which marital status is a factor.

Because of the inherent limitations of any computer search³ and the many ways in which the laws in the United States Code may have dealt with marital status, the only way to create an exhaustive list of laws in the Code implicating marital status would be to read and analyze the Code in its entirety. We believe that such an effort would not generate substantially more useful information than we have provided here.

A second caveat concerning our data is that they include only laws classified to the United States Code. As you know, the Code is a compendium of "general and permanent" laws. Although appropriations and annual authorizations, for example, might contain references to marital status, they are typically in effect for a single year, and therefore do not appear in the Code.

Finally, no conclusions can be drawn, from our identification of a law as one in which marital status is a factor, concerning the effect of the law on married people versus single people. A particular law may create either advantages or disadvantages for those who are married, or may apply to both married and single people. For example, those who are unmarried fare better than their married counterparts under the so-called marriage penalty provisions of the tax laws, while married couples enjoy estate tax benefits not available to the unmarried. Other laws apply both to married and single people by virtue of terms like "survivors," "relatives," family," and "household."

The raw data produced by our searches were in a form that made them unwieldy and difficult to use. One reason for this is the sheer number of individual laws that we identified. Also, we conducted multiple searches in several databases, resulting in several separate lists in varying formats. Finally, the laws on the lists were organized as they are in the United States Code; for a reader attempting to understand what kinds of laws make

³One such limitation results from the use of statutory definitions. Our search for occurrences of "spouse" would find a law defining "relative," for purposes of a program, as including a spouse. It would not find the laws in that program that, by referring to "relative," apply to a spouse. A search for "relative" does not solve this problem. That word is used commonly in senses unrelated to marital status (as are other terms such as "single"). A computer cannot distinguish between these senses; a lawyer would have to examine each occurrence of "relative" to determine whether it refers to marital status.

marital status a factor, that organization is not consistently helpful. Some of the Code's 50 titles contain laws on seemingly unrelated subjects. Title 42, under the broad designation "The Public Health and Welfare," includes laws ranging from Social Security to nuclear waste disposal to civil rights and privacy protection. Conversely, closely parallel provisions may appear in different titles: benefits for most federal civil servants are in Title 5, Government Organization and Employees, but similar provisions for Foreign Service officers are in Title 22, Foreign Relations and Intercourse.

To give readers a sense of the kinds of federal laws in which marital status is a factor, we classified the laws on the list into the following 13 categories⁴:

- ✧ Social Security and Related Programs, Housing, and Food Stamps
- ✧ Veterans' Benefits
- ✧ Taxation
- ✧ Federal Civilian and Military Service Benefits
 - Employment Benefits and Related Laws
 - Immigration, Naturalization, and Aliens
 - Indians
 - Trade, Commerce, and Intellectual Property
 - Financial Disclosure and Conflict of Interest
 - Crimes and Family Violence
 - Loans, Guarantees, and Payments in Agriculture
 - Federal Natural Resources and Related Laws
 - Miscellaneous Laws

While we believe this classification scheme is useful for organizing the hundreds of statutes on the list, and for representing the range of federal programs and activities in which the law makes marital status relevant, it should not be regarded as definitive. Other ways of categorizing these laws would be equally valid. Moreover, the categories we use are not mutually exclusive: many laws could arguably be in a different category. A general description of each category and a few examples of the laws it contains are in enclosure I. The full lists of statutes in each category are in enclosure II.

As arranged with your staff, unless you announce its contents earlier, we plan no further distribution of this letter for 7 days after its issue date. At that time, we will make copies available on request.

If you have any questions, please call me at (202) 512-8203 or Susan Poling, Assistant General Counsel, at (202) 512-2667.

Sincerely yours,

⁴The order of the categories is not significant, except that the first four are those in which marital status is most pervasive, and are the largest.

Barry R. Bedrick
Associate General Counsel

Enclosures - 2

Categories of Laws Involving Marital Status

CATEGORY 1—SOCIAL SECURITY AND RELATED PROGRAMS, HOUSING, AND FOOD STAMPS

This category includes the major federal health and welfare programs, particularly those considered entitlements, such as Social Security retirement and disability benefits, food stamps, welfare, and Medicare and Medicaid.¹ Most of these laws are found in Title 42 of the United States Code, The Public Health and Welfare; food stamp legislation is in Title 7, Agriculture.

In many of these programs, recognition of the marital relationship is integral to the design of the program. For example, the law establishing the Old Age, Survivors, and Disability Insurance (OASDI) program (Social Security) is written in terms of the rights of husbands and wives, and widows and widowers. Once the law sets forth the basic right of an individual participant to retirement benefits, it prescribes in great detail the corresponding rights of the current or former spouse. Whether one is eligible for Social Security payments, and if so how much one receives, are both dependent on marital status. This is reflected in the provisions for what happens upon the death of a beneficiary: if certain conditions are met, then a spouse or a divorced spouse (as well as a widow or widower) has a right to payments based on the marriage, rather than on his or her own earnings.

The part of the Social Security Act that governs the OASDI program is unusual in that, unlike many other laws we have identified, it defines the terms "husband" and "wife." It does so in terms of state law: a person is the wife or husband of an insured individual for purposes of OASDI if "the courts of the State [of domicile] ... would find that such applicant and such insured individual were validly married ..." or, if not, that under the state's laws of intestate succession, the person would have the same status with respect to the individual's property as a wife or husband, widow or widower. Those 65 or older who are eligible for Social Security retirement benefits, or who have received Social Security disability benefits for at least 2 years, are also eligible for benefits under Medicare.

The Social Security Act also authorizes the Supplemental Security Income (SSI) program, for the needy aged, blind, and disabled. Under SSI, both the level of income to determine eligibility and the level of benefits for those who are eligible differ, depending whether the applicant has an eligible spouse or not. SSI defines "eligible spouse" as an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual. The SSI law goes on

¹The recently enacted welfare reform bill, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, greatly affected some of the provisions in this category, but the changes are not generally effective until July 1997. Where both the old and new provisions appear in the United States Code, we have included both—the ones in effect until July 1997 and the ones that take effect thereafter—in Enclosure II.

to say that, in determining whether two individuals are husband and wife, state law will generally apply, except that if a man and a woman have been determined to be husband and wife for purpose of OASDI or, if a man and woman are found to be holding themselves out to the community as husband and wife, they are also husband and wife for purposes of SSI.

Child support enforcement is another program, also established under the Social Security Act, that contains provisions affecting spouses. Its purpose is to provide help (1) in enforcing the support obligations of absent parents to their children and to the spouse with whom the children may be living, and (2) in obtaining child and spousal support. If an obligation has been established under state law for one spouse to support another, and if the supported spouse is receiving assistance under Medicaid (see below) or AFDC (Aid to Families with Dependent Children), then a state participating in the child support enforcement program must help enforce the support obligation.

Medicaid is a jointly funded federal-state entitlement program to provide medical assistance to qualifying low-income people, including those eligible for AFDC² and SSI, non-AFDC low-income children and pregnant women, and low-income Medicare beneficiaries. In determining a person's eligibility for Medicaid based on income, states may consider the spouse's financial responsibility for the person, but may not consider anyone else's financial responsibility. Spouses are considered "essential" to individuals receiving Medicaid benefits, and are therefore eligible for medical assistance themselves. The Medicaid statute also prescribes how to account for the income and resources of the spouse of an institutionalized person, for purposes of determining that person's eligibility for benefits.

In the broad federal program of housing assistance for low-income families the definition of "families" takes marital status into account. For some purposes, the term means families whose heads, or their spouses, are elderly, near-elderly, or disabled. However, the same provision includes a definition of families—"2 or more elderly persons, near-elderly persons, or persons with disabilities living together"—that does not require any marital relationship. The same law makes marital status a factor in determining whether a family qualifies for assistance in terms of income. Applicants may exclude \$550 for each family member who is under 18, or is disabled or handicapped or a full-time student, but this exclusion does not apply to "the head of the household or his spouse." Also to be excluded is any payment by a member of the family for the support and maintenance of a spouse or former spouse who does not live in the household.

In the National Affordable Housing program, marital status also is significant. The program is intended to assist families, and particularly "first-time homebuyers," in buying homes. "First-time homebuyer" is defined, in part, as an individual "and his or her spouse" who have not owned a home during the preceding 3 years.

²Under welfare reform, AFDC will be replaced by Temporary Assistance for Needy Families in July 1997. States will have the option of terminating Medicaid benefits for individuals who refuse to work.

In the Food Stamp program (also to be broadly affected by welfare reform), marital status is not central, but does play a role. Eligibility for benefits under the program is determined on the basis of households, and "household" includes not only spouses who live together, but also groups of individuals who live together and customarily buy and prepare food together.

CATEGORY 2—VETERANS' BENEFITS

Veterans' benefits, which are codified in Title 38 of the United States Code, include pensions, indemnity compensation for service-connected deaths, medical care, nursing home care, right to burial in veterans' cemeteries, educational assistance, and housing. Husbands or wives of veterans have many rights and privileges by virtue of the marital relationship.

A surviving spouse or child of a veteran is entitled to receive monthly dependency and indemnity compensation payments when the veteran's death was service-connected, and to receive a monthly pension when the veteran's death was not service-connected. If it is discovered that a veteran's marriage is invalid, the purported marriage may nevertheless be deemed valid under certain circumstances, as long as a "real" widow or widower does not ask for benefits.

Veterans who have at least a 30 percent disability are entitled to additional disability compensation if they have dependents. For this purpose a spouse is considered a dependent. A veteran's spouse may also receive compensation if a veteran disappears. On the other hand, a spouse's estate is considered along with the veteran's when the Secretary of Veterans Affairs determines whether it is reasonable that some part of the veteran's assets be used for the veteran's maintenance and whether the Secretary should discontinue paying the pension.

The spouses of certain veterans are entitled to medical care provided by the government. In determining, based on income and assets, whether a veteran has the ability to defray necessary home care and medical expenses, the property of the spouse of the veteran is included as an asset of the veteran. Spouses of veterans may be beneficiaries of National Service Life Insurance, and are also eligible for interment in national cemeteries if the veteran is eligible. The surviving spouse of a veteran who died of a service-connected disability is entitled to educational assistance for up to 45 months, and to job counseling, training, and placement services. Spouses and widows or widowers of certain veterans also enjoy preferences in federal employment.

CATEGORY 3—TAXATION

The distinction between married and unmarried status is pervasive in federal tax law; this is one of the largest categories, with 179 provisions. Tax law does not define such terms as "husband," "wife," or "married."

Marital status figures in federal tax law in provisions as basic as those giving married taxpayers the option to file joint or separate income tax returns. It is also seen in the related provisions prescribing different tax consequences depending on whether a taxpayer is married filing jointly,

married filing separately, unmarried but the head of a household, or unmarried and not the head of a household.

The different treatment in the tax code of married couples and single individuals gives rise to one of the most contentious tax policy issues, the so-called marriage penalty (and its counterpart, the marriage bonus). This issue comes into play in connection with income tax rates, the treatment of capital losses, credits for the elderly and disabled, taxation of Social Security benefits, and a number of other provisions of the tax code. In our report, Tax Administration: Income Tax Treatment of Married and Single Individuals,³ we identified 59 provisions in income tax law under which tax liability depends in part on whether a taxpayer is married or single.

Marital status also plays a key role in the estate and gift tax laws and in the part of the tax code dealing with taxation on the sale of property. For estate tax purposes, property transferred to one spouse as the result of the death of another is deductible for purposes of determining the value of the decedent's estate. Gifts from one spouse to another are deductible for purposes of the gift tax. Gifts from one spouse to a third party are deemed to be from both spouses equally. The law permits transfers of property from one spouse to another (or to a former spouse if the transfer is incident to a divorce) without any recognition of gain or loss for tax purposes. These provisions permit married couples to transfer substantial sums to one another, and to third parties, without tax liability in circumstances in which single people would not enjoy the same privilege.

CATEGORY 4—FEDERAL CIVILIAN AND MILITARY SERVICE BENEFITS

This category includes laws dealing with current and retired federal officers and employees, members of the Armed Forces, elected officials, and judges, in which marital status is a factor. Typically these laws address the various health, leave, retirement, survivor, and insurance benefits provided by the United States to those in federal service and their families.

Over 270 of the 1049 provisions we found fall in this category. They appear primarily in Title 5 of the United States Code, Government Organization and Employees, for civilian employees, and Title 10, Armed Forces, for military members. However, parallel provisions are found in 19 other titles covering, for example, Foreign Service officers (Title 22, Foreign Relations and Intercourse), Central Intelligence Agency employees (Title 50, War and National Defense), Lighthouse Service employees (Title 33, Navigation and Navigable Waters), and members of the Coast Guard (Title 14, Coast Guard).

Marital status is a factor in these laws in many ways. Among the laws governing federal employees and officers, it figures in the following provisions: a law establishing health benefits or survivor benefits for spouses; a law prescribing the order of precedence in payment of final paychecks and life insurance benefits of employees or officers who die without having designated

³GAO/GGD-96-175, September 3, 1996.

a beneficiary; and a law determining the rights of current or former spouses to a retirement annuity after the death of an employee.

In addition, under provisions for reimbursement of employees' expenses in connection with a government-ordered relocation, spouses are eligible for per diem allowances or subsistence payments. Federal civil service employees are entitled to unpaid leave in order to care for a spouse with a serious health problem, and an employee disabled by work-related injuries receives augmented compensation if he or she is married.

A different set of laws governs military personnel and their families. Some of the provisions unique to military service include: employment assistance and transitional services for spouses of members being separated from military service; continued commissary privileges for dependents, including spouses, of members separated for spousal or child abuse, and the right of minor spouses of overseas military personnel to free secondary education through the Defense Department school system.

CATEGORY 5—EMPLOYMENT BENEFITS AND RELATED LAWS

Marital status comes into play in many different ways in federal laws relating to employment in the private sector. Most such laws appear in Title 29 of the United States Code, Labor. However, others are in Title 30, Mineral Lands and Mining; Title 33, Navigation and Navigable Waters; and Title 45, Railroads.

This category includes laws that address the rights of employees under employer-sponsored employee benefit plans; that provide for continuation of employer-sponsored health benefits after events like the death or divorce of the employee; and that give employees the right to unpaid leave in order to care for a seriously ill spouse. In addition, Congress has extended special benefits in connection with certain occupations, like mining and public safety. The spouse of a coal miner who dies of black lung disease is entitled to benefits, for example. The surviving spouse of a public safety officer killed in the line of duty is eligible for a death benefit of up to \$100,000.

Spouses are sometimes excluded from coverage as employees under certain laws. For example, under the National Labor Relations Act, an individual working for his or her spouse does not come within the definition of "employee," and therefore does not have the right, available under the Act to other employees, to organize or to engage in collective bargaining. If the only regular employees of a business are the owner and his or her spouse, then the business is not subject to regulation of wages and hours under the Fair Labor Standards Act of 1938 (FLSA). Similarly, the spouse or other family member of an employer working in agriculture is not covered under FLSA requirements like minimum wage.

Some laws protect the interests of one spouse when the other becomes eligible for some benefit. The Employee Retirement Income Security Act prohibits an employee from changing

beneficiaries in a retirement plan or from waiving the joint and survivor annuity form of retirement benefit, without the written consent of his or her spouse.

The Railroad Retirement Act confers many rights on retired railroad employees and their spouses. Spouses may be eligible for annuities and lump sum benefits. Congress has also enacted a workers' compensation law for longshore and harbor workers that establishes survivor benefits for spouses.

CATEGORY 6—IMMIGRATION, NATURALIZATION, AND ALIENS

This category includes laws governing the conditions under which noncitizens may enter and remain in the United States, be deported, or become citizens. Most are found in Title 8, Aliens and Nationality.

The law gives special consideration to spouses of immigrants and aliens in a wide variety of circumstances. Under immigration law, aliens may receive special status by virtue of their employment, and that treatment may extend to their spouses. For example, the spouses of aliens who come to the United States on a temporary basis (to work as registered nurses, seasonal agricultural workers, or in certain specialty occupations), and who meet other criteria, are not subject to the worldwide numerical limitations on levels of immigration. Also, spouses of aliens granted asylum can be given the same status if they accompany or join their spouses.

Spouses of aliens do not enjoy favored immigration status in all circumstances. Posthumous citizenship is authorized for noncitizen members of the armed forces who die during hostilities, but not for their spouses. When the government revokes the citizenship of someone because it was obtained through misconduct, and that person's spouse derived his or her citizenship from the marriage, the spouse's citizenship will also be revoked.

Some provisions of immigration law are designed to prevent misuse of marital status. The law calls for termination of the permanent resident status of an alien granted on the basis of marriage, if it is determined that the marriage was for the purpose of procuring the alien's entry to the United States, or if the marriage is annulled or terminated (other than through the death of a spouse) within two years.

