

State of Delaware
Department of Human Resources, Statewide Benefits Office

**13 Del.C. Chapter 2 “Civil Union and Equality Act of 2011” AKA 146th General
Assembly’s Senate Bill 30**
and
**“Civil Marriage Equality and Religious Freedom Act of 2013” AKA 147th General
Assembly’s House Bill 75**

Frequently Asked Questions (FAQs)

For more information, visit the SBO website at de.gov/statewidebenefits.

1. What is the Civil Union and Equality Act of 2011 and when did it become effective?

Legislation known as the “Civil Union and Equality Act of 2011” became effective as of 10:00 a.m. on January 1, 2012. A party to a civil union shall be included in any definition or use of the terms “dependent”, “family”, “husband and wife”, “immediate family”, “next of kin”, “spouse”, “stepparent” and other terms, whether or not gender-specific, that denote a spousal relationship or a person in a spousal relationship.

2. What rights were created by the passage of the Civil Union and Equality Act of 2011?

The Civil Union and Equality Act of 2011 created a legal relationship of civil unions in the State of Delaware. The Act further recognizes legal unions between two persons of the same sex entered into jurisdictions outside of Delaware provided that such unions and the parties thereto meet Delaware eligibility requirements to enter into a civil union in the State of Delaware. Persons who enter into a lawful civil union in Delaware on or after January 1, 2012 or whose legal union is recognized under Delaware law on or after January 1, 2012, will have the same rights, benefits, protections, and responsibilities as married persons under Delaware law.

3. What is the Civil Marriage Equality and Religious Freedom Act of 2013 and when does it become effective?

The Civil Marriage Equality and Religious Freedom Act of 2013 repeals the prohibition on same-gender marriage that was enacted in Delaware in 1996. As of July 1, 2013, two individuals, whether of the same or different genders, are allowed to marry if otherwise eligible. After June 30, 2013, no new civil unions will be formed in Delaware. Both parties to a civil union that is not subject to a pending proceeding for dissolution, annulment or legal separation are permitted to convert their civil union to a marriage prior to July 1, 2014 by application for a marriage license to the clerk of the peace of the county in which their civil union license was issued, with or without further solemnization of such marriage. On July 1, 2014, all remaining civil unions not currently subject to a proceeding for dissolution,

annulment or legal separation will automatically convert to marriages. In addition, with respect to legal unions other than marriages between two persons of the same gender established in another jurisdiction, both parties to such legal union will be afforded the same rights, benefits and protections, and will be subject to the same responsibilities, obligations and duties, as a marriage for purposes of Delaware law. In order for such recognition to apply, such union must be validly formed in such other jurisdiction, the parties thereto must meet the eligibility requirements to enter into a marriage in the State of Delaware, and such union must afford and impose on the parties thereto substantially the same rights, benefits, protections, responsibilities, obligations and duties of marriage. This Act provides for the equal application of all laws of the State of Delaware relating to marriage, married spouses or their children to same-gender or different-gender married spouses and their children.

4. What other states or jurisdictions recognize civil unions?

Other states (or jurisdictions) that recognize civil unions which also are recognized by the State of Delaware include, but may not be limited to:

Colorado
Hawaii
Illinois
New Jersey

This may not be an exhaustive list of all jurisdictions, particularly outside of the United States. Contact the Statewide Benefits Office to confirm other states (or jurisdictions) that recognize civil unions.

5. What other states or jurisdictions recognize same-gender marriages?

Effective June 26, 2015 the US Supreme Court legalized same-sex marriage across the United States. The impacts of this decision as it relates to the benefits provided by the State of Delaware will be updated upon further guidance.

Prior to that decision, the states that recognized same gender marriages include, but may not be limited to:

Alaska
Arizona
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Idaho

Illinois
Indiana
Iowa
Maine
Maryland
Massachusetts
Minnesota
Missouri
Montana
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
District of Columbia

6. What is the term used to describe the legalization of a civil union or same-gender marriage?

The term, under Delaware law, to legally join two same sex spouses is “solemnization”.

7. What is the termination of a civil union or same-gender marriage?

The termination of a civil union or same-gender marriage results in a dissolution of the civil union or same-gender marriage as a “divorce”.

8. Can I add my civil union or same-gender marriage spouse and/or civil union or same-gender marriage spouse's children to my benefits?

Yes, you may add your civil union or same-gender marriage spouse and your civil union or same-gender marriage spouse's children to the following benefits:

- Medical (which includes prescription coverage and Employee Assistance Program)
- Dental
- Vision
- Life Insurance, and
- Flexible Spending Accounts (under certain circumstances for civil unions).