The Congress recently limited the eligibility of qualified aliens for certain federal programs—such as SSI, Temporary Assistance for Needy Families (which will replace AFDC), and Social Services block grants—but it made a few exceptions, one of which directly benefits spouses of veterans. Aliens who are serving on active duty in the Armed Forces or who are honorably discharged veterans, and their spouses, remain eligible for these benefits in the same manner as a citizen. Federal law also provides that the incomes of the sponsor of an immigrant, and of the sponsor's spouse, are to be taken into account in determining the immigrant's eligibility for means-tested public benefits.

CATEGORY 7—INDIANS

The indigenous peoples of the United States have long had a special legal relationship with the federal government through treaties and laws that are classified to Title 25, Indians. Various laws set out the rights to tribal property of white men marrying Indian women, or of Indian women marrying white men, the evidence that is required, and the rights of children born of marriages between white men and Indian women.⁴

The law also establishes Indians' rights to develop descent and distribution rights regarding their property as long as they include certain provisions. Most relevant to this discussion is the right of a surviving spouse who is neither an Indian nor a member of the deceased spouse's tribe to elect a life estate in property that he or she is occupying at the time of the death of the other spouse. Another law governing rights of Navajo and Hopi Indians gives relocation benefits to spouses who relinquish their life estates.

Health services can also be made available to otherwise ineligible spouses of an eligible Indian if all such spouses are made eligible by an appropriate resolution of the governing body of the tribe. Health professionals seeking positions in the Indian Health Service and their spouses may be reimbursed for actual and reasonable expenses incurred in traveling to and from their homes to an area in which they could be assigned to allow them to evaluate the area with respect to the assignment.

CATEGORY 8—TRADE, COMMERCE, AND INTELLECTUAL PROPERTY

This category includes provisions concerning foreign or domestic business and commerce, from the following titles of the United States Code: Bankruptcy, Title 11; Banks and Banking, Title 12; Commerce and Trade, Title 15; Copyrights, Title 17; and Customs Duties, Title 19.

Federal law prescribes the right of debtors to seek bankruptcy protection and the rights of creditors when their debtors adopt that strategy. It expressly permits spouses to file jointly for bankruptcy protection. This may benefit both the debtors and their creditors: the married couple pays only one filing fee and creditors file only one claim.

Bankruptcy law prescribes how to distribute the assets of a bankrupt person, assigns specific priorities to different classes of creditors, and permits a bankrupt debtor to be "discharged" (i.e., released) from the obligation to repay certain debts. A former spouse of the debtor making a claim in a bankruptcy proceeding for payments pursuant to a divorce decree or separation agreement is given a higher priority than some other creditors. Also, a discharge in bankruptcy generally does not relieve a debtor of the obligation to pay alimony or support to a spouse or former spouse in connection with a divorce decree or separation agreement.

⁴The laws in this category dealing with marriage that use the terms "Indian" and "white" are more than 100 years old, and have not been amended since their enactment in 1888.

In some cases, marriage can be a factor in triggering criminal liability. For example, a widow's or widower's entitlement to federal employee survivor payments ceases upon remarriage; such a widow or widower who remarries and continues to accept payment may, if found guilty, be fined or imprisoned.

Claiming marital status that does not exist can also be a crime. Falsely representing oneself to be the spouse or surviving spouse of an individual in order to elicit information about the Social Security number, date of birth, employment, wages, or benefits of that individual, is a felony.

Comprehensive crime control legislation directed the Attorney General to study the means by which abusive spouses obtain information concerning the addresses or locations of estranged or former spouses, despite the desire of the victims to have the information withheld. Congress also has charged the National Commission on Crime Prevention and Control to evaluate the adequacy of federal and state laws on sexual assault and the need for a more uniform statutory response to sex offenses. This mandate specifically addresses sexual assaults and other sex offenses committed by offenders who are known, or related by blood or marriage, to the victim.

Criminal justice grants are given to encourage arrest of domestic violence offenders; "domestic violence" includes an act of violence by a current or former spouse. Another provision gives nationals of the United States who are victims of acts of terrorism committed outside the United States, and their survivors, including spouses, a statutory right to bring a civil action for treble damages.

CATEGORY 11—LOANS, GUARANTEES, AND PAYMENTS IN AGRICULTURE

Under many federal loan programs, a spouse's income, business interests, or assets are taken into account for purposes of determining a person's eligibility to participate in the program. In other instances, marital status is a factor in determining the amount of federal assistance to which a person is entitled, or the repayment schedule.

Education loan programs are found primarily in Title 20, Education; housing loan programs for veterans are found in Title 38, Veterans' Benefits. Title 7, Agriculture, includes provisions governing agricultural price supports and loan programs that are affected by the spousal relationship.

Under the federal family education loan program, the income and assets of an independent student's spouse are attributed to the student for purposes of determining whether the student is eligible for a loan and, if so, the amount. Married couples may consolidate their separate student loans into one if they agree to be jointly and severally liable for repayment of the consolidated loan, without regard either to the amounts of the respective loan obligations to be consolidated or to any subsequent change in their marital status. Under the federal direct student loan program, the Secretary of Education, in order to determine the annual repayment amount when repayment is contingent on the borrower's income, may obtain information regarding the income not only of

The National Housing Act addresses the rights of mortgage borrowers. Banks often use a so-called due-on-sale clause in mortgage agreements that permits them to declare the loan payable in full if the borrower sells the property without their consent. The Act prohibits use of the due-on-sale clause in case of transfers of residential property from one spouse to another.

For some purposes, the laws regulating investment companies and advisers apply not only to the advisers themselves, but also to what the law terms "interested persons." "Interested persons" is defined to include the spouses of certain persons, of their parents, and of their children.

The Consumer Credit Protection Act regulates some aspects of garnishment of wages, a legal process whereby a creditor collects a debt by having the debtor's employer pay part of the debtor's wages directly to the creditor. The Act establishes that at most 25 percent of the disposable earnings of an individual can be withheld through garnishment. However, if the purpose of the garnishment is to enforce an order for the support of a spouse, the maximum is 60 percent or, if the wage earner is supporting a spouse (not the former spouse for whose benefit the support order was issued), 50 percent.

The Copyright Act gives renewal rights and termination rights, in some circumstances, to the widow or widower of the creator of a copyrighted work. The law defines "widow or widower" as the creator's surviving spouse under the law of the creator's domicile at the time of his or her death, whether or not the spouse subsequently remarries.

The amount of customs duty on imported merchandise depends on its value. Under the law, the actual transaction value—that is, how much the buyer paid the seller—may be used to establish value if the buyer and seller are not "related." For this purpose, spouses are deemed to be related. Also, certain countries that deny or restrict the ability of their citizens to emigrate in order to join "close relatives" in the United States can be penalized by the imposition of restrictions on their trade with the United States. "Close relative," for purposes of this law, includes a spouse.

Under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, the federal government provides a mechanism for financing programs to strengthen the market for cut flowers and greens, through an assessment of "handlers" of these products whose annual sales exceed \$750,000. Marital status comes into play in determining whether a handler meets the \$750,000 threshold: for this purpose, sales by one spouse are attributed to the other.

CATEGORY 8—FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST

Federal law imposes obligations on Members of Congress, employees or officers of the federal government, and members of the boards of directors of some government-related or government-chartered entities, to prevent actual or apparent conflicts of interest. These individuals are required to disclose publicly certain gifts, interests, and transactions. Many of these requirements, which are found in 16 different titles of the United States Code, apply also to the individual's spouse.

The law regulates the conditions under which gifts from foreign governments and international organizations may be accepted by spouses of employees of the Postal Service, the Postal Rate Commission, certain government contractors, employees of the District of Columbia government, members of the uniformed services, Members of Congress, the President, and the Vice President. Employees of executive, legislative, and judicial agencies may not appoint relatives, including spouses, to agencies in which they serve or exercise control. The spouses of members of the Senate may not accept, in any calendar year, gifts worth more than \$250, without getting a waiver.

Elsewhere in the Code are rules intended to prevent conflicts of interest on the part of members of various councils and boards. For instance, members of the boards of directors of the National Sheep Industry Improvement Center and the Alternative Agricultural Research and Commercialization Corporation are prohibited from participating in any matter pending before either board in which a spouse holds an interest. The law governing the members of Regional Fishery Management Councils is somewhat different. Members are required to disclose and make available for public inspection any financial interests they or their spouses might have in an activity that the councils might undertake.

Another variation in the treatment of conflict of interest involving spouses appears in connection with the National Foundation for Biomedical Research. Instead of prescribing conflict of interest rules for the Foundation, the Congress directed it to devise its own standards. However, those standards must ensure that officers, employees and agents of the Foundation (including members of the Board), and their spouses, avoid encumbrances that could result in a financial conflict of interest or a divided allegiance.

CATEGORY 10—CRIMES AND FAMILY VIOLENCE

This category includes laws that implicate marriage in connection with criminal justice or family violence. The nature of these provisions varies greatly. Some deal with spouses as victims of crimes, others with spouses as perpetrators. These laws are found primarily in Title 18, Crimes and Criminal Procedure, but some, dealing with crime prevention and family violence, are in Title 42, The Public Health and Welfare.

Attempting to influence a United States official through threats directed at a spouse is a federal crime, as are killing, or attempting to kill, foreign officials or their spouses, or threatening to kill certain persons protected by the Secret Service, such as major presidential candidates and their spouses.

Under federal criminal statutes, spouses and others have some protections against domestic violence. It is a federal crime for a person to travel across a state line with the intent to injure a spouse or "intimate partner" if that person intentionally commits a crime of violence and causes bodily injury to the spouse or intimate partner. The term "spouse or intimate partner" is broadly defined to include a former spouse, someone who "shares a child in common" with the abuser, and someone who "cohabits or has cohabited with the abuser as a spouse."

the borrower but also of the borrower's spouse. Repayment schedules are generally based on the adjusted gross income of both spouses.

Many of the laws governing veterans' benefits implicate marital status. Eligibility for assistance in borrowing for housing extends to the surviving spouses of veterans who die from a service-connected disability, and to the spouses of certain veterans who, for more than 90 days, have been missing in action, captured by hostile forces, or forcibly detained by a foreign government.

The laws governing agriculture include provisions for price supports and loan programs that are affected by marital status. For example, the law limits the amount of certain crop support payments that any one person can receive. For this purpose, a husband and wife are considered to be one person, except to the extent each may have owned property individually before the marriage. Also, agricultural loans for real estate, operating expenses, and emergencies may be made to "family farms," defined as those farms in which a majority interest is held by individuals related by marriage or blood.

Fourteen statutes in the Code that prohibit discrimination on the basis of marital status are listed in this category. For example, such discrimination is prohibited in executive agencies, and is unlawful for a creditor in private financial transactions.

This category includes the laws chartering various patriotic societies, such as the Veterans of Foreign Wars, that have as one of their purposes to assist the widows and children of servicemen or others. The Gold Star Wives of America and Navy Wives Clubs of America have one of our search terms in their titles.

We also included in this category laws related to the federal financing of presidential election campaigns. To be eligible for federal funds, candidates may not spend more than \$50,000 of their own money or that of members of their immediate families for their campaigns. A spouse or a close relative's spouse is deemed to be a member of the candidate's immediate family for this purpose.

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Federal law gives special rights to spouses in connection with a variety of transactions involving federal lands and other federal property. These transactions include purchase and sale of land by the federal government and lease by the government of water and mineral rights.

When the government purchases land for national battlefields, monuments, seashores, or parks, the law commonly allows those from whom the land is purchased and their spouses to continue to use and occupy it during their lifetimes. For example, those owning houses (and their spouses) when the Stones River National Battlefield and Sleeping Bear Dunes National Lakeshore were created have life estates in the land. Although these laws affect relatively few individuals, we found more than 40 such provisions in Title 16, Conservation.

In addition to playing a role under these provisions for the government to buy land, spousal relationship has also been a factor in determining priorities among potential buyers when the government is selling federal lands. For example, when Congress decided in 1955 to terminate ownership of land used by the Atomic Energy Commission and sell it to local entities and private parties, it generally barred any transfer of priorities for purchase, but allowed a husband and wife to exercise a priority in their joint names.

The marital relationship may affect whether an individual can be considered a surface mine owner with whom the Secretary of Labor can negotiate a lease. To be designated a surface mine owner, an individual must hold legal or equitable title to the land for a 3-year period and his or her principal residence must be on the land. In computing the 3-year period, the Secretary may include periods during which a relative by blood or marriage, including a spouse, owned the land.

Under laws governing reclamation and irrigation of lands by the federal government, the basic unit of ownership is 160 irrigable acres. Under certain conditions, if the death of a spouse causes lands in private ownership to become excess lands (having more than 160 acres) but those lands were eligible to receive water from a project under the Federal reclamation laws without a recordable contract, the Secretary of the Interior is authorized to furnish water to them, without requiring the contract, as long as the lands are owned by the surviving spouse. If the surviving spouse remarries, the exception no longer applies, and lands in excess of 160 irrigable acres are appraised in the usual manner.

CATEGORY 13—MISCELLANEOUS

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**The Right Reverend
William J. Winterrowd, Chairman**

THE GOVERNOR'S COMMISSION ON THE RIGHTS AND RESPONSIBILITIES OF SAME-SEX RELATIONSHIPS

Report, Findings and Recommendations

July 8, 1998



REPORT, FINDINGS AND RECOMMENDATIONS

OF THE GOVERNOR'S COMMISSION ON THE RIGHTS AND RESPONSIBILITIES OF SAME-SEX RELATIONSHIPS

EXECUTIVE SUMMARY

Introduction

In September 1997 Governor Romer appointed a Commission to examine the major economic social and legal benefits, obligations, rights and responsibilities that are available to married persons but denied to relationships between two persons of the same sex. In this Report, such same-sex relationships are referred to as "committed relationships" and the individuals who are in committed relationships are described as "committed partners." At the direction of the Governor's Executive Order, the Commission excluded from its mission the examination of same-sex marriage, focusing exclusively on the civil interaction between committed partners and the State.

The Commission was chaired by the Right Reverend William J. Winterrowd, Bishop of the Colorado Episcopal Diocese. Its membership included fourteen men and women from government, the law, business, not-for-profit organizations and the clergy. The Commission met at least monthly from October through June, and held public hearings in five locations in Colorado. The Report summarizes the information learned by the Commission and makes specific "Findings" and "Recommendations" for actions by State officials, private corporations and individuals.

The Commission members recognize that the recommendations contained in its Report would require the adoption of certain legislation and have made broad recommendations concerning the scope and format of such legislation. While members hope that the Commission's Recommendations will be implemented, the primary intent of the Report is to help stimulate thoughtful and informed public discourse among Coloradans.

Research and Hearings

The Report sets forth the principal arguments the Commission heard both for and against the State extending rights and responsibilities to committed relationships.

The Commission heard the following arguments in *support*:

- Committed relationships exist in our society. As a matter of fairness, equity and justice, the same rights and responsibilities extended to married persons should be extended to committed partners.
- Committed Relationships provide significant benefits to society and should be encouraged by the State.
- Alternative legal mechanisms used by committed partners to provide part of the protections afforded through marriage are inadequate, expensive and can not produce the desired results. State recognition of committed relationships could help to create uniform treatment of these relationships in our society.
- The Fourteenth Amendment of the U.S. Constitution, assuring equal protection under the law, requires that committed relationships be afforded the same rights, responsibilities and obligations provided under the law to couples joined by marriage.
- Religious doctrine requires that society treat committed partners with fairness, justice and compassion.

The Commission heard the following arguments in *opposition*:

- Homosexuality is unnatural and against the will of God. The State should do nothing that would lend legitimacy or support to committed relationships.
- Families based on the union of marriage provide benefits to society that are not equaled by committed relationships.
- Extending rights and benefits to committed relationships would either undermine marriage or contribute to the moral decay of society.
- Colorado residents – through the results of Amendment 2 in the 1992 election – oppose the extension of rights to homosexuals, including committed partners.
- Most of the “rights” typically identified by parties favoring state recognition of committed partners can be obtained through existing legal mechanisms, thus the State needs to do nothing to change such rights.

Findings and Recommendations

The Commission considered these arguments and, upon additional research, made the following Findings and Recommendations:

1. Separate Secular and Religious Concerns.

- Our country has a rich tradition of separating matters of church from matters of state. The Commission finds that, with respect to the issues addressed in this Report, the policy of separation of church and state should be followed. Marriage is both a religious and a legal institution. The Commission opposes any effort strictly to put into law the tenants of any one religious faith. At the same time, the Commission opposes any action by the State which would inhibit diverse religious communities from defining their religious institution of

marriage according to their own doctrines and faiths or establishing their own religious positions and policies concerning human sexuality.

- The Commission recommends that actions taken in response to this Report be directed only at relationships among individuals within the secular society. Nothing the Commission recommends should be construed to suggest that religious institutions, in the course of their religious missions, institute policies contrary to their doctrines.

2. Preserve Marital Rights and Benefits.

- The Commission affirms that marriages play an essential role in our culture, that they provide numerous benefits to society as a whole, and that these social benefits justify extending to married persons these significant rights, benefits and responsibilities.
- In implementing the recommendations of the Commission, the State should take no action which, by the force of law, restricts the ability of married persons to access all the various rights, benefits and responsibilities currently provided them by law and society.