9. How do I enroll my civil union or same-gender marriage spouse and/or civil union or same-gender marriage spouse's children in my State of Delaware benefit plans?

Your point-of-contact is your Human Resources/Benefits Office within your agency or school. Detailed enrollment instructions are available on SBO's website.

Should you have concerns regarding your rights, benefits, protections, and responsibilities or cannot reach your Human Resources/Benefits Office, contact the Statewide Benefits Office at 739-8331 or 1-800-489-8933.

10. When can I add my civil union or same-gender marriage spouse or civil union or same-gender marriage spouse's children to my State of Delaware medical, dental, and vision benefits?

You may add your civil union or same-gender marriage spouse and/or civil union or same-gender marriage spouse's children to your State of Delaware medical, dental, and vision benefits by contacting your Human Resources/Benefits Office within 30 days of your civil union or same-gender marriage to make changes (enroll) due to a qualifying event. If you do not enroll within 30 days, you must wait until the next open enrollment period.

11. What documents must I provide to my Human Resources/Benefits Office to enroll my civil union spouse in my State of Delaware medical, dental, vision?

When you enroll your civil union spouse on your State of Delaware medical, dental or vision benefit plan you must provide your Human Resources/Benefit Representative with the following documents:

- A copy of Certificate of Civil Union;
- A completed Certification of Tax Dependent Status form for Civil Union Spouse/Children to properly assess federal taxes for benefits;

- An Enrollment Form available from your Human Resources/Benefits Office; and
- You must also complete the Spousal Coordination of Benefits form

Visit SBO's website for complete instructions on how to enroll your civil union spouse in benefits.

12. What documents must I provide to my Human Resources/Benefits Office to enroll my civil union spouse's children in my State of Delaware medical, dental, and vision benefits?

When you enroll your civil union spouse's children on your State of Delaware medical, dental, and vision benefit plan you must provide your Human Resources/Benefits Office with the following documents:

- A copy of the child(ren)'s Birth Certificate or Adoption Documents; and
- A completed Certification of Tax Dependent Status form for a Civil Union Spouse/Children to properly assess federal taxes for benefits (see question 15 below for more information on tax dependent status).
- You must also complete the Adult Dependent Coordination of Benefits form for children who turn 21 prior to December 31 of the prior year. The form must be printed, completed, and returned to your Human Resources/Benefits Office. Your Human Resources/Benefits Office is responsible for forwarding the Adult Dependent Coordination of Benefits form to your medical care plan provider and maintaining the form in your health file for future auditing purposes. This form is not required if you are enrolling in a CDH Gold medical plan, or if you are only enrolling the adult dependent in a dental and/or vision plan.

Go to SBO's website for complete instructions on how to enroll your civil union spouse's children in benefits.

13. What documents must I provide to my Human Resources/Benefits Office to enroll my same-gender marriage spouse in my State of Delaware medical, dental, vision?

- A copy of Marriage certificate;
- An Enrollment Form available from your Human Resources/Benefits Office; and
- Upon enrollment in a medical plan covering your spouse, you must also complete the Spousal Coordination of Benefits form on. This form is not required for the dental or vision plan.

14. What documents must I provide to my Human Resources/Benefits Office to enroll my same-gender marriage spouse’s children in my State of Delaware medical, dental, and vision benefits?

When you enroll your same-gender marriage spouse’s children on your State of Delaware medical, dental, and vision benefit plan you must provide your Human Resources/Benefits Office with the following documents:

- A copy of the child(ren)’s Birth Certificate or Adoption Documents; and
- You must complete the Dependent Coordination of Benefits form for children who are enrolled in other coverage.

15. Will my monthly premiums be taken on a pre-tax or after-tax basis if I cover my civil union spouse and/or civil union spouse’s children on my medical, dental and vision benefits?

Review the document entitled *Coverage Code Explanations – Civil Union Spouse and/or Civil Union Spouse’s Children* to determine what coverage code applies to your enrollment based on who you are covering on your benefit plans and the tax dependent status of those dependents.

- If the Coverage Code is M, N, O, T, U or V - Your monthly premiums will be taken on a pre-tax basis as all dependents are qualified tax dependents.
- If the Coverage Code is I, J, K, P, R, S, W, X, Y or Z – Refer to the *Civil Union Health Plan Rates* to determine what portion of the total monthly premiums will be taken as an after-tax deduction at the federal level.