3. Provide Parallel Rights and Responsibilities to Persons in Committed Relationships

- The Commission finds that the State, and society at large, benefit from an environment that supports committed, stable relationships, including same-sex committed relationships, that provide mutual emotional, social, financial, legal and medical support.
- The Commission finds that in committed relationships which include children - biological or adopted - as part of the family, the interests and welfare of the children are of paramount importance. In most cases, it is in the best interest of the children to have a legal relationship with both committed partners. The sexual orientation of a parent should not be a factor in determining the best interest and welfare of a child. Nor should the right to be a parent, including through adoption, be affected by one's sexual orientation.
- The Commission finds that existing legal mechanisms, such as wills and powers of attorney, are not adequate to protect the needs of persons in committed relationships. They can not afford committed partners the comprehensive set of rights and responsibilities afforded to married persons, and are not immune from legal challenge.
- The Commission finds there are sound and compelling reasons to provide rights and benefits to persons in committed relationships, parallel to those currently provided to persons who are married.

- Based on the above findings, the Commission recommends that the State revise its statutes to extend to persons in committed relationships the legal rights and benefits, as well as responsibilities and obligations, currently afforded to persons who are married.

The Commission proposes that a new law be enacted that would define a committed relationship to be recognized by the State and registered by committed partners who wish to avail themselves of the rights, and benefits, as well as to commit themselves to the responsibilities and obligations provided through such statute. The Commission defined a committed relationship as:

"A committed relationship eligible for registration is between two people of the same-sex who affirm that they are not related by kinship, are of the legal age of consent and are not otherwise married or registered in another committed relationship."

The Commission's recommendation to amend existing laws to extend rights and responsibilities afforded marriage to registered committed relationships.

The Commission identified significant areas in Colorado law that offer benefits, rights, responsibilities and obligations to married persons. These include probate and inheritance, medical and health related issues, contractual relationships, children, health insurance, dissolution of relationships, privileged conversations, workers compensation benefits, wrongful death benefits, and other insurance benefits. Chapter III of the Report identifies these laws and describes how the treatment of committed partners is different. Significant differences in federal law, particularly with respect to pensions, taxation and social security are also discussed in this Chapter.

The Commission also identified a number of areas of federal law that should also be addressed to eliminate inequities between married persons and committed partners. Except for identifying such areas, the Commission did not make specific recommendations with respect federal statutes. The Commission did, however, encourage Colorado's congressional representatives to introduce or support legislation changing federal law to ensure equitable treatment of committed relationships.

In the course of its investigation and in the testimony it received from Colorado citizens, the Commission believes that the benefits, responsibilities, rights and obligations that it recommends be extended to committed relationships could also be applicable to other types of relationships outside the scope of the Commissions investigations. The decision to broaden the definition of committed partners to include such other relationships, however, was beyond

the scope of the Commission's investigation and should be addressed by a different commission or by the elected officials who would be responsible for implementing such changes.

In addition, the Commission believes the ability of committed partners to access the responsibilities, benefits, obligations and rights recommended in this Report should be viewed in the larger context of protection from discrimination, including discrimination in employment, housing and public accommodations. A societal commitment to end discrimination in all contexts is necessary to secure the rights of all citizens.

Conclusion:

The Commission concludes that State and society as a whole benefit from an environment that supports committed, stable relationships. Extending right and benefits, as well as responsibilities and obligations, to persons in same-sex committed relationships will not diminish the rights and benefits enjoyed by married persons. The Commission strongly recommends that the State recognize committed relationships and protect these relationships in the same manner it recognizes and protects married relationships. To do this, the Commission recommends that State enact a law that recognizes same-sex committed relationships and amends existing laws to extend parallel rights and responsibilities to persons in committed relationships.

REPORT, FINDINGS AND RECOMMENDATIONS

COMMISSION ON THE RIGHTS AND RESPONSIBILITIES OF SAME-SEX RELATIONSHIPS

July 8, 1998

Chapter I -- Introduction

Colorado Governor Roy Romer created the Commission on the Rights and Responsibilities of Same Sex Relationships on September 5, 1997 (Executive Order B00897). This action followed his vetoes of bills passed by the Colorado General Assembly in 1996 and 1997 which would have amended the State's definition of marriage to ban same-sex marriages. This issue arose in the General Assembly in part as the result of debate at the national level and in other states.

Governor Romer formed the Commission to explore whether or not the State should extend any rights, benefits, responsibilities or obligations to committed relationships between two members of the same sex. This Report refers to such relationships as "committed relationships," and to persons in a committed relationship as "committed partners."

The Governor's Executive Order charges the Commission with two major duties:

- to research and examine major legal and economic rights and benefits, as well as obligations and responsibilities, in the areas of property, inheritance, taxes, support and health care issues, which are extended to people in legal marriages but not to people in committed relationships; and
- to examine public policy reasons to extend or not to extend such rights, benefits, responsibilities or obligations to committed partners.

The Executive Order specifically directs the Commission to restrict its inquiry to same-sex relationships. The Commission found, in its hearings and deliberations, that there are a number of issues outside of these parameters that the State ought to consider if it is to design a system to protect people in relationships. Many people argued that self-determination is at the heart of these discussions, regardless of sexual orientation. In fact, there are some relationships outside of marriage – such as elderly people living together to share costs, or a parent and dependent adult child – which may warrant some level of legal recognition and support other than marriage.

In its research, the Commission found that private companies that extend health insurance benefits to employees' committed partners have dealt with these issues in several different ways. Some offer benefits only to same-sex partners and not to unmarried heterosexual partners, reasoning that heterosexuals have the option of marriage. Others offer benefits to relationships, regardless of sexual orientation. These different approaches suggest the variety of answers to important social questions of how institutions recognize intimate relationships among their employees.

During the course of its work, the Commission identified legal categories of benefits and responsibilities afforded to persons who are married, but not to committed partners. These areas include: probate and inheritance law; medical and health-related rights; health insurance; children; retirement and pension benefits; workers compensation benefits; wrongful death benefits; income, gift and estate tax benefits; and several miscellaneous benefits. A detailed discussion of these benefits and responsibilities is included in Chapter III.

The Commission also studied the definition and formation of a “committed relationship” and discussed what criteria a same-sex couple should meet in order to be in a committed relationship. The Commission suggests a definition of “committed relationship” in Chapter IV and outlines the legal framework for the creation and dissolution of committed relationships.

On March 4, 1998, the Commission held five public hearings in Denver, Edwards, Grand Junction, Greeley, and Pueblo to provide citizens the opportunity to share their insights and experiences with the Commission. Approximately 450 people attended these hearings. The unedited transcript of the testimony of the more than 100 individuals who spoke is available by contacting the Governor’s Office. It can also be reviewed on the Internet through the Governor’s Office homepage at: http://www.state.co.us/gov_dir/governor_office.html

On March 19, 1998, a number of Commission members also met in Colorado Springs with representatives of several conservative organizations and religious groups. In addition, the Commission invited experts, including a representative from the Colorado Division of Insurance and a tax law professor from the University of Denver College of Law, to provide information on issues such as health care insurance and tax liability.

Finally, to provide a context for the Commission’s Report and recommendations, it is important to understand the State’s role in recognizing and legalizing the formation of intimate relationships. At this time, the State recognizes and formalizes only heterosexual relationships, either through issuing marriage licenses or by recognizing common-law marriage. Both types of marriage are legal in Colorado.

The State confers numerous rights and responsibilities to married persons, including inheritance, adoption, and parental rights and responsibilities. These rights and responsibilities provide legal and economic protections to the couple or family in question and protect individuals in the marital relationship, including children. Other rights and responsibilities – such as the right of married persons to file joint or separate income tax returns, to inherit from their spouses tax-free, or to receive spousal social security benefits after one partner dies – are conferred by the federal government. Presently, neither the State nor the federal government confers any comparable rights or responsibilities to committed partners.

The State’s role in regulating intimate relationships can be viewed as a service of the government to its citizens. By providing certain protections to citizens in marriages and offering people ways to protect themselves and their relationships, the government places a value on preserving heterosexual relationships – specifically, marriage. The principal question addressed by the Commission is whether the State should similarly recognize committed relationships, and if so,

Chapter II -- Public Policy Issues

In his Executive Order, Governor Romer asked the Commission to “examine the public policy reasons to extend or not to extend” to same-sex couples rights, responsibilities and benefits similar to those extended to married heterosexual couples. The Commission began its inquiry with this task. This Chapter outlines the issues the Commission identified and makes several conclusions based on its deliberations.

Section One outlines the most significant public policy reasons in favor of extending rights and benefits, as well as obligations and responsibilities, to committed partners.

Section Two outlines the most significant public policy reasons in opposition to extending these rights and responsibilities to committed partners.

Section Three discusses the strength of arguments for and against the State extending rights and responsibilities to committed partners. Based on this discussion, the Commission makes three recommendations.

Section One: Arguments asserted in favor of extending rights, responsibilities, benefits and obligations to persons in committed relationships.

The arguments presented below attempt to summarize the views of those who favor having the State extend rights and responsibilities to persons in committed relationships similar to the rights and responsibilities the State extends to married persons. The arguments summarized in this section should not necessarily be construed to represent the individual views of any members of the Commission.

- 1. Supporters asserted that committed relationships exist in our society, and that, in the interest and tradition of fairness and equality, they should be recognized and afforded equal treatment under the law.**

“Marriage is an institution among heterosexuals accepted as correct only because of its history, not because of any inherent correctness. The reason for the existence of government is for the protection of all its people, and to provide benefits for the common good, so that those who support government in terms of taxation, in terms of holding down a job, in terms of caring for their community, deserve the same rights and privileges and protection as all other members of [society]”

Pamela Linden
Greeley Public Hearing, March 4, 1998

partner. Legally speaking, marriage creates kin. Surely society's interest in kin-creation is strongest of all for people who are unlikely to be supported by children in old age and who may well be rejected by their own parents in youth."

Jonathan Rauch
The New Republic, May 6, 1996

"I'm representing no organization, I come as an individual. [W]hile I have no one in my family who is gay, and to my knowledge, none of my friends, I do believe the State has a compelling interest in long-term, stable relationships for the health of our society as well as for the health of individuals and family members involved. I would like to see [the] State support -- or legally confirm relationships [between] people of the same sex who wish to enter into long-term, stable relationships. I would like to see this marriage be parallel in all ways to heterosexual marriage."

Doree Pitkin
Greeley Public Hearing, March 4, 1998.

People in committed relationships claimed that their relationships provide tangible benefits to society. They explained that committed relationships foster economic and social stability. They said such relationships should be encouraged, rewarded and protected in the same manner as marriages are for the benefits they provide to society.

Those supporting this argument indicated their belief that people in committed relationships, whether they are homosexual or heterosexual, are more economically stable, have higher job productivity, and are less likely to become dependent on public assistance. They asserted that people in committed relationships assist and support each other in times of economic hardship or medical illness.

Individuals presenting testimony to the Commission indicated that they felt being a committed partner led to a sense of higher productivity and greater fulfillment in their personal lives. Some further asserted that such stability encourages monogamy and lessens the cost of public health services.

Many who gave testimony argued that providing legal protections to committed partners would create a more stable family system to protect the health, safety and welfare of their children. They pointed out that current law prohibits one partner in a committed relationship from adopting the children of the other partner, jeopardizing the couple's ability to determine how the children will be protected and cared for in the event of the death of the parent. Some also noted that a committed partner who is not the parent is unlikely to be able to obtain employee health benefits for the children of the other partner.

Supporters argued that people are more productive and constructive citizens when they belong to and enjoy the support of a community. The building block of community is family, and the core of family is a committed relationship between two adults. These people reasoned that, because

attorney and other legal paperwork, there are many problems with these mechanisms. They noted that they often are costly and difficult to prepare, and they cannot create the same level of protection, no matter how thoroughly prepared. They said the burden of having to draft a cumbersome set of legal documents is inequitable because the documents cannot fully protect one's partner and dependents. Further, these documents may be challenged in a legal system that does not recognize the validity of committed relationships. Advocates provided a variety of anecdotal evidence and statistics to support this argument.

According to people in committed relationships, it is costly to construct the myriad of legal arrangements required to establish even the most basic rights because the assistance of an attorney is required. Committed partners must maintain and possibly defend those arrangements, requiring even more legal service. A 1995 state commission in Hawaii estimated the average cost to a couple for such services in that state to be \$6,800 – a cost that is not incurred by married couples. Some experts suggested this estimate is low, especially to address complex financial relationships. Those in committed relationships warned against do-it-yourself strategies in making legal arrangements because they are complicated and vulnerable to legal challenge.

Supporters also argued that once they have completed arrangements to ensure that they have rights in emergencies or the event of death, committed partners often face an uphill battle in exercising those rights amidst the confusion associated with such scenarios. They noted that legal documentation often is not available in emergencies, leaving a committed partner powerless if a critical decision must be made. One individual recounted that when he was in a work-related accident, his boss was allowed in the emergency room but his partner of many years was not.

Individuals who have attempted to construct such legal arrangements reported a variety of problems with the enforcement and judicial validation of the documents. They indicated that, since the State does not recognize committed partnerships, such arrangements are vulnerable in court. For example, when a committed partner dies, his or her will can be challenged by the deceased's biological family. In such cases, the courts may decide in favor of the biological family over the legally documented wishes of the deceased.

Some said the streamlined system of granting rights and responsibilities between spouses is effective in many ways that a committed relationship's legal arrangements cannot be. Many married adults do not have wills, but most know that their spouses will be protected by the law. This and other important elements of marriages are not available to committed relationships.

Finally, some legal experts pointed out that the number of rights which can be secured through legal documents such as wills and powers of attorney are limited compared to those conferred to persons in a marriage. For example, while a power of attorney may assure one committed partner the ability to make health care decisions for the other partner, it does not entitle that person to take time away from work to care for an ill or disabled partner. Similarly, although a will can facilitate inheritance from one's committed partner, it cannot assure that the surviving partner will continue to have parenting rights.

5. Supporters asserted that religious doctrine requires society to strive to ensure that all members of society are treated the same.

"Will you seek and serve Christ in all persons, loving your neighbor as yourself?"

"Will you strive for justice and peace among all people, and respect the dignity of every human being?"

The Book of Common Prayer
According to the use of The Episcopal Church, 1979

"[Y]ou need to open your hearts. Where there is love, there is God. It's quite plain and simple."

Micah Norton
Grand Junction Public Hearing, March 4, 1998

Several members of the clergy and people of faith from the Judeo-Christian tradition testified to the primary notion of justice in Jewish and Christian scriptures and heritage. They said this understanding of justice is built upon the divine command to respect the dignity of all human beings, and that followers of Christian and Jewish faiths are commanded to create a genuine community among themselves and with their neighbors.

These people further argued that the sacred writings repeatedly give examples of how difficult it is to achieve genuine community. The notion of Judeo-Christian justice is always a source of conflict within the community, they said, and yet there is a passionate desire reflected in the prophets of all ages to settle for nothing less than love and charity with one's neighbor.

According to this line of argument, sacred Judeo-Christian writings hold their followers to a higher standard of justice which asserts that, since a divine hand formed every human being, each person should be treated with respect and prejudice should be avoided. They say this standard of justice is in stark contrast to civil standards throughout history. For example, American democracy and contemporary culture would claim that justice is served as long as one's constitutional rights are not violated. In the Judeo-Christian tradition, however, proponents said the standard of justice requires followers to pursue the best interest of other persons and to recognize the divine bias toward the poor, the widow, and the outcast.

Some Christians who testified said Jesus tells them they must love their neighbor. They said that when the disciple asked, *"And who is my neighbor?"* Jesus told the parable of the man who was robbed and left dying in a ditch. Therefore, they said, to love your neighbor means to go all out for the stranger and the outcast – perhaps the one you least like in the community – to see that that individual is treated with all the respect that you hope to receive yourself.

Similarly, some Jews who addressed these issues said that, for centuries, Jews have provided moral leadership in recognizing our differences and diversities. They said that Jewish sacred texts affirm that all persons are created *Betzelem Elonim*, "in the Image of God," and therefore

According to this argument, the Bible is unambiguous on the issue of homosexuality – especially in the book of Leviticus. These persons said that if we take scripture at face value, then homosexuality clearly is against the will of God. Similarly, a number of people referred to homosexuality as “unnatural.” They claimed that God’s will is expressed in the natural world around us, and homosexual activity is alien to that world.

Some who made this argument stated that in a pluralistic society they were willing to accept, and to some extent accommodate, homosexuality. However, all strongly opposed extending rights and benefits to persons in committed relationships because it could be interpreted as an endorsement or validation of homosexuality. They were concerned that conferring rights to committed relationships may encourage homosexuality on a societal level.

According to several members of the clergy who spoke, there simply can be no compromise in the church’s mission of “calling society to God’s ideal.” They said treating committed relationships as a valid expression of human love would go against this mission. Nor, they said, can the issue be dismissed simply by separating the roles of the church and of the state. These people view legislation as an expression of morality, and law as an expression of right and wrong. Therefore, they reasoned, the State should neither legitimize nor support committed relationships because homosexuality is wrong.

2. Opponents asserted that families based on unions between a man and a woman provide benefits to society which same-sex unions cannot provide.

“[G]overnmental bodies provide marital benefits because they derive benefits from the traditional family union that really comprises the foundation of culture. The traditional family is the best environment to prepare for old age, to prevent welfare costs, to prevent violence, to raise children and to preserve our culture. And these are tremendous benefits to the state. And they are things that the state cannot do. And that’s why the marital benefits are extended to traditional husband and wife family units.”

“But there is no benefit to the state from a homosexual union. It is strictly a matter of personal satisfaction. And that’s why . . . the state does not give marital benefits to homosexual marriages or unions, whether they are monogamous or not.”

Will Perkins, Chair, Colorado for Family Values
Public Hearings, Grand Junction, March 4, 1998

A second argument that was presented in opposition to extending rights and benefits to committed relationships was that marriages provide benefits to society that committed relationships do not. They noted the benefits range from procreation and child rearing to providing economic security and serving as a stabilizing force in society.

Several of those who opposed extending benefits to committed partners tied this argument – especially with regard to procreation and child rearing – to a religious faith and a belief that homosexuality is morally wrong. However, they stressed that their argument was addressing

about by the increasing moral confusion of society. One drew an analogy to what he called the “moral relativism” of the 1960s, suggesting it lead us down a path that has resulted in historically high rates of divorce and teen pregnancy.

As one of these clergy stated, society must keep a moral compass and follow that compass even when in doubt. “Rejecting the moral wisdom of the ages, even if we don’t understand it,” he said, leads inevitably to the moral decay of society.

- b. According to the second position asserted, if marriage provides society unique and essential benefits (the argument discussed in item #2 of this section), then anything perceived to undermine or diminish the value of marriage also threatens society as a whole. According to those who presented this argument, the American family is under serious strain, and the resulting breakdown of many families is contributing to a great many social ills, from crime and drug abuse to poverty and declining health and educational standards.

This position is similar to that which often is made concerning single parents. While the opponents said they want to make all parents successful and want to ensure all children have a fair chance in life, they warned that the State should do nothing to send the signal that having children out of wedlock is ideal or that raising children in a one-parent household is equal to raising them in a two-parent household.

They asserted that, by providing single parents or committed relationships with the same or similar rights and benefits as persons in a marriage, society would send the message that these relationships are of equal value to society. They believe, from a societal point of view, sending such a message would be destructive. They said such a message would ultimately dilute the value of the benefits of marriage and further contribute to the breakdown of the American family and all the social ills that has brought.

Again, as with the opponents’ argument in #2 above, it is important to note that this argument did not necessarily suggest that committed relationships are bad and should be opposed. It simply argues that the family somehow is threatened, and that the survival of our culture depends in part on rallying around the traditional family unit. In such an environment, opponents asserted, it would be foolish for society to share more broadly the benefits it extends to persons in marriages and families, if by doing so it sends the wrong signal or dilutes the value of those benefits.

- 4. Opponents asserted that, through the results of the Amendment 2 election in 1992 as well as a number of opinion polls since then, Coloradans clearly oppose the extension of any rights to gay people or to persons in same-sex committed relationships.**

public policy reasons for and against extending rights, responsibilities, benefits and obligations to persons in committed relationships.

1. Separate Secular and Religious Concerns.

The Commission notes that many of the most passionate arguments it heard on all sides were based on religious faith. Whether it was the argument that homosexuality is a sin in the eyes of God or the argument that God commands us to love and not to judge one another, these beliefs are sincerely and firmly held. The Commission also notes that these issues are being debated actively in many religious congregations and denominations throughout the country and the world.

The Commission believes these issues are best debated and resolved within religious communities rather than the secular community. The Commission was not appointed to participate in debates over religious doctrine.

Finding:

Our country has a rich tradition of separating matters of church from matters of state. The Commission finds that, with respect to the issues addressed in this Report, the policy of separation of church and state should be followed strictly. Marriage is both a religious and a civil institution. The Commission opposes any effort to put into law the tenants of any one religious faith. At the same time, the Commission opposes any action by the State which would inhibit diverse religious communities from defining their religious institution of marriage according to their own doctrines and faiths or establishing their own religious positions and policies concerning human sexuality.

Recommendation:

The Commission recommends that actions taken in response to this Report be directed only at relationships between individuals within the secular society. Nothing the Commission recommends should be construed to require religious institutions, in the course of their religious missions, to institute policies contrary to their doctrines.

2. Preserve Marital Rights and Benefits.

The Commission recognizes that marriages provide valuable benefits to society. Among these benefits are procreation, child rearing, economic security, health, safety, and social stability. Families also are the first educators of young children, and they play an essential role in passing shared values from one generation to the next.

one's spouse in a hospital would not be harmed if similar rights were extended to committed partners. Similarly, post-marital support requirements would not be diminished for a married couple if such responsibilities were also applicable to committed partners who terminate their relationship.

Although the cumulative effect of extending benefits and responsibilities currently enjoyed by married families may result in a net tax loss to the State, the Commission is unaware of any reputable study which has been done to evaluate this potential liability, and believes it to be small, given the relatively small number of individuals to whom the extension of committed relationship benefits would apply.

Furthermore, human sexual orientation is a complex characteristic. For whatever reason – either as a result of genetics, environment, early childhood development, or a combination of factors – a minority of individuals are homosexual. The Commission is aware of no credible evidence to suggest that extending benefits to committed partners will sway anyone to become homosexual or to choose a same-sex relationship over a heterosexual relationship.

b. Committed relationships provide benefits to society.

The Commission is convinced that committed relationships provide valuable benefits to society – benefits that are similar to those provided by marriages.

Opponents of extending rights to persons in committed relationships asserted that society derives no benefits from these relationships. In support of this argument, however, they usually pointed to characteristics of transient or non-monogamous relationships rather than committed long-term relationships.

The Commission is persuaded that committed relationships provide many tangible benefits, and that society is strengthened by committed relationships. These benefits include the stability and support of individuals and dependents in long-term relationships and the avoidance of public assistance if partners are recognized and able to care for their family members. These benefits further include improved public health, economic stability, job performance, safety, child rearing, social stability and cultural contributions. These are of significant importance and value to society, and warrant legal support.

Through State acknowledgement of committed relationships and the public notice that is inherent with committed partners asserting the responsibilities and benefits thus expected, the community benefits in a subtle, probably immeasurable, but profound way – what one of the Commission members referred to as “the neighborhood watch” factor. If committed relationships were recognized through State law, committed partners would be more likely to become active participants in the civic responsibilities of community – serving on the local neighborhood association, paying attention to a neighbor's home, becoming more involved in the social fabric of one's community.

ABUSE IN A NATIONAL SURVEY OF ADULT MEN AND WOMEN: PREVALENCE, CHARACTERISTICS, AND RISK FACTORS. 14 Child Abuse and Neglect, 19-28.]

Dr. Bigner also refuted the assertion that children of committed partners have a high probability of being homosexual as well. His research found that raising a child in a family with homosexual partners as parents does not determine a child's sexual orientation. Dr. Bigner further stated that it is clear that sexual orientation is something that is not transmitted from parent to child by modeling such behavior. If the sexual orientation of parents were transmissible from parent to child, he asserted, then heterosexual parents would only produce heterosexual children. [See Patterson, C. (1995); 31 *SEXUAL ORIENTATION AND HUMAN DEVELOPMENT: AN OVERVIEW*. *Developmental Psychology*, 3-11; and Bigner, J. J. (1996) *WORKING WITH GAY FATHERS: DEVELOPMENTAL, POST-DIVORCE, AND THERAPEUTIC ISSUES*, in R. J. Green & J. S. Lairds (Eds.), *LESBIAN AND GAY COUPLES AND FAMILY RELATIONSHIPS: THERAPEUTIC PERSPECTIVES*. (pp. 370-403) San Francisco: Josey-Bass.]

Colorado's adoption laws limit step-parent adoptions to the legal spouse of the parent. Because Colorado does not recognize committed partners as legal spouses, committed partners are not eligible for co-parent adoption status. The Commission believes that children are best served by having two legal parents. This would ensure, for instance, that two adults have mutual financial and legal responsibility for the care and upbringing of the child, and that either of the committed partners could obtain health insurance for the child through an employer. The child also would have access to important protections if either parent dies. These should include social security benefits, pension plan benefits, and employment-related sickness, death, and family leave benefits. Finally, it ensures continuity in the raising of the child in the event one parent dies.

Finding:

The Commission finds that in committed relationships which include children – biological or adopted – as part of the family, the interest and welfare of the children are of paramount importance. In most cases, it is in the best interest of the children to have a legal relationship with both committed partners. The sexual orientation of a parent should not be a factor in determining the best interest and welfare of a child. Nor should the right to be a parent, including through adoption, be affected by one's sexual orientation.

In addition, the Commission rejects the assertion that persons in committed relationships are able to access the necessary rights and protections through existing legal means, such as wills and powers of attorney. The overwhelming evidence that came out of the public hearings was that such arrangements cannot create the same level of protection for committed partners that is available to married couples, no matter how thoroughly prepared. Furthermore, creating legal documents to protect some of the needs of committed partners is always more expensive and less secure than the options available through marriage. The expense and legal difficulty of these mechanisms alone put them out of reach of many committed partners.

not to extend benefits to persons in committed relationships. It is the Commission's judgment that such a burden has not and probably cannot be met.

Finding:

The Commission finds there are sound and compelling reasons to provide rights and benefits to persons in committed relationships, parallel to those currently provided to persons who are married.

Recommendation:

Based on the above findings, the Commission recommends that the State revise its statutes to extend to persons in committed relationships the legal rights and benefits, as well as responsibilities and obligations, currently afforded to persons who are married.

I. PROBATE AND INHERITANCE UNDER COLORADO LAW.

Probate and Inheritance laws determine what happens to a person's assets when he or she dies, specifically who will inherit the person's assets. The laws apply different rules depending on whether or not a person has a will. Nearly 75% of all Americans do not have wills.² This is due to a variety of reasons, including their not wanting to face their own mortality or make difficult decisions about distributing their assets. They also do not want to incur the intangible (inconvenience and disclosure of private information about their assets) and economic costs of having a will prepared by an attorney. These factors discourage people from contracting for their own personalized inheritance provisions, making the default rules provided by the law particularly important.

1. Statutory Protection for Persons Without a Will.

(a) Married Persons Are Protected Whether or Not there is a Will. Colorado statutes protect the surviving spouse. If a married person does not have a will at death (called "dying intestate"), the surviving spouse is entitled to inherit a certain percentage of the deceased spouse's assets.³ Also, the surviving spouse has priority under the statutes to serve as the person to administer the estate of the deceased spouse.⁴ Even if a married person does have a will at death (called "dying testate"), the will cannot disinherit the surviving spouse unless there is an enforceable marital agreement which specifically waives the surviving spouse's right to the statutory entitlement.⁵

(b) Committed Partners Need a Will to Inherit. Colorado statutes do not protect the surviving committed partner of a deceased committed partner who dies without a will. If a person in a committed relationship dies without a will, the assets owned in the name of the deceased committed partner will be distributed to the deceased partner's blood relatives.⁶ The committed partner is not mentioned anywhere in the Colorado intestacy statutes. In fact, the State of Colorado will inherit the deceased partner's assets before a surviving partner will.⁷ If a person in a committed relationship dies with a valid will (one which has been admitted to probate by a court), a surviving committed partner can inherit from the deceased committed partner. However, the intangible costs (as listed above for married couples, but with the additional fear factor of making themselves known as gay or lesbian to the attorney and other family members) and the economic costs associated with the preparation of the document deter many committed partners from having a will prepared. Even if persons in a committed relationship have prepared wills, wills providing for committed partners are more likely to be challenged by a deceased partner's blood relatives.

2. Additional Statutory Protection for Married Persons.

(a) Statutory Allowances for Surviving Spouse. A surviving spouse is also eligible for certain allowances from the deceased spouse's estate which take priority over the claims of creditors of the deceased spouse. The law protects the surviving spouse from being impoverished. These allowances include a family allowance of \$12,000⁸, an exempt property allowance of \$15,000⁹, and a homestead exemption of \$30,000.¹⁰

hiring of an attorney, which in turn involves additional intangible and economic costs. A committed partner also can submit a petition to a court requesting that he or she be named guardian¹⁹ or conservator²⁰ for a committed partner. Such a petition is subject to challenge by blood relatives or other interested persons²¹ and also can be quite costly, particularly if the petition is contested by a relative of the incapacitated person. Subject to a determination by the court of the best interests of the incapacitated person, the court will select the person who the court believes is the best qualified to serve as guardian and/or conservator.²²

2. Right to Visit Spouse at Health Care Facilities.

(a) Married Persons Have Automatic Right to Visit. Because persons who are married are legal members of a person's family, they automatically are given the right to visit their relatives in medical facilities.

(b) Committed Partners Do Not Have Automatic Right to Visit. Because committed partners are not legally recognized as spouses, or even as family members, they can be denied visiting rights when a committed partner is in a medical facility. A person in a committed relationship can sign a health care power of attorney which designates his or her committed partner as the agent to make medical decisions on their behalf, which would allow the committed partner to visit.²³ However, because of the intangible and economic costs of such documentation, many people do not prepare this document.

3. Right to Make Medical Decisions on Behalf of a Spouse.

(a) Married Persons. Colorado statutes provide a list of "interested persons" who can make decisions about another person who is not conscious or cannot communicate wishes about medical needs (referred to as "incapacitated"). The statute provides that a spouse is one of the "interested persons".²⁴ Also named in the statute as "interested persons" are parents, adult children, adult grandchildren, brothers and sisters and close friends.²⁵ That group of "interested persons" must decide which one of them will make the medical decisions on behalf of the "incapacitated person."²⁶ If they cannot agree which one of them will make decisions, a court will have to decide,²⁷ which can be costly. Unless it can be proven to a court that the spouse is not the best choice, the spouse will likely be selected to make medical decisions.

(b) Committed Partners. A committed partner can be considered a close friend and, therefore, an "interested person" under the statute. However, if blood relatives do not unanimously agree that the committed partner shall be the one to make the decisions on behalf of his or her "incapacitated" partner, a court will have to decide. Prior to becoming "incapacitated," a committed partner can sign a health care power of attorney which designates his or her committed partner as the agent to make medical decisions on their behalf.²⁸ However, because of the intangible and economic costs of such documentation, many people do not prepare this document.

4. Right to Make Decisions about the Medical Use of a Deceased Person's Body. A person can make an organ donation through a designation on their Colorado driver's license or through a written statement signed by that person.²⁹

marriage, cohabit and hold themselves out to their friends, family and community as being in a marriage.³⁶ Committed partners cannot marry and cannot become common law spouses.

1. Married Persons. Married persons have a legal right to request support or maintenance from their spouse upon the filing of a divorce or legal separation.³⁷ Colorado statutes provide for the payment of temporary support to a spouse and dependent children prior to a final dissolution decree³⁸ and impose a penalty for non-payment.³⁹ Spouses can alter the legal rights and responsibilities conferred upon them by the law through a pre-nuptial or post-nuptial agreement.⁴⁰ However, a court can modify or ignore the provisions of a pre-nuptial or post-nuptial agreement if the court determines the document is unfair.⁴¹

2. Committed Partners. Persons in a committed relationship do not have a legal obligation to provide maintenance or support for one another. Only by the creation of a written "living together" agreement or other contract can certain rights and responsibilities be created between persons in a committed relationship.

3. Jurisdiction. Colorado Revised Statutes and case law (court decisions) govern the above-described contractual relationships. Colorado courts have not issued a reported decision on the construction and enforceability of living together agreements for committed partners.

IV. CHILDREN.

Colorado laws dealing with child custody, child support and parental visitation generally come into play when a couple has ended their relationship. The laws governing child-related topics give certain rights and responsibilities to biological parents.⁴² It is very difficult for a non-biological parent to share in any of the legal rights and responsibilities of child rearing, even where the person has been financially and psychologically significant in a child's life. The marital status of biological parents is generally not relevant in determining their rights and responsibilities vis a vis children. However, marital status does matter in the areas discussed below.

1. Custody/Visitation (Parenting Time).

(a) Married Persons. Under current Colorado law, when a couple's marriage is dissolved or they become legally separated, the custody of any children born to or adopted by them during their marriage is determined by the court.⁴³ The court can award sole custody of the children to one of the parents, or award joint custody to both parents. The award of custody is based upon the best interests of the children.⁴⁴ The custodian(s) of the children are able to make all major decisions concerning the children regarding their health, education and general welfare. Effective February 1, 1999, Colorado courts will no longer designate a custodial parent. The parents or legal caretakers of children will be allocated parental responsibilities for the children.⁴⁵ In dissolution of marriage or legal separation actions, parents also are granted parenting time with the children.⁴⁶ This is the time that the children spend with each parent. Unless it can be shown that the children will suffer physical or emotional harm, parents are awarded reasonable parenting time with their children.