16. What does the term “imputed income” mean with respect to a civil union?

The term imputed income is defined by the Internal Revenue Service (IRS) to be the value of a benefit or service which is considered to be part of an employee’s income for the purpose of calculating an employee’s federal tax liability. Premiums (the monthly cost) for medical care coverage is shared by the State of Delaware (as the employer) and by the employee. The portion paid by your employer, State of Delaware, for your civil union spouse or your civil union spouse’s children who are not your tax dependents is considered to be imputed income. Federal tax will be deducted from the employee’s pay on the amount of imputed income. Imputed income will be reported by the State of Delaware on the employee’s annual W-2 form for inclusion in the employee’s federal tax return.

17. Why do I have to pay imputed income for the employer paid health benefits provided to my civil union spouse and civil union spouse’s children?

The Federal Defense of Marriage Act (DOMA) only addresses marriages, not civil unions or domestic partnerships. This means that while a same-sex couple's civil union is recognized by the State of Delaware, it is not recognized for the purposes of accessing marriage benefits under federal law. This means health benefits cannot be deducted on a pre-tax basis and the value of the benefit or service must be considered as part of an employee's income (imputed) for the purpose of calculating federal tax liability.

18. Do I have to pay premiums on an after-tax basis and imputed income with respect to a same-gender marriage?

As a result of the Supreme Court United States v. Windsor ruling, all legal same-gender marriages are now recognized for federal tax purposes. Therefore, benefits are deducted on a pre-tax basis and you do not need to pay imputed income.

19. Can my civil union spouse and/or civil union spouse's children qualify as a tax-qualified dependent for health plan purposes?

For a civil union spouse and/or civil union spouse's children to be a tax-qualified dependent for health care purposes, the civil union spouse and/or civil union spouse's children must meet the following requirements, in accordance with the Internal Revenue Code Section 152 (as modified by 105 (b)):

- Receive at least one-half of his/her support from you;
- Live with you as part of the same household;
- Not be claimed as a "qualifying child" dependent by anyone else;
- Be a U.S. citizen, a U.S. national, or a resident of the U.S., Canada, or Mexico at some time during the year in which you are claiming him/her as a dependent; and
- Not file a joint federal income tax return (other than for a claim of refund) with the individual's spouse (applicable to children of civil union spouse).

20. What is the Certification of Tax Dependent Status for a Civil Union Spouse/Children form?

The Certification of Tax Dependent Status for a Civil Union Spouse/Children form provides for the employee to designate his/her civil union spouse and each civil union spouse's child as either a "tax-qualified dependent" or "not a tax-qualified dependent". You, as the employee, are required to complete this form when enrolling your civil union spouse and your civil union spouse's children. Once you have designated the tax dependent status of your civil union spouse and/or civil union spouse's children by checking the appropriate box, refer to the Coverage Code Explanations to choose the applicable coverage code which must

be entered on the Certification of Tax Dependent Status form. The completed form must be provided to your Human Resources/Benefits Office to be included in your file in the event of a future audit by the Statewide Benefits Office. You are responsible for submitting a new form any time the status of your civil union spouse or your civil union spouse's children's tax dependency changes.

The Certification of Tax Dependent Status for a Civil Union Spouse/Children form and additional information on civil unions is available on SBO's website.

21. What if I am unsure if my civil union spouse or his/her children satisfy the definition of a tax-qualified dependent?

If you are unsure if your civil union spouse and/or your civil union spouse's children satisfy the definition of a tax-qualified dependent, you should consult with a tax accountant.

22. Which benefits will be subject to imputed income?

Only your medical benefits will have imputed income as the State of Delaware pays a large share of your premium each month. State of Delaware dental and vision benefits are paid entirely by you each month; therefore, there is no imputed income for State of Delaware dental and vision benefits.

23. How will I know how much imputed income will be assessed each month for medical benefits to cover my civil union spouse and/or civil union spouse's children?

Review the document entitled *Coverage Code Explanation – Civil Union Spouse and/or Civil Union Spouse's Children* to determine what coverage code applies to your enrollment based on who you are covering on your benefit plans and the tax dependent status of those dependents.

- If the Coverage Code is M, N, O, T, U or V - No imputed income is applicable as all dependents are qualified tax dependents.
- If the Coverage Code is I, J, K, P, R, S, W, X, Y or Z – Refer to the *Civil Union Health Plan Rates* as imputed income will be calculated for all plans that include an employer paid (state share) portion as some dependents are not qualified as tax dependents.
Imputed income does not apply to 100% employee pay all plans (State dental and vision).

24. What do I do upon conversion of my civil union to a same-gender marriage?

You must notify your Human Resources/Benefits Office within 30 days of the conversion. Your benefits will then be on a pre-tax basis and no imputed income will be due. Although

the date of your same-gender marriage once converted will be retroactive to the date of your civil union, your benefits will be prospective.