Colorado law, the committed partner cannot under any circumstances adopt his or her partner's children regardless of the emotional or financial commitment of the partner to the children.

(c) Single Person. A single person can adopt children in Colorado.⁵⁴

4. Artificial Insemination.

(a) Married Persons May be Deemed Legal Parents. If a wife becomes pregnant via artificial insemination, her husband may be deemed for all relevant purposes the biological father of the child.⁵⁵

(b) Committed Partners Cannot be Deemed Natural Parents. If one of the female partners in a committed relationship becomes pregnant via artificial insemination, the other partner can not be deemed the biological parent of the child.

5. Children's Right to Inherit.

(a) Children's Right to Inherit from Biological or Adoptive Parent. If there is no will, children, whether biological or legally adopted, will inherit from their parent under Colorado statutes.⁵⁶ However, parents do have the ability to disinherit their legal children under a will.

(b) Children's Right to Inherit from Non-Biological Parent. The children of a non-biological parent have no inheritance rights unless the non-biological parent has legally adopted the children or created a will naming the children as beneficiaries. A committed partner cannot adopt his or her partner's children. Therefore, a committed partner must make a will and name the children of his or her committed partner if such children are to inherit from the estate. Even with a will which provides for the committed partner's children, unaccepting blood relatives of the deceased partner may contest the document.

6. Jurisdiction. Colorado Revised Statutes and case law (court decisions) govern the legal rights and responsibilities regarding children.

V. HEALTH INSURANCE BENEFITS.

There is no state or federal requirement that private employers provide health care insurance coverage for their employees. Such a mandate could only be made by the United States Congress through an amendment to the Employee Retirement Income Security Act ("ERISA").⁵⁷ However, many private employers do provide health care insurance coverage to their employees as a benefit.

1. Health Insurance Coverage Provided by Private Employers.

(a) Health Insurance for Spouses and Dependents of Employees. Many employers provide coverage to the spouses and dependents of employees, and employers may require employees to pay for the additional costs of insuring dependents. Even if an amount is withheld from employee salaries to pay part of the premium, the portion contributed by the employer is

of his or her support from the employee, and (5) either be a relative or else have his or her principal abode in the employee's home and be a member of the employee's household.⁶³ However, the "member-of-the-household" test is not satisfied if the employee-committed partner relationship violates local law.⁶⁴ The tax treatment to the employer is the same as with married persons.⁶⁵

4. Continuation of Coverage. The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA")⁶⁶ includes provisions whereby persons covered under an employer health plan who are losing coverage for any of several specific reasons may elect to continue coverage under the employer's plan at their own expense.⁶⁷

(a) Married Persons. Depending on the event triggering the loss of insurance coverage, COBRA continuation coverage elections may be made by the covered employee or a "qualified beneficiary," defined as a spouse or dependent child of the employee who has coverage under the plan.⁶⁸

(b) Committed Partners. COBRA elections are not required to be made available to committed partners of employees.

5. Jurisdiction. The federal government, through laws such as the Employee Retirement Income Security Act ("ERISA")⁶⁹ and the Internal Revenue Code ("IRC"),⁷⁰ governs the funding, administration and taxation of health care insurance for private employers and federal employees. The State of Colorado, as an employer, has control over the nature and extent of benefits extended to state employees.

VI. RETIREMENT BENEFITS.

This area addresses who can receive the retirement benefits of a person at the person's death.

1. Survivor Benefits. There are two types of tax-qualified retirement plans: defined contribution plans⁷¹ and defined benefit plans.⁷² Defined contribution plans include 401(k), profit sharing, money purchase, target benefit plans and employee stock option plans. Defined benefit plans include pension or retirement plans characterized by a benefit formula usually based on average compensation and years of service.

(a) Married Persons. Retirement benefits payable to married participants under defined benefit and money purchase plans (and some profit sharing plans) must be paid in the form of a joint and survivor annuity for the participant and the participant's spouse unless both the participant and the participant's spouse elect in writing to have the benefits paid in another form, such as a lump sum payment.⁷³ Under the statutory joint and survivor annuity, the retiree receives benefit payments for life with at least fifty percent of that amount payable for life to the surviving spouse after the death of the retiree.⁷⁴

(b) Committed Partners. Absent a surviving spouse, defined contribution and defined benefit plans generally allow the participant to designate anyone as beneficiary; therefore, a participant may designate his or her committed partner as beneficiary.

2. Property Division.

(a) Spouses Receive Equitable Shares of All Joint Property. Upon divorce, joint property is divided equitably between the spouses, regardless of how the property is titled, or who bought the property. The law assumes that nearly all of the property is marital property. The laws also prevent spouses from taking, destroying, wasting, selling or hiding joint property during a dissolution. The law prevents one spouse from receiving an unfair portion of the property and impoverishing the other party.

(b) Committed Partners Have No Dissolution Rules. When committed partners dissolve their relationship, no dissolution laws govern how they should divide property. No dissolution laws prevent one person from receiving or taking more than his or her fair share of property merely because of how property is titled, who bought it, or where it is located.

3. Debt Division.

(a) Spouses are Responsible for Equitable Portions of Debt. Courts equitably divide joint debt, regardless of whose name it is in, between spouses when they divorce. Dissolution statutes provide a means by which joint debts are serviced during the divorce proceeding.

(b) Committed Partners Have No Dissolution Rules. When committed partners dissolve their relationship, no dissolution laws govern how joint debt will be divided. Further, no laws ensure that joint debts get paid during the dissolution process.

4. Spousal Support.

(a) Previously Married Persons Can Receive Spousal Support. Married persons may have the responsibility to pay spousal support or maintenance to their former spouses, if one is in need of the support and the other is able to pay. The court has discretion to determine the amount and duration of support. The State of Colorado will enforce the order for support, and failing to pay support is a class 5 felony.⁷⁹

(b) Committed Partners Cannot Receive Support. Committed partners have no legal right to or responsibility for spousal support, but can provide for it in a contract. Courts, however, might not enforce such contracts.

5. Tax Treatment Regarding the Payment of Support.

(a) Former Spouse Who Pays Support. The full amount of maintenance or support paid by a former spouse is a deductible expense to the payor for income tax purposes.⁸⁰

(b) Former Committed Partner Who Pays Support. None of the amount of maintenance or support paid by a former committed partner pursuant to a contractual or other agreement is a deductible expense for purposes of the income tax. Further, the payment of support may be considered a gift, and the payor may incur a gift tax on the amounts paid in

employee is a dependent entitled to benefits.⁸⁷ The act also allows several other classes of persons, including mother, father, child, sibling, grandparent or grandchild, to obtain benefits if they are disabled and dependent on the deceased worker for support.⁸⁸

2. Committed Partners. Workers' compensation benefits are not paid to a partner in a committed relationship.

3. Jurisdiction. Colorado Revised Statutes and case law (court decisions) govern the legal rights and responsibilities regarding workers' compensation benefits.

X. WRONGFUL DEATH BENEFITS.

This area addresses who can recover for damages and loss of support as a result of the wrongful death of a person.

1. Married Persons Can Recover for the Death of a Spouse. In a wrongful-death lawsuit, a surviving spouse is allowed to sue for the loss of support from the deceased spouse and also to sue on behalf of the deceased spouse for the loss to the deceased spouse's estate. The suit also may attempt to recover damages, including loss of companionship, consortium and marital care, as well as the expenses of any illness and burial.⁸⁹ This type of legal action may not be pursued by persons other than those listed in the statute.⁹⁰

2. Committed Partners Cannot Recover for the Death of the Committed Partner. A committed partner cannot sue for support or loss of companionship, consortium, care or the expenses of illness and burial. For example, if a third party causes the wrongful death of a committed partner the person or entity responsible for the death will have no liability to the surviving committed partner. The law does not recognize any economic or emotional injury to the surviving committed partner.

3. Jurisdiction. The Colorado Revised Statutes and case law (court decisions) govern the legal rights and responsibilities regarding wrongful death benefits.

XI. OTHER INSURANCE BENEFITS.

In addition to health insurance benefits discussed above in Legal Area V, the Commission recognizes other insurance benefits as major legal and economic benefits.

1. Family Discounts on Insurance.

(a) Family Discounts Available to Married Persons. Insurers generally give automatic family discounts for various types of insurance and offer special consideration of spouses. These special discounts may include premium discounts for life insurance, auto insurance, home insurance and private disability insurance.

(b) Family Discounts Generally Not Available to Committed Partners. The Commission is not aware of any insurance discount offered based on a committed relationship.

permission, a spouse can use the spouse's ability to gift \$10,000 and give a total of \$20,000 in one year.⁹²

(2) Limit of \$10,000 Per Year on Tax-Free Gifts Between Committed Partners. Other than marital transfers, individuals are limited to a \$10,000 per year cap on tax-free transfers.⁹³ Thus, persons in committed relationships can only transfer tax-free up to \$10,000 in assets between themselves each year. Gifts in excess of \$10,000 in any one year reduce the "credit" against tax of the payor and may, if large enough, generate a gift tax to the payor. Persons in a committed relationship are subject to the same rules as apply to non-spousal gifts.

(b) Joint Filing on Tax Return.

(1) Applicable to Married Couples. Married couples may elect to file their income taxes jointly or separately.⁹⁴ There can be advantages or disadvantages to joint filing, depending on the financial circumstances of the spouses. For example, there is a tax penalty on married couples when both spouses work and have income over a certain amount. However, there is also a tax benefit to families who have only one working spouse and income of a certain amount.

(2) Not Applicable to Committed Partners. Committed partners do not have the option of filing jointly. The Defense of Marriage Act⁹⁵ provides that committed partners are not spouses for the purposes of federal law.

(c) Insurance and Fringe Benefits Provided by Employer .

(1) Favorable Tax Treatment for Married Persons. The amounts paid by an employer for the health insurance and fringe benefits of an employee or the employee's spouse and dependents are, within limits, not treated as taxable income to the employee.⁹⁶ An employer is entitled to a deduction for the ordinary and necessary expenses of carrying on its business, including amounts paid or incurred for hospital and medical expense benefits or insurance, as well as fringe benefits.⁹⁷

(2) Unfavorable Tax Treatment for Committed Partners. If an employer offers health care insurance coverage and fringe benefits for the committed partners of its employees and the dependents of the committed partners, the amounts paid on behalf of the employees for the coverage of their committed partners and their dependents are considered part of the employee's income and are taxable as such. The tax treatment to the employer is the same as with married persons.

(3) Jurisdiction. The federal government, through laws such as the Employee Retirement Income Security Act ("ERISA")⁹⁸ and the Internal Revenue Code ("IRC"),⁹⁹ governs these benefits.

deferral can be substantial, amounting to hundreds of thousands of dollars (or millions of dollars), depending on the amount of assets in the deceased partner's estate.

3. Jurisdiction. The federal government, through laws such as the Internal Revenue Code ("IRC")¹⁰³ and the Employee Retirement Income Security Act ("ERISA")¹⁰⁴ governs the gift, income and estate taxes. The state laws generally follow the federal laws. Furthermore, the Defense of Marriage Act,¹⁰⁵ would pre-empt any tax law changes attempted by the individual states to recognize committed partners as married persons for the purposes of tax laws.

SUMMARY

Though the above list of major legal and economic benefits and responsibilities extended to married persons but not extended to committed partners is not exhaustive, the Commission finds that it is sufficiently complete to reflect the extensive benefits conferred to married persons under Colorado and federal law. The Commission believes that married individuals take these wide-ranging benefits for granted, and, therefore, the public is not keenly sensitive to the difficulties committed partners face in sharing their emotional and economic lives.

The Commission further recognizes that committed partners cannot obtain all the rights and responsibilities afforded married couples through legal instruments, no matter how thoroughly prepared. Furthermore, the significant intangible and economic costs deter most committed partners from creating the documentation necessary to secure even those benefits which can be created by contract. Beyond the time and money necessary to hire an attorney, creating contractual substitutes for some of the legal rights routinely accorded spouses involves making difficult decisions; confronting mortality and the possibility of injury, illness or relationship dissolution; incurring tax liabilities; and risking job loss, family rejection or other penalty as a result of making themselves known as gay or lesbian. Many of these intangible and economic costs also exist as barriers to contracting for married couples; however, the law recognizes these barriers for married persons and provides the default rules described in this Chapter.

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38. COLO. REV. STAT. § 14-10-108 (1997).
39. COLO. REV. STAT. § 14-6-101 (1997).
40. COLO. REV. STAT. § 14-2-301 *et seq.* (1997).
41. COLO. REV. STAT. § 14-2-307 (1997).
42. COLO. REV. STAT. § 14-10-123 (1997).
43. COLO. REV. STAT. § 14-10-123 (1997).
44. COLO. REV. STAT. § 14-10-124 (1997).
45. House Bill 98-1183, signed into law by Governor Romer on June 2, 1998.
46. COLO. REV. STAT. § 14-10-129 (1997).
47. COLO. REV. STAT. § 19-4-107 (1997).
48. COLO. REV. STAT. § 14-10-124 (1997).
49. COLO. REV. STAT. § 14-10-123 (1997).
50. COLO. REV. STAT. § 19-1-117 (1997).
51. COLO. REV. STAT. § 14-10-123 (1997).
52. COLO. REV. STAT. § 14-10-115 (1997).
53. COLO. REV. STAT. § 19-5-203 (1997).
54. COLO. REV. STAT. § 19-5-202 (1997).
55. COLO. REV. STAT. § 19-4-106 (1997).
56. COLO. REV. STAT. § 15-11-114 (1997).
57. 29 U.S.C.S. §§ 1001-1461.
58. Colorado Health Care Coverage Act, COLO. REV. STAT. § 10-16-101 (1994, as amended);
Small Employer Health Insurance Availability Program, COLO. REV. STAT. § 10-8-601
(1994, as amended).
59. I.R.C. § 106 and Treas. Reg. § 1.106-1.
60. I.R.C. § 162(a)(1) and Treas. Reg. § 1.162-10(a).
61. Treas. Reg. § 1.61-21(b).
62. Treas. Reg. § 1.106-1.
63. I.R.C. §§ 152(a) and 152(b).
64. I.R.C. § 152(b)(5).
65. I.R.C. § 162(a)(1) and Treas. Reg. § 1.106-1.
66. I.R.C. § 4980B.
67. *See generally* I.R.C. § 4980B and ERISA § 601.
68. I.R.C. § 4980B(g)(1).
69. 29 U.S.C.S. §§ 1001-1461.
70. The Internal Revenue Code of 1986, as amended.
71. *See* I.R.C. § 414(i).
72. *See* I.R.C. § 414(j).
73. I.R.C. § 401(a)(11) and I.R.C. § 417.
74. I.R.C. § 417(b).
75. I.R.C. §§ 402 and 408.
76. I.R.C. § 401(a)(9).
77. 29 U.S.C.S. §§ 1001-1461.
78. The Internal Revenue Code of 1986, as amended.
79. COLO. REV. STAT. § 14-6-101 (1997).
80. I.R.C. § 71.

- The Commission finds that existing legal mechanisms, such as wills and powers of attorney, are not adequate to protect the needs of persons in committed relationships. They can not afford committed partners the comprehensive set of rights and responsibilities afforded to married persons, and are not immune from legal challenge.
- The Commission finds there are sound and compelling reasons to provide rights and benefits to persons in committed relationships, parallel to those currently provided to persons who are married.
- Based on the above findings, the Commission recommends that the State revise its statutes to extend to persons in committed relationships the legal rights and benefits, as well as responsibilities and obligations, currently afforded to persons who are married.

To implement these recommendations, in light of the analysis of the key legal areas of rights, benefits, obligations and responsibilities afforded married couples described in Chapter III, the Commission recommends that the State recognize same-sex committed relationships and protect these relationships in the same manner that it protects married relationships. To do this, the Commission recommends that the State enact a law that recognizes same-sex committed relationships and amends existing laws to extend rights and responsibilities to persons in same-sex committed relationships.

Since the State can only change laws and regulations within its jurisdiction, the Commission's specific recommendations relate only to state laws, regulations and policies. The Commission additionally has included policy recommendations at the end of this Chapter suggesting federal law changes to extend rights, protections, responsibilities and obligations now afforded only to married persons to partners in same-sex committed relationships. The Commission further encourages governmental agencies and private entities to review and modify internal policies and procedures to extend the same or similar benefits to couples in same-sex committed relationships that are extended to married couples.

As in the body of the Report, the balance of this Chapter will refer to same-sex committed relationships as "committed relationships" and the persons in a committed relationship as "committed partners."

Specific Recommendations:

1. Create a Legal Framework to Define and Register Committed Relationships

The Commission first recommends that the State of Colorado create a legal framework to recognize the establishment and registration of committed relationships. By creating a legal framework for committed relationships, the State will be able to extend provisions of Colorado law that protect married persons to persons in committed relationships. The Commission adopted the following as its recommended definition of a committed relationship eligible for registration:

b. Medical and Health-Related Issues

Colorado laws extend rights to a married spouse to become the guardian and conservator of his or her incapacitated spouse, to be recognized as a family member of the spouse for purposes of visitation in a medical facility, to make health care decisions for a spouse who cannot communicate his or her wishes, and to make decisions regarding burial or cremation or regarding organ donation for a deceased spouse. These laws should be amended to extend the same rights and responsibilities to partners in a committed relationship.

c. Contractual Relationships

Colorado laws affirm the rights of married couples to enter into pre- and post-marital agreements to modify some of the legal rights and responsibilities imposed by law. This right to modify the parties' rights and responsibilities established by law should also be available to committed partners. The same judicial fairness constraints imposed on married couples entering into these agreements should apply to same-sex couples who execute similar agreements.

d. Children

Colorado laws enable a spouse to adopt his or her spouse's children if the other biological parent relinquishes his or her parenting rights and responsibilities, either voluntarily or involuntarily. The laws also permit married couples jointly to adopt children who are not biologically related to either parent, and the laws recognize children born to a couple through artificial insemination as the couple's biological children. The laws further provide both biological and legally-adopted children with rights of inheritance from their parents should the parents die without a will. Committed partners should be given equal rights to adopt non-biological children as married couples enjoy and should be presumed the parents of a child born into the relationship regardless of how the child was conceived.

Children of parents in committed relationships, whether biological or adopted, should be given the same statutory rights to inherit from their parents in the event the deceased parent does not leave a will.

e. Health Insurance Benefits

Private sector employers are not required by state or federal law to offer health insurance benefits to their employees. The Commission believes, however, that employers who do offer health benefits to their employees should provide equal benefits to all employees. If spousal and family benefits are available to married employees, similar benefits should be offered to employees in committed relationships. Colorado insurance laws should be amended to require insurance companies who provide family coverage to employers to include coverage for family members of committed relationships.

Under the Colorado insurance laws, insurance carriers in Colorado are required to make "standard" and "basic" health benefit plans available to small employers (those with 50 or

to face adverse tax treatment upon the establishment or exercise of their state rights or responsibilities. Furthermore, some benefits, such as spousal Social Security benefits and spousal retirement benefits, are controlled by federal law.

Accordingly, the Commission encourages Colorado's representatives in Congress to introduce or support legislation changing federal law to ensure equitable treatment of committed relationships. The amendments required would be in the areas of Estate and Income Tax Laws, the Employee Retirement Income Security Act, Social Security and other laws addressing rights, protections, responsibilities and obligations for married persons.

4. Governmental Agencies and Private Entities should Review and Modify their Internal Policies and Procedures to Extend the Same or Similar Benefits to Couples in Committed Relationships that they Extend to Married Couples.

The Commission's final recommendation is that Governmental agencies and private entities be encouraged to review and revise their internal policies and procedures to ensure equitable treatment of persons in committed relationships. Additionally, such institutions are encouraged to provide information to staff involved in dealing with partners in committed relationships to ensure appropriate decisions with respect to all parties involved. Similarly, the Commission encourages all private and public institutions with membership or other similar benefit programs offering spousal memberships, discounts, travel and other benefits to offer equal rights to committed partners.

Specifically, the Commission recommends that the State of Colorado offer health benefits to the partners and children of state employees who are in committed relationships to the same extent that health benefits are offered to cover spouses and children of married employees. Such action by the State would both extend appropriately these benefits to its employees who are in committed relationships and would set an example and verifiable claims history for the benefit of the business community.

Employers have voiced fears that providing health benefits to committed partners would greatly increase employers' premiums as a result of HIV/AIDS coverage. Many employers who have extended health benefits to committed partners, however, have found that the increased cost is negligible. For example, the City of Berkeley, California, first began to offer domestic partner insurance in 1985 through its HMO provider, Kaiser Permanente. At that time, and in the epicenter of the AIDS crisis, Kaiser imposed a surcharge to provide such coverage. Within three years, however, the surcharge was first reduced, then eliminated as claims experience failed to justify the need for a loading factor to cover the expected additional costs.

5. The Commission recommends that the State consider taking action on two important matters which fall outside of the Commission's charge, but which are closely related to the issues considered in this Report.

In fulfilling its mission, the Commission encountered two areas which merit further review and possible action, but which were not included in the Commission's charge from the Governor's Executive Order.

ATTACHMENT TO CHAPTER IV

TO THE REPORT OF COMMISSION ON THE RIGHTS AND RESPONSIBILITIES OF SAME-SEX PARTNERSHIPS

PROPOSED LEGAL FRAMEWORK FOR ESTABLISHING SAME-SEX COMMITTED RELATIONSHIPS:

The following is an outline of provisions to be included in a Colorado Statute setting forth the establishment, registration and licensure, and dissolution of same-sex committed relationships.

TITLE XX

ARTICLE YY

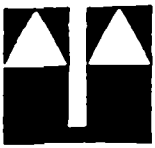
COMMITTED RELATIONSHIPS

PART 1 - GENERAL

- XX-YY-101 Legislative Declaration and Purpose. [Purpose of statute]
- XX-YY-102 Definitions.

PART 2 - FORMATION OF COMMITTED RELATIONSHIPS

- XX-YY-201 Formalities. A committed relationship between two persons of the same gender who are registered and licensed pursuant to this Part 2 is valid in this state.
- XX-YY-202 Registration Form and License.
- XX-YY-203 Legal Capacity to Create Committed Relationship.
 - (1) persons must be 18 years or older.
 - (2) persons must not be married or licensed in a committed relationship.
 - (3) persons must be legally prohibited from marrying each other.
 - (4) persons must not be related by blood or affinity in way that would prevent them from marrying.
 - (5) persons must have sufficient mental capacity to understand the nature and consequences of licensure.
- XX-YY-204 Void Committed Relationships and the Putative Partner. [Protect persons who entered into committed relationship in good faith]
- XX-YY-205 No Common Law Committed Relationship.
- XX-YY-205 Validity of Committed Relationships Formed in Other Jurisdictions.



Lambda Legal Defense and Education Fund, Inc.

Marriage Project: *Legal and Economic Benefits*

Although many lesbian and gay couples are in long-term relationships, and undertake responsibilities toward one another just as married couples do, they are denied the vast array of legal, economic, and practical benefits that married couples enjoy. Among these are the rights to:

- ▶ obtain such government benefits as **Social Security** and **Medicare**;
- ▶ file joint **tax** returns and get special marriage or family rates or exemptions;
- ▶ have joint **parenting, adoption, foster care, custody, and visitation**;
- ▶ obtain joint **insurance** policies for **home** and **auto**, as well as **family health** coverage;
- ▶ **Inherit automatically** in the absence of a will;
- ▶ secure equitable division of property and determine child custody and support **in case of divorce**;
- ▶ obtain **veterans' discounts** on medical care, education, and housing loans;
- ▶ enter jointly into **rental leases** with automatic renewal rights;
- ▶ the automatic right to make **medical decisions** on a partner's behalf in the event of illness;
- ▶ choose a **final resting place** for a deceased partner;
- ▶ take **bereavement** or **sick leave** to care for partner or child;
- ▶ receive spousal exemptions to **property tax** increases upon the death of a partner;
- ▶ obtain **wrongful death benefits** for a surviving partner and children;
- ▶ apply for **immigration** and residency for partners from other countries;
- ▶ obtain **domestic violence** protection orders;
- ▶ **visit** a partner or child in the **hospital**, and other public institutions.

In total, there are hundreds of legal rights and responsibilities that come with civil marriage. Most of these benefits cannot be privately arranged or contracted through other means, even for those who can afford a lawyer. Furthermore, private employers, banks, and other businesses often extend important benefits and privileges—such as special rates or memberships—to married couples only.

Gay people are moved by the same mix of personal, economic, and practical reasons as non-gay people, who take for granted the right to choose whether and whom to marry. Denying equal marriage rights not only deprives same-sex couples of the social and emotional significance that marriage holds for many, it also deprives them of legal and economic benefits that can be essential to their livelihood.



Rights & Benefits of Marriage



What is Marriage, Anyway?

Most importantly, it's not just about sex. Anyone who is married knows that.

Marriage is a powerful legal and social idea that protects and supports intimate family relationships by providing a unique set of rights, privileges, and benefits. Those who can marry often take these rights for granted, but for gay men and lesbians, these benefits are forever denied.

In Hawaii alone, for instance, because lesbians and gay men cannot marry, they have no right to:

- Accidental death benefit for the surviving spouse of a government employee;
- Airport relocation assistance for displaced persons;
- Appointment as guardian of a minor;
- Award of child custody in divorce proceedings;
- Beneficial owner status of corporate securities;
- Bill of Rights benefits for victims and witnesses;
- Burial of servicemember's dependents;
- Certificates of occupation;
- Consent to post-mortem examination;
- Continuation of rights under existing homestead leases;
- Control, division, acquisition, and disposition of community property;
- Criminal injuries compensation;
- Death benefit for surviving spouse for government employee Disclosure of vital statistics records;
- Division of property after dissolution of marriage;
- Eligibility for housing opportunity allowance program of the Housing, Finance and Development Corporation;

- Exemption from claims of Department of Human Services for social services payments, financial assistance, or burial payments;
- Exemption from conveyance tax;
- Exemption from regulation of condominium sales to owner-occupants;
- Funeral leave for government employees;
- Homes of totally disable veterans exempt from property taxes;
- Income tax deductions, credits, rates exemption, and estimates;
- Inheritance of land patents;
- Insurance licenses, coverage, eligibility, and benefits organization of mutual benefits society;
- Lease of agricultural parks;
- Lower hunting license fees;
- Making, revoking, and objecting to anatomical gifts;
- Nonresident tuition deferential waiver;
- Notice of guardian ad litem proceedings;
- Notice of probate proceedings;
- Payment of wages to a relative of deceased employee;
- Payment of worker's compensation benefits after death;
- Permission to make arrangements for burial or cremation;
- Proof of business partnership;
- Public assistance from the Department of Human Services;
- Qualification as a facility for the elderly;
- Real property exemption from attachment or execution;
- Right of survivorship to custodial trust;
- Right to be notified of parole or escape of inmate;
- Right to change names;
- Right to enter into pre-marital agreement;
- Right to file action for nonsupport;
- Right to gasoline dealer franchise;
- Right to inherit property;

- Right to purchase leases and cash freehold agreements concerning the management and disposition of public land;
- Right to sue for tort and death by wrongful act;
- Right to support after divorce;
- Right to support from spouse;
- Rights and proceedings for involuntary hospitalization and treatment;
- Rights by way of dour or curtesy;
- Rights to notice, protection, benefits, and inheritance under the uniform probate code;
- Sole interest in property;
- Spousal privilege and confidential marriage communications;
- Status of children;
- Succession to Hawaii Homes Commission leases;
- Support payments in divorce action;
- Tax relief for natural disaster losses;
- Travel and transportation expense of government employees;
- Vacation allowance on termination of public employment by death;
- Veterans' preference to spouse in public employment;
- In vitro fertilization coverage;
- and,
- Waiver of fees for certified copies and searches of vital statistics.

[Overview](#) • [Info from Your State](#) • [Take Action!](#) • [News](#) • [Coming Attractions](#)



A nationwide coalition committed to winning and keeping the freedom to marry for same-gender couples.



HUMAN
RIGHTS
CAMPAIGN

919 18th Street NW
Washington, DC 20006
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phone 202 628 4160
fax 202 347 5323

MEMORANDUM

DATE: November 1, 1999

TO: Dan Mendelson
Nicole Rabner

FROM: Winnie Stachelberg
Political Director

RE: Proposed OPM Regulations on Expansion of Sick Leave for Federal Employees

CC: Karen Tramontano
Richard Socarides
Eric Liu

On behalf of the Human Rights Campaign's more than 300,000 members, we applaud the President's efforts to set an example for the private sector by creating new family-friendly workplace policies for Federal government employees. As we expressed to you last month, however, we are concerned that if these policies are specifically linked to a particular definition of family, many Federal employees will be unnecessarily denied those benefits.

As you know, we have been closely tracking the implementation of the President's proposal to expand Federal employees' use of sick leave for family care. While this policy will allow many Federal employees to better balance their family and work responsibilities, if not carefully drafted, it will not cover the family members of many Federal employees currently covered by OPM's sick leave for family care policies.

It is our understanding that OPM has forwarded draft regulations in this area to OMB and DPC. We have reviewed these proposed regulations and would like to reiterate our concern that they are not inclusive of the families of many Federal employees. While OPM's current sick-leave policy includes a broad definition of "family member" [5CFR630.201], the new regulations unnecessarily limit the availability of expanded sick leave to care for a "spouse, son, daughter or parent." This wording completely eliminates the ability of gay and lesbian employees to avail themselves of this expanded leave to care for a seriously ill domestic partner. In addition, it prevents Federal employees from using this leave to care for siblings, parents-in-law, grandchildren, adult children or grandparents, as they are able to do under current regulations governing sick leave for family care.

We agree that this expansion of sick leave must be tied to some of the terms and conditions included in the Family and Medical Leave Act, (e.g. certification of “serious health condition”). The expanded sick leave, however, should be available to care for all persons listed in the current regulations governing sick leave for family care, and not limited to only those available under FMLA. As such, we request that the Administration make the following modifications to these regulations to be more inclusive before they are sent out for public comment or to Congress:

First, the regulations should provide up to 12 weeks of unpaid family and medical leave for all federal employees to care for a family member (as defined by 5 CFR 630.201.) Second, the regulations should provide for substitution of accrued sick leave for this unpaid leave in a uniform policy applying equally to all federal employees. Such regulations would be consistent with Executive Order 13087, which established a uniform policy for the Federal Government to prohibit discrimination based on sexual orientation. Further, while the Defense of Marriage Act (1 U.S.C. §7) prevents the use of the terms “marriage” or “spouse” in reference to same-sex couples, it *does not* prevent the Administration from promulgating the more expansive regulations that we propose.

Above, we have broadly outlined our suggested changes to these regulations. We have also drafted preliminary language for these modified regulations, which we have attached following the OPM proposal.

Again, we strongly support the President’s efforts to create a more family-friendly workplace, and look forward to working with you to ensure that this and other policies are inclusive of the families of all Federal employees.

[Code of Federal Regulations]
[Title 5, Volume 1, Parts 1 to 699]
[Revised as of January 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 5CFR630.201]

[Page 673-674]

TITLE 5--ADMINISTRATIVE
PERSONNEL

CHAPTER I--OFFICE OF PERSONNEL MANAGEMENT

PART 630--ABSENCE AND LEAVE--Table of Contents

Subpart B--Definitions and General Provisions for Annual and Sick Leave

Sec. 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term temporary employee engaged in construction work at an hourly rate means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid on an hourly rate.

(b) In subparts B through G of this part:

Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of the leave year.

Employee means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

Family member means the following relatives of the employee:

(1) Spouse, and parents thereof;

(2) Children, including adopted children and spouses thereof;

(3) Parents;

(4) Brothers and sisters, and spouses thereof; and

(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Health care provider has the meaning given that term in Sec. 630.1202.

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and

[[Page 674]]

ending with the day immediately before the first day of the first complete pay period in the following calendar year.

Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour--

(1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and Sec. 550.141 of this chapter;

(2) Is a regular tour of duty (as defined in Sec. 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or

(3) Is authorized for a category of employees by the Office of Personnel Management.

United States means the several States and the District of Columbia.

[61 FR 64450, Dec. 5, 1996, as amended at 63 FR 64595, Nov. 23, 1998]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. draft	re: Privileged (11 pages)	n.d.	P6/b(6)
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Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

PROPOSAL

TITLE 5 -- ADMINISTRATIVE PERSONNEL CHAPTER I -- OFFICE OF PERSONNEL MANAGEMENT SUBCHAPTER B -- CIVIL SERVICE REGULATIONS PART 630 -- ABSENCE AND LEAVE SUBPART B -- DEFINITIONS AND GENERAL PROVISIONS FOR ANNUAL AND SICK LEAVE

5 CFR 630.201

§ 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term temporary employee engaged in construction work at an hourly rate means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid on an hourly rate.

(b) In subparts B through G of this part:

Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of the leave year.

Employee means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

Family member means the following relatives of the employee:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and
- (5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Health care provider has the meaning given that term in § 630.1202.

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

Serious health condition. (1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves-

(i) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(ii) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following-

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves-

(1) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that-

(1) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider,

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) (Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.)

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour --

(1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and § 550.141 of this chapter;

(2) Is a regular tour of duty (as defined in § 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or

(3) Is authorized for a category of employees by the Office of Personnel Management.

United States means the several States and the District of Columbia.