25. Is my conversion of my civil union to a same-gender marriage a life event to add my same-gender marriage spouse and/or same-gender marriage spouse's children to my benefits?

You may enroll your same-gender spouse in your benefits upon conversion as long as you notify your Human Resources/Benefits Office of the marriage and present a copy of the same-gender marriage certificate within 30 days following the date in which your civil union is converted to a same-gender marriage.

26. Can I submit health care expenses for my civil union spouse and/or civil union spouse's children for reimbursement through the State of Delaware's Flexible Spending Account (FSA) program?

FSA is administered as required by the Internal Revenue Service (IRS), Section 125, which does not require "enrollment" of dependents as other benefit plans require. The IRS regulations provide for you to submit claims for reimbursement for your civil union spouse and/or your civil union spouse's children if they are your "qualifying relatives" as defined by the IRS. See the Summary Plan Description on SBO's website.

By signing a FSA claim form requesting to be reimbursed FSA monies, you attest that you are fully responsible for the sufficiency, accuracy, and veracity of all information related to the claim and that unless an expense for which payment or reimbursement claimed is a proper expense you may be liable for payment of all related taxes including federal, state, or local income tax amounts paid from the plan which relate to such expense.

You may change your current FSA elected amount as a result of your civil union by contacting your Human Resources/Benefits Office within 30 days of entering into a civil union because it is a qualifying event. If you do not make a change in your elected amount within 30 days, you must wait until the next open enrollment period.

Additional information may be obtained by contacting the State of Delaware's FSA administrator, ASIFlex, at 1-800-659-3035.

27. Can I submit health care expenses for my same-gender marriage spouse and/or same-gender marriage spouse's children for reimbursement through the State of Delaware's Flexible Spending Account (FSA) program?

Yes, as a result of the Supreme Court United States v. Windsor ruling, all legal same-gender marriage are now recognized for federal tax purposes. Therefore, qualified health care

expenses for your same-gender spouse and/or same-gender spouse's children can be submitted for reimbursement through the State of Delaware's FSA program upon enrollment.

You may enroll in or change your current FSA elected amount as a result of your same-gender marriage by contacting your Human Resources/Benefits Office within 30 days of entering into the marriage because it is a qualifying event. If you do not make a change in your elected amount within 30 days, you must wait until the next open enrollment period.

Additional information may be obtained by contacting the State of Delaware's FSA administrator, ASIFlex, at 1-800-659-3035.

28. What life insurance coverage options are available to eligible employees of a civil union or same-gender marriage?

Employees who enter into a civil union or same-gender marriage may automatically increase coverage by an additional one times annual base pay, up to a total amount not exceeding the lesser of three times annual base pay or \$200,000 without providing proof of good health, when a life event occurs (as long as the employee has not previously failed insurability requirement and applies for the additional coverage within 31 days of the life event). A life event is considered a civil union, same-gender marriage, marriage, birth and/or adoption.

29. What effect does the Civil Union and Equality Act of 2011 and the Civil Marriage Equality and Religious Freedom Act of 2013 have on who is eligible to enroll as a dependent in the Group Universal Life (GUL) and Accidental Death & Dismemberment (AD&D) program?

The law extends eligibility for dependent life coverage to persons at least 18 years of age who are party to a civil union obtained or recognized in the State of Delaware on or after January 1, 2012 or same-gender marriage entered into on or after July 1, 2013 provided coverage is requested within 31 days of the life event. A life event is considered a civil union, same-gender marriage, marriage, birth and/or adoption. Dependent life enrollment requests received after 31 calendar days will require proof of good health by Securian.

The law also extends eligibility to a State of Delaware employee's civil union or same-gender marriage spouse's children, stepchildren and/or legally adopted children who are (a) unmarried; (b) are dependent on the employee for financial support; and (c) have not obtained the age of 19 years or have not attained the age of 24 years if a full-time student at an accredited educational institution are also eligible for enrollment in the dependent life program. Children age 19 years or older are eligible if they are physically or mentally incapable of self-support, were incapable of self-support prior to the date their insurance would otherwise have terminated and are financially dependent on the State of Delaware

employee for more than one-half of their support and maintenance. Eligibility begins at live birth. Eligibility for a child ends at the end of the calendar year in which the child no longer meets the above requirements. Each parent may elect dependent coverage separately *if* both parents are benefit eligible active employees of the State of Delaware.

30. What life insurance coverage options are available to eligible dependents of a civil union or same-gender marriage?

Dependent life coverage is available for purchase by employees enrolled in the GUL and AD&D program. Dependent life coverage is Term Life insurance rather than GUL insurance, and there is no AD&D coverage for dependents. Employees may purchase spouse only coverage, child(ren) only coverage or spouse and child(ren) coverage. The cost information is on SBO's website.