PROPOSED REGULATIONS

TITLE 5 -- ADMINISTRATIVE PERSONNEL CHAPTER I -- OFFICE OF PERSONNEL MANAGEMENT SUBCHAPTER B -- CIVIL SERVICE REGULATIONS PART 630 -- ABSENCE AND LEAVE SUBPART D -- SICK LEAVE

5 CFR 630.401

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (e) (f) of this section, an agency ~~shall~~ must grant sick leave to an employee when the employee --

(1) Receives medical, dental, or optical examination or treatment;

(2) Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;

(3) (i) Provides care for a family member who is incapacitated as the result of physical or mental illness, injury, pregnancy, or childbirth or who receives medical, dental or optical examination or treatment; or

(ii) Requests the substitution of sick leave for leave without pay under paragraph (c)(1) of this section to provide care for a spouse, son or daughter, or parent with a serious health condition;

(4) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;

(5) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

(6) Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who has invoked his or her entitlement to use family and medical leave under subpart L of this part *OR § 630.401A* may substitute a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) for leave without pay during the 12-month period established under § 630.1203(c) *OR §630.401A(c)* to care for a spouse, son or daughter, parent *OR FAMILY MEMBER* with a serious health condition.

(2) If, at the time an employee requests the substitution of sick leave for leave without pay under paragraph (c)(1) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, that amount must be subtracted from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be substituted for leave without pay during the 12-month period established under § 630.1203(c) *OR §630.401A(c)*. If the 12-month period extends into the next leave year, the employee may use additional sick leave under § 630.401(a)(3)(i) or (4) as soon as that leave becomes available for use at the beginning of the new leave year. Further, if an employee has not used the full entitlement to 12 weeks of family and medical leave under subpart L of this part *OR §630.401A*, he or she may substitute the additional sick leave that becomes available for use at the beginning of the new leave year for leave without pay at any time during the remainder of the 12-months period established under § 630.1203(c) *OR §630.401A(c)*.

(3) An employee who substitutes the maximum amount of sick leave authorized under paragraph (c)(1) to care for a spouse, son or daughter, parent *OR FAMILY MEMBER* with a serious health condition may not use any additional family and medical leave for any other purpose listed in § 630.1203(a) *OR §630.401A(a)* during the 12-month period established under § 630.1203(c) *OR §630.401A(c)*.

(4) The approval of an employee's request to substitute sick leave for leave without pay to care for a spouse, son or daughter, parent *OR FAMILY MEMBER* with a serious health condition is subject to all the terms and conditions applicable to the approval of leave without pay for these same purposes under 5 CFR part 630, subpart L, Family and Medical Leave, *OR §630.401A*, *AND* the notice and medical certification requirements set forth in §§ 60.1206 and 630.1207, respectively.

(d) To be granted any sick leave for the purposes described in paragraphs (a) (3) or (4) of this section during any leave year in an amount exceeding a total of 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in paragraphs (a) (3) and (4) of this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.

(e) When sick leave is granted to an employee under the condition specified in paragraph (d) of this section, the amount of sick leave retained in the employee's sick leave account shall, in each instance, be at least equal to the minimum prescribed by paragraph (c) of this section after deducting the amount to be used for the purposes described in paragraphs (a)(3) and (4) of this section.

(f) If the number of hours in the employee's tour of duty is changed during the leave year, the employee's entitlement to use sick leave for the purposes described in paragraphs (a)(3) and (4) of this section shall be recalculated based on the employee's new tour of duty.

PROPOSAL

5 CFR 630.401A

§ 630.401A. Leave entitlement.

(a) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a family member, if such family member has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

(b) An employee shall invoke his or her entitlement to leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may take only the amount of leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

(c) The 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in paragraph (a) of this section and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to leave under paragraphs (a) (1) and (2) of this section shall expire at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken under paragraphs (a) (1) and (2) of this section, may begin prior to or on the actual date of birth or placement for adoption or foster care, and the 12-month period, referred to in paragraph (a) of this section begins on that date.

(e) Leave under paragraph (a) of this section is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) Each agency shall inform its employees of their entitlements and responsibilities under this subpart, including the requirements and obligations of employees.

(h) An agency may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (b) of this section. An employee's notice of his or her intent to take leave under § 630.1206 may suffice as the employee's confirmation.

(i) "Family member" has the meaning given that term in §630.201.

[Code of Federal Regulations]
[Title 5, Volume 1, Parts 1 to 699]
[Revised as of January 1, 1999]
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TITLE 5--ADMINISTRATIVE
PERSONNEL

CHAPTER I--OFFICE OF PERSONNEL MANAGEMENT

PART 630--ABSENCE AND LEAVE--Table of Contents

Subpart B--Definitions and General Provisions for Annual and Sick Leave

Sec. 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term temporary employee engaged in construction work at an hourly rate means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid on an hourly rate.

(b) In subparts B through G of this part:

Accrued leave means the leave earned by an employee during the current leave year that is unused at any given time in that year.

Accumulated leave means the unused leave remaining to the credit of an employee at the beginning of the leave year.

Employee means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

Family member means the following relatives of the employee:

- (1) Spouse, and parents thereof;
- (2) Children, including adopted children and spouses thereof;
- (3) Parents;
- (4) Brothers and sisters, and spouses thereof; and
- (5) Any individual related by blood or affinity whose close

association with the employee is the equivalent of a family relationship.

Health care provider has the meaning given that term in Sec. 630.1202.

Leave year means the period beginning with the first day of the first complete pay period in a calendar year and

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ending with the day immediately before the first day of the first complete pay period in the following calendar year.

Medical certificate means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour--

(1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and Sec. 550.141 of this chapter;

(2) Is a regular tour of duty (as defined in Sec. 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or

(3) Is authorized for a category of employees by the Office of Personnel Management.

United States means the several States and the District of Columbia.

[61 FR 64450, Dec. 5, 1996, as amended at 63 FR 64595, Nov. 23, 1998]

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Domestic Partnership Benefits and Obligations Act of 1999 (Introduced in the House)

HR 2859 IH

106th CONGRESS

1st Session

H. R. 2859

To provide benefits to domestic partners of Federal employees.

IN THE HOUSE OF REPRESENTATIVES

September 14, 1999

Mr. FRANK of Massachusetts (for himself, Mrs. LOWEY, and Mr. NADLER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide benefits to domestic partners of Federal employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Domestic Partnership Benefits and Obligations Act of 1999'.

SEC. 2. BENEFITS TO DOMESTIC PARTNERS OF FEDERAL EMPLOYEES.

(a) IN GENERAL- A domestic partner of an employee shall be entitled to benefits available to and obligations imposed upon a spouse of an employee.

(b) CERTIFICATION OF ELIGIBILITY- In order to obtain benefits under this Act, an employee shall file an affidavit of eligibility for benefits with the Office of Personnel Management certifying that the employee and the domestic partner of the employee--

(1) are each other's sole domestic partner and intend to remain so indefinitely;

- (2) have a common residence, and intend to continue the arrangement;
- (3) are at least 18 years of age and mentally competent to consent to contract;
- (4) share responsibility for a significant measure of each other's common welfare and financial obligations;
- (5) are not married to or domestic partners with anyone else;
- (6) understand that willful falsification of information within the affidavit may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification; and
- (7)(A) are same sex domestic partners, and not related in a way that, if the 2 were of opposite sex, would prohibit legal marriage in the state in which they reside; or
- (B) are opposite sex domestic partners, and are not related in a way that would prohibit legal marriage in the state in which they reside.

(c) DISSOLUTION OF PARTNERSHIP-

(1) IN GENERAL- An employee or domestic partner of an employee who obtains benefits under this Act shall file a statement of dissolution of the domestic partnership with the Office of Personnel Management not later than 30 days after the death of the employee or the domestic partner or the date of dissolution of the domestic partnership.

(2) DEATH OF EMPLOYEE- In a case in which an employee dies, the domestic partner of the employee at the time of death shall be deemed a spouse of the employee for the purpose of receiving benefits under this Act.

(3) OTHER DISSOLUTION OF PARTNERSHIP-

(A) IN GENERAL- In a case in which a domestic partnership dissolves by a method other than death of the employee or domestic partner of the employee, any benefits received by the domestic partner as a result of this Act shall terminate.

(B) EXCEPTION- In a case in which a domestic partnership dissolves by a method other than death of the employee or domestic partner of the employee, any health benefits received by the domestic partner as a result of this Act shall continue for a period of 60 days after the date of the dissolution of the partnership. The domestic partner shall pay for such benefits in the same manner that a former spouse would pay for such benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985.

(d) CONFIDENTIALITY- Any information submitted to the Office of Personnel Management under subsection (b) shall be used solely for the purpose of certifying an individual's eligibility for benefits under subsection (a).

(e) DEFINITIONS- For purposes of this Act:

(1) DOMESTIC PARTNER- The term 'domestic partner' means an adult person living with, but not married to, another adult person in a committed, intimate relationship.

(2) BENEFITS- The term 'benefits' means--

(A) Civil Service Retirement, as provided in title 5, chapter 83, of the United States Code;

(B) Federal Employees' Retirement, as provided in title 5, chapter 84, of the United States Code;

(C) life insurance, as provided in title 5, chapter 87, of the United States Code;

(D) health insurance, as provided in title 5, chapter 89, of the United States Code; and

(E) compensation for work injuries, as provided in title 5, chapter 81, of the United States Code.

(3) EMPLOYEE-

(A) With respect to Civil Service Retirement, the term 'employee' shall have the meaning given such term in section 8331(1) of title 5, United States Code.

(B) With respect to Federal Employees' Retirement, the term 'employee' shall have the meaning given such term in section 8401(11) of title 5, United States Code.

(C) With respect to life insurance, the term 'employee' shall have the meaning given such term in section 8701(a) of title 5, United States Code.

(D) With respect to health insurance, the term 'employee' shall have the meaning given such term in section 8901 of title 5, United States Code.

(E) With respect to compensation for work injuries, the term 'employee' shall have the meaning given such term in section 8101(1) of title 5, United States Code.

(4) OBLIGATIONS- The term 'obligations' means any duties or responsibilities that would be incurred by the spouse of an employee.

SEC. 3. EXEMPTION FROM TAX FOR EMPLOYER-PROVIDED FRINGE BENEFITS TO DOMESTIC PARTNERS.

Section 106 of the Internal Revenue Code of 1986 (relating to contributions by employer to accident and health plans) is amended by adding at the end the following new subsection:

'(d) TREATMENT OF DOMESTIC PARTNERS- The provisions of section 2 of the Domestic Partnership Benefits and Obligations Act of 1999 shall apply to employees and domestic partners of employees for purposes of this section and any other benefit which is not includible in the gross income of employees by reason of an express provision of this chapter.'

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HR 2104 IH

106th CONGRESS

1st Session

H. R. 2104

To amend the Family and Medical Leave Act of 1993 to permit leave to care for a domestic partner, parent-in-law, adult child, sibling, or grandparent if the domestic partner, parent-in-law, adult child, sibling, or grandparent has a serious health condition.

IN THE HOUSE OF REPRESENTATIVES

June 9, 1999

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Family and Medical Leave Act of 1993 to permit leave to care for a domestic partner, parent-in-law, adult child, sibling, or grandparent if the domestic partner, parent-in-law, adult child, sibling, or grandparent has a serious health condition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. LEAVE TO CARE FOR A DOMESTIC PARTNER,
PARENT-IN-LAW, ADULT CHILD, SIBLING, OR GRANDPARENT.**

(a) LEAVE REQUIREMENT- Section 102 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612) is amended--

(1) in subsection (a)(1)(C), by striking 'or parent' each place it occurs and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subsection (e)(2)(A), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

(b) CERTIFICATION- Section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613(a)) is amended--

(1) in subsection (a), by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent';

(2) in subsection (b)(4)(A), is amended by striking 'or parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(3) in subsection (b)(7), is amended by striking 'parent' and inserting 'domestic partner, parent-in-law, adult child, sibling, grandparent, parent'.

(c) EMPLOYMENT AND BENEFITS PROTECTION- Section 104(c)(3) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2614(c)(3) is amended--

(1) in subparagraph (A)(i), by striking `or parent' and inserting `domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subparagraph (C)(ii), by striking `or parent' and inserting `domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

SEC. 2. FEDERAL EMPLOYEES.

(a) LEAVE REQUIREMENT- Section 6382 of title 5, United States Code, is amended--

(1) in subsection (a)(1)(C), by striking `or parent' each place it occurs and inserting `domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subsection (e)(2)(A), by striking `or parent' and inserting `domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

(b) CERTIFICATION- Section 6383 of title 5, United States Code, is amended--

(1) in subsection (a), by striking `or parent' and inserting `domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'; and

(2) in subsection (b)(4)(A), is amended by striking `or parent' and inserting `domestic partner, parent-in-law, adult child, sibling, grandparent, or parent'.

END

HR 1111 IH

106th CONGRESS

1st Session

H. R. 1111

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 16, 1999

Mrs. MORELLA introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 5, United States Code, to provide for the establishment of a program under which long-term care insurance is made available to Federal employees and annuitants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Federal Civilian and Uniformed Services Long-Term Care Insurance Act of 1999'.

SEC. 2. LONG-TERM CARE INSURANCE.

Subpart G of part III of title 5, United States Code, is amended by adding at the end the following:

'Chapter 90--Long-Term Care Insurance

'Sec.

'9001. Definitions.

'9002. Eligibility to obtain coverage.

'9003. Contracting authority.

'9004. Long-term care benefits.

'9005. Financing.

'9006. Regulations.

'Sec. 9001. Definitions

`For purposes of this chapter:

`(1) EMPLOYEE- The term `employee' means--

`(A) an employee as defined by section 8901(1)(A)-(H); and

`(B) an individual described in section 2105(e).

`(2) ANNUITANT- The term `annuitant' has the meaning such term would have under paragraph (3) of section 8901 if, for purposes of such paragraph, the term `employee' were considered to have the meaning given to it under paragraph (1) of this subsection.

`(3) QUALIFIED RELATIVE- The term `qualified relative', as used with respect to a sponsoring individual, means--

`(A) the spouse of such sponsoring individual;

`(B) a parent or parent-in-law of such sponsoring individual; and

`(C) any other person bearing a relationship to such sponsoring individual specified by the Office in regulations.

`(4) SPONSORING INDIVIDUAL- The term `sponsoring individual' refers to an individual described in paragraph (1), (2), (3), or (4) of section 9002(b).

`(5) CARRIER- The term `carrier' means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, qualified long-term care services under group insurance policies or contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier.

`(6) QUALIFIED LONG-TERM CARE SERVICES- The term `qualified long-term care services' has the meaning given such term by section 7702B of the Internal Revenue Code of 1986.

`(7) OFFICE- The term `Office' means the Office of Personnel Management.

`(8) APPROPRIATE SECRETARY- The term `appropriate Secretary' means--

`(A) except as otherwise provided in this paragraph, the Secretary of Defense;

`(B) with respect to the Coast Guard when it is not operating as a service of the Navy, the Secretary of Transportation;

`(C) with respect to the commissioned corps of the National Oceanic and Atmospheric Administration, the Secretary of Commerce; and

`(D) with respect to the commissioned corps of the Public Health Service, the Secretary of Health and Human Services.

`Sec. 9002. Eligibility to obtain coverage

`(a) IN GENERAL- Any eligible individual may obtain long-term care insurance coverage under this chapter for himself or herself, in accordance with applicable provisions of this chapter.

`(b) ELIGIBLE INDIVIDUAL DEFINED- For purposes of this section, the term `eligible individual' means each of the following:

`(1) EMPLOYEE- An employee who has completed 6 months of continuous service as an employee under other than a temporary appointment limited to 6 months or less.

`(2) ANNUITANT- An annuitant.

`(3) MEMBER OF THE UNIFORMED SERVICES- A member of the uniformed services on active duty for a period of more than 30 days or full-time National Guard duty (as defined in section 101(d)(5) of title 10) who satisfies such eligibility requirements as the Office prescribes under section 9006(c).

`(4) RETIRED MEMBER OF THE UNIFORMED SERVICES- A member of the uniformed services entitled to retired or retainer pay (other than under chapter 1223 of title 10) who satisfies such eligibility requirements as the Office prescribes under section 9006(c).

`(5) QUALIFIED RELATIVE- A qualified relative of a sponsoring individual.

`(c) CERTIFICATION REQUIREMENT- As a condition for obtaining long-term care insurance coverage under this chapter based on one's status as a qualified relative, certification from the applicant's sponsoring individual shall be required as to--

`(1) such sponsoring individual's status, as described in paragraph (1), (2), (3), or (4) of subsection (b) (as applicable), as of the time of the qualified relative's application for coverage; and

`(2) the existence of the claimed relationship as of that time.

Any such certification shall be submitted at such time and in such form and manner as the Office shall by regulation prescribe.

`(d) DISQUALIFYING CONDITION- Nothing in this chapter shall be considered to require that long-term care insurance coverage be made available in the case of any individual who would be immediately benefit eligible.

`Sec. 9003. Contracting authority

`(a) IN GENERAL- The Office may, without regard to section 3709 of the Revised Statutes or other statute requiring competitive bidding, contract with qualified carriers to provide group long-term care insurance under this chapter, except that the Office may not have contracts in effect under this section with more than 3 qualified carriers as of any given time.

`(b) QUALIFIED CARRIERS- To be considered a qualified carrier under this chapter, a company must be licensed to issue group long-term care insurance in all the States and the District of Columbia.

`(c) TERMS AND CONDITIONS-

`(1) IN GENERAL- Each contract under this section shall contain a detailed statement of the benefits offered (including any maximums, limitations, exclusions, and other definitions of benefits), the rates charged (including any limitations or other conditions on their subsequent adjustment), and such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

`(2) RATES- The rates charged under any contract under this section shall reasonably reflect the cost of the benefits provided under such contract.

`(d) NONCANCELABILITY- The benefits and coverage made available to individuals under any

contract under this section shall be guaranteed to be renewable and may not be canceled by the carrier except for nonpayment of charges.

`(e) PAYMENT OF REQUIRED BENEFITS; DISPUTE RESOLUTION- Each contract under this section shall require the carrier to agree--

`(1) to pay or provide benefits in an individual case if the Office (or a duly designated third-party administrator) finds that the individual involved is entitled thereto under the terms of the contract; and

`(2) to participate in administrative procedures designed to bring about the expeditious resolution of disputes arising under such contract, including, in appropriate circumstances, one or more alternative means of dispute resolution.

`(f) DURATION-

`(1) IN GENERAL- Each contract under this section shall be for a term of 5 years, but may be made automatically renewable from term to term in the absence of notice of termination by either party. However, the rights and responsibilities of the enrolled individual, the insurer, and the Office (or duly designated third-party administrator) under any such contract shall continue until the termination of coverage of the enrolled individual.

`(2) TERMINATION OF INDIVIDUAL COVERAGE- Group long-term care insurance coverage obtained by an individual under this chapter shall terminate only upon the occurrence of any of the following:

`(A) DEATH- The death of the insured.

`(B) EXHAUSTION OF BENEFITS- Exhaustion of benefits, as determined under the contract.

`(C) INSOLVENCY- Insolvency of the insurer, as determined under the contract.

`(D) CANCELLATION- Any event justifying a cancellation under subsection (d).

`(3) PRESERVATION OF RIGHTS AND RESPONSIBILITIES- Each contract under this section shall include such provisions as may be necessary so as, except as provided in paragraph (2)--

`(A) to effectively preserve all parties' rights and responsibilities under such contract notwithstanding the termination of such contract (whether due to its nonrenewal under the first sentence of paragraph (1) or otherwise); and

`(B) to ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual pursuant to that enrollment shall not be terminated due to any change in status (as described in section 9002(b)), such as separation from Government service or the uniformed services, or ceasing to meet the requirements for being considered a qualified relative (whether due to divorce or otherwise).

`Sec. 9004. Long-term care benefits

`(a) IN GENERAL- Benefits under this chapter shall be provided under qualified long-term care insurance contracts, within the meaning of section 7702B of the Internal Revenue Code of 1986.

`(b) SPECIFIC MATTERS TO BE INCLUDED IN ALL CONTRACTS- Each contract under section 9003 shall, in addition to any matter otherwise required under this chapter, provide for the following:

`(1) Adequate consumer protections (including through establishment of sufficient reserves or reinsurance).

`(2) Adequate protections in the event of carrier bankruptcy (or other similar event).

`(3) Availability of benefits upon appropriate certification as to an individual's--

 `(A) inability (without substantial assistance from another individual) to perform at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity;

 `(B) having a level of disability similar (as determined under regulations prescribed by the

Secretary of the Treasury in consultation with the Secretary of Health and Human Services) to the level of disability described in subparagraph (A); or

 `(C) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

`(4) Choice of cash or service benefits (such as the expense-incurred method or the indemnity method).

`(5) Inflation protection (whether through simple or compounded adjustment of benefits).

`(6) Portability of benefits (consistent with subsections (d) and (f) of section 9003).

`(c) **ADDITIONAL SPECIFIC MATTERS TO BE INCLUDED IN AT LEAST ONE CONTRACT-** To the maximum extent practicable, as of any given time, at least 1 of the policies being offered under this chapter shall, in addition to any matter otherwise required under this chapter, provide for the following:

 `(1) Length-of-benefit options.

 `(2) Options relating to the provision of coverage in a variety of settings, including nursing homes, assisted living facilities, and home and community care.

 `(3) Options relating to elimination periods.

 `(4) Options relating to nonforfeiture benefits.

 `(5) Availability of benefits upon appropriate certification of medical necessity (as defined by the Office in consultation with the Secretary of Health and Human Services) not satisfying the requirements of subsection (b)(3).

`(d) **GOVERNMENTWIDE PLAN-**

 `(1) **IN GENERAL-** The Office shall take all practicable measures to ensure that, of the long-term care benefits plans available under this chapter as of any given time, at least one of them shall be a Governmentwide long-term care benefits plan.

 `(2) **DEFINITION-** For purposes of this subsection, the term 'long-term care benefits plan' means a group insurance policy or contract, or similar group arrangement, provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for qualified long-term care services.

 `(3) **CLARIFICATION-** Neither subsection (c)(5) nor the exception set forth in the

parenthetical matter under subsection (e) shall apply with respect to any Governmentwide plan under this subsection.

`(e) COORDINATION WITH INTERNAL REVENUE CODE OF 1986- Nothing in this chapter shall be considered to permit or require the inclusion, in any contract, of provisions inconsistent with section 7702B or any other provision of the Internal Revenue Code of 1986 (except to the extent necessary to carry out subsection (c)(5)).

`(f) COORDINATION WITH STATE REQUIREMENTS- If a State (or the District of Columbia) imposes any requirement which is more stringent than the analogous requirement imposed by subsection (b)(1), the requirement imposed by subsection (b)(1) shall be treated as met if the more stringent requirement of the State (or the District of Columbia) is met.

`(g) DEFINITIONS- For purposes of this section:

`(1) ACTIVITIES OF DAILY LIVING- Each of the following is an activity of daily living:

`(A) Eating.

`(B) Toileting.

`(C) Transferring.

`(D) Bathing.

`(E) Dressing.

`(F) Continence.

`(2) NURSING HOME- The term 'nursing home' has the meaning given such term by section 1908 of the Social Security Act.

`(3) ASSISTED LIVING FACILITY- The term 'assisted living facility' has the meaning given such term by section 232 of the National Housing Act.

`(4) HOME AND COMMUNITY CARE- The term 'home and community care' has the meaning given such term by section 1929 of the Social Security Act.

`Sec. 9005. Financing

`(a) NO GOVERNMENT CONTRIBUTION- Except as provided in subsection (b)(2), each individual having long-term care insurance coverage under this chapter shall be responsible for 100 percent of the charges for such coverage.

`(b) WITHHOLDINGS-

`(1) IN GENERAL- The amount necessary to pay the charges for enrollment shall--

`(A) in the case of an employee, be withheld from the pay of such employee;

`(B) in the case of an annuitant, be withheld from the annuity of such annuitant;

`(C) in the case of a member of the uniformed services described in section 9002(b)(3), be withheld from the basic pay of such member; and

`(D) in the case of a member of the uniformed services described in section 9002(b)(4), be withheld from the retired pay or retainer pay payable to such member.

`(2) VOLUNTARY WITHHOLDINGS FOR QUALIFIED RELATIVES- Withholdings to pay the charges for enrollment of a qualified relative may, upon election of the sponsoring individual involved, be withheld under paragraph (1) in the same manner as if enrollment were for such sponsoring individual.

`(3) DIRECT PAYMENTS- All amounts withheld under paragraph (1) or (2) shall be paid directly to the carrier.

`(c) OTHER FORMS OF PAYMENT- Any enrollee whose pay, annuity, or retired or retainer pay (as referred to in subsection (b)(1)) is insufficient to cover the withholding required for enrollment (or who is not receiving any regular amounts from the Government, as referred to in subsection (b)(1), from which any such withholdings may be made) shall pay an amount equal to the shortfall (or, in the case of an enrollee not receiving any regular amounts, the full amount of those charges) directly to the carrier.

`(d) SEPARATE FUND REQUIREMENT- Each carrier participating under this chapter shall maintain all amounts received under this chapter separate and apart from all other funds.

`(e) REIMBURSEMENTS- Contracts under this chapter shall include appropriate provisions under which each carrier shall reimburse the Office or other administering entity for the administrative costs incurred by such entity under this chapter (such as for dispute resolution) which are allocable to such carrier.

`Sec. 9006. Regulations

`(a) IN GENERAL- The Office shall prescribe regulations necessary to carry out this chapter.

`(b) ENROLLMENT- The regulations of the Office shall prescribe the time at which and the manner and conditions under which an individual may obtain long-term care insurance under this chapter, except that, under the regulations, an open enrollment period shall be afforded at least once each year (similar to that afforded under section 8905(f)).

`(c) CONSULTATION- Any regulations necessary to effect the application and operation of this chapter with respect to an eligible individual described in paragraph (3) or (4) of section 9002(b), or a qualified relative thereof, shall be prescribed by the Office in consultation with the appropriate Secretary.'

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of enactment of this Act, except that no coverage may become effective before the first calendar year beginning after the expiration of the 18-month period beginning on the date of enactment of this Act.

END

FEDERAL DIARY

Mike Causey

Same-Sex Couple Calls for Equal Coverage

A growing number of employers now provide health insurance coverage for same-sex couples. Montgomery County is considering it. The Washington Post does it.

Reader **Melissa Schraibman** asks: What's keeping Uncle Sam?

"After reading your Oct. 25 column regarding childless couples' resentment against paying for family coverage insurance, I was once again struck by the reality of legal discrimination against gay and lesbian families. . . . I would be only too happy to be eligible to participate in a family plan.

"I have been a fed for five years and my partner works in the private sector. We . . . are registered as domestic partners in Takoma Park (Md.), where we . . . own a home together. Because we cannot legally marry, . . . I cannot purchase a family plan to cover her.

"For several years she was a full-time student and was forced to pay for insurance out of her own pocket. Meanwhile, legally married federal workers enjoy benefits paid for in part by gay and lesbian federal workers.

"If I were to become unable to work or lose my job, her job does provide domestic partner insurance benefits. These benefits are of lesser quality than federal health benefits. Moreover, according to the tax laws, she would be taxed on the value of the insurance benefits I would receive, a significant tax consequence. A married person in her job would not be taxed on benefits to a spouse. I can't think of a more blatant example of continuing legal discrimination against a group of people in America."

Preexisting Medical Conditions

Reader **Peter Mango** asks: "My mother-in-law is a retired fed currently enrolled in the Mail Handlers health plan. However she is moving to a location that has very limited provider coverage. She would like to change plans but has been told by her personnel office that preexisting conditions would not be covered. . . . Would you please advise."

Answer: She may want to consider Blue Cross or GEHA if she decides to switch. More importantly, the personnel office was wrong. Under the federal health program, anybody can switch plans and cannot be denied benefits or coverage because of age or preexisting medical condition.

Overseas Pay Raises

From England, **J. Bruce Parker** writes: "Now that I work for the U.S. Army in London, I now don't get locality pay. My question is what do I get? Do I get the full 4.8 percent raise or do I sacrifice some of that so that locality pay can

be given for the high-cost areas?"

Answer: Overseas white-collar federal workers (and those in Alaska and Hawaii) don't get locality adjustments. So if **President Clinton** earmarks 1 percentage point of the 4.8 percent "average" raise to locality adjustments, overseas federal workers will get a 3.8 percent increase in January.

Getting Married

Reader **Jim Nardone** is getting married next year. "I currently pay for a self-only health plan and am wondering what you suggest we do next year. My fiancée is not a federal worker."

Answer: Congratulations! You can sign up for family coverage any time you get married. You don't need to do it during a regular open enrollment period. Also, federal workers getting divorced can switch any time to a single plan.

Postal Bottleneck II

Reader complaints about long lines at the Bethesda and Washington Square post offices prompted **Douglas M. Byrd** to write: "I work at the Washington Square post office. I noticed that Edward C. [the complainer] mentioned that three clerks were 'working' at one station. That station has room for only three clerks. The Postal Store, according to Mr. C., had only one clerk working. The store has room for only two clerks.

"When Mr. C stopped at his supermarket on the way home he didn't complain or write the newspaper about long lines. When on the next day he went to the bank around the corner, you guessed it, not a peep. . . . The Washington Square office has the most dedicated, customer-oriented people I've worked with in my 30-plus year career. They have been learning a new system and it has been rough, slow going . . . but if your station is not big enough to accommodate the traffic in our area we didn't build it. We just work there."

Goodbye, Columbus?

Vontell T. writes: "I know you've received some wild questions, but I have to ask: Someone told my husband the government plans to remove two holidays—Columbus Day and Thanksgiving Day—in the next couple of years. After you pick yourself up off the floor from laughter, please let me know if you've heard any such rumor?"

Answer: The Internet is full of even wilder, and false, reports. Bottom line: No federal holiday is on any hit list. Columbus Day and Thanksgiving are here to stay.

Mike Causey's e-mail address is causeym@washpost.com

FEDERAL DIARY

Mike Causey

Uncle Sam Still Not Ready to Offer Long-Term Care Program

Although some hopeful federal workers think an in-house long-term care plan is just around the corner, odds are that it will be late in 2002—at the earliest—before the group-rate benefit is offered to civilian workers, military personnel and selected family members.

Based on calls from interested readers and queries from agency human resources offices, it appears that some people think that long-term care insurance is a done deal and that they will soon be reading brochures and considering premiums. A few readers say they have heard (incorrectly) that long-term care coverage will be offered during the coming health insurance open enrollment period. Federal workers and retirees will be picking their health plans for 2000 in November and December, but long-term care insurance won't be one of the choices.

Although individuals can buy long-term care insurance now, as a group benefit for federal civilian workers and military personnel, coverage is still in the negotiation stage. It hasn't become law yet, and the chances of that happening this year are about zero.

So for now, LTC stands for Long Time Coming. House backers of federal long-term care coverage hope to iron out differences this week between Republicans and Democrats. Republicans, led by Rep. Joe Scarborough (Fla.), would like to offer workers and retirees several plans and options. They

think competition among plans would give workers and retirees the best possible coverage at the best possible cost.

Democrats favor a single, all-inclusive plan, with the government setting standards for coverage and premiums. They think that if there are a variety of plans, retirees or lower-income workers might be lured into inferior ones. They also worry about higher-risk individuals, the older and less healthy ones, becoming clustered in one plan.

Both Republicans and Democrats agree that individuals should pay the entire premium.

Coverage would be extended to civilian workers (and most likely military personnel), their spouses, parents and parents-in-law and to retirees and their spouses. That would create a potential insurance pool of about 22 million. Currently, about 7 million Americans have long-term care insurance. Most of them have purchased individual plans, although a growing number of private employers are offering the benefit—at group rates—provided workers pay the full premium.

The first Senate hearing on long-term care insurance isn't scheduled until late October. Congress will be preoccupied with other legislation, and it plans to adjourn early this year. But the House hopes to lay the groundwork so that long-term care insurance can become law sometime next year. Once the program was signed into law, it would be 18

months before the benefit was offered to employees and retirees.

Organ Donation Leave

Rep. Elijah E. Cummings (D-Md.) predicts that President Clinton will give quick approval to legislation that would give federal workers up to 30 days of paid leave to donate a kidney or other vital organ. The Cummings bill—sponsored by Sen. Daniel K. Akaka (D-Hawaii) in the Senate—cleared Congress this month.

Currently, Cummings says, federal workers may take up to seven days a year of their own leave time to donate organs or bone marrow. Cummings says the extended time off—with pay—takes into account the longer recovery period required by many organ donors and rewards rather than punishes them financially.

Hispanic Heritage Session

The Department of Energy will have a Hispanic Heritage Month celebration and awards ceremony at 12:30 p.m. today, at 1000 Independence Ave. SW. Speakers include Treasury Secretary Lawrence H. Summers, Veterans Affairs Secretary Togo D. West Jr., Army Secretary Louis Caldera, Small Business Administration Administrator Aida Alvarez, top White House staffers Maria Echaveste and Mickey Ibarra and Energy Secretary Bill Richardson.

Richardson is the only Hispanic in the highest-ranking Hispanic government. He's also been a possible vice presidential pick and gets the Democratic presidential nod.

Labor Management Awards

Office of Personnel Management will present labor partnership awards at 2 p.m. today. The awards are given to federal agencies and unions. The awards are presented by the Federation of Government Employees. The awards ceremony will take place at OPM's main building.

Winners of the partnership awards are: Contract Management Council and AFGE Local 3973; Food and Drug Administration Western Region and National Union Chapter 227; Internal Security Division Central District and NTEU; Overton Brooks Veteran Affairs Clinic and AFGE Local 51; Louisiana and AFGE Local 609, 695; the Veterans Affairs Region 2571.

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MARYLAND

Officials Promise Fixes For Parking Problems

TRAFFIC, From B1

game. Some fans gave up and went

drivers.

Officials will meet again Tuesday to continue their discussions

best contingency plan will not solve all the traffic problems.

When it approved the stadium deal, the County Council granted the Redskins a waiver to build smaller parking spaces than the law permitted—perhaps contributing to the cramped conditions each Sunday. Meanwhile, Redskins officials severely overesti-

Businesses Brace for Go To Stop Intercounty Con

CONNECTOR, From B1

tolls set higher at rush hour. Eleven of the committee's