31. How can I enroll my newly eligible dependents in life insurance?

Employees enrolled in the GUL and AD&D program may enroll newly eligible dependents online through Securian's secure website at www.lifebenefits.com. If this is the first time you are logging onto Securian's website, your user name will be your 6 digit State of Delaware employee ID number with the letter "d" in front of it. The password is your eight digit date of birth (mmddyyyy) plus the last 4 digits of your Social Security number. You will be required to change your password when you enter the site for the first time. If you have previously logged onto Minnesota Life's website and don't remember your password, please contact Securian at 1-877-215-1489 or by email at lifebenefits@securian.com to request password assistance.

Employees without internet access can complete a paper application contained in the rear section of the enrollment application posted on SBO's website and return it directly to Securian at the following address:

Securian
ATTN: B2-4256
Group Insurance Division
400 Robert Street North
St. Paul, MN 55101-9988

32. When will life insurance coverage become effective?

Coverage not requiring proof of good health will become effective the first of the following month (not counting legal holidays and approved leaves) following receipt of application for enrollment. Dependent life elections made after your initial eligibility period will be effective on the date coverage is approved by Securian. Life insurance coverage is billed on the first day of the month following the date coverage is approved.

33. What happens if I previously ported life insurance coverage and am no longer actively employed in a benefits eligible position with the State of Delaware and enter into a civil union or same-gender marriage? Are my dependents eligible for enrollment?

Only the dependents of actively employed benefits eligible employees are eligible for enrollment in the life insurance program.

34. Where can I find more information on the GUL and AD&D program?

Visit SBO's website

35. Who do I contact if I have questions about life insurance?

You may contact Securian directly at 1-877-215-1489 or by email at lifebenefits@securian.com between the hours of 8:00 am and 7:00 pm ET, Monday through Friday.

36. What is my responsibility in regard to benefit coverage if my civil union or same-gender marriage spouse and I dissolve our civil union or same-gender marriage relationship?

Should you and your civil union or same-gender marriage spouse dissolve your relationship; the court of jurisdiction will issue the appropriate decree. It is your responsibility to provide your Human Resources/Benefits Representative with a copy of the decree within 30 days of the date of the decree. Coverage for your former civil union or same-gender marriage spouse will be terminated the day after the date of the decree.

If you do not provide notice to your Human Resources/Benefits Representative, you will be held financially responsible for all costs incurred by the State of Delaware for premiums and claims processed from the day after the issuance of the decree which dissolved your civil union or same-gender marriage.

37. Can my former civil union or same-gender marriage spouse and/or my former civil union or same-gender marriage spouse's children continue to participate in the State of Delaware's medical (including prescription and employee assistance program), dental, vision, and flexible spending account programs via COBRA?

Yes, your former civil union or same-gender marriage spouse and/or your former civil union or same-gender marriage spouse's children may continue to participate in these benefit programs via COBRA. Your Human Resources/Benefits Representative will process the required documentation upon receiving the Dissolution Decree as long as it is provided within the required time frame.

38. If my civil union or same-gender marriage spouse is also a State of Delaware employee, in a benefit eligible position, or a State pensioner will we be provided Double State Share (DSS)?

No, only individuals who are benefit eligible and/or pensioners prior to January 1, 2012 and whose marriage is recognized by Delaware law prior to January 1, 2012 are eligible to receive DSS.

39. Will my civil union or same-gender marriage spouse, upon my death as a State of Delaware pensioner or as an employee in a benefit eligible position and vested in the State of Delaware's pension plan, receive survivor's benefits?

Yes, your civil union or same-gender marriage spouse will upon your death as a State of Delaware pensioner or as an employee in a benefit eligible position and vested in the State of Delaware's pension plan receive survivor's benefits.

40. Who should I provide documentation regarding pension survivor benefits?

Your Human Resources/Benefits Office will provide the Pension Office with a copy of a Civil Union or Same-Gender Marriage Certificate to be used for future pension purposes including survivor benefits.

Original 1-1-12
Revised 7-1-13
Revised 10-2-13
Revised 11-18-13
Revised 12-2-13
Revised 12-19-13
Revised 5-20-14
Revised 5-22-14
Revised 6-26-14
Revised 7-1-14
Revised 10-6-14
Revised 10-10-14
Revised 10-23-14
Revised 11-14-14
Revised 12-17-14
Revised 01-07-15
Revised 11-05-18

T/GHIP Compliance/Civil Unions for 1-1-1/2011-2015/CU SGM Web Pieces for 10-13/CUSGM FAQs 11-05-18