

TO: Local District Commissioners, Medicaid Directors, Temporary Assistance Directors, Legal Staff, Fair Hearing Staff, and Staff Development Coordinators

FROM: Judith Arnold, Director
Division of Coverage and Enrollment

SUBJECT: Medicaid Eligibility for Legally Recognized Same-Sex Marriages Performed Elsewhere

EFFECTIVE DATE: Immediately

CONTACT PERSON: Local District Support Unit
Upstate (518)474-8887 NYC (212)417-4500

The purpose of this General Information System (GIS) message is to advise Local Departments of Social Services (LDSS) of new Medicaid eligibility policy regarding equal treatment and recognition of same-sex marriages that have been legally performed elsewhere.

A February 1, 2008 Fourth Department court decision in *Martinez v. County of Monroe* held that legal same-sex marriages performed in other jurisdictions are "entitled to recognition in New York in the absence of express legislation to the contrary." Effective immediately, therefore, individuals who declare that they have been legally married in a jurisdiction that recognizes and performs same-sex unions must, regardless of gender, receive full faith, credit and comity as all other legally married persons when a district makes any Medicaid eligibility and case decision in New York State.

Equal treatment means that terms such as "husband", "wife", and "spouse" are construed in a manner that encompasses legal same-sex marriages. Factors including but not limited to the following must be evaluated in the same manner for all legally performed marriages:

- Required signatures on applications;
- Household composition and size;
- Budgeting methodology;
- Determination of Legally Responsible Relatives;
- Spousal and Child Support issues;
- Health insurance premium payments;
- Chronic/long term care budgeting issues, including transfers of resources;
- Income from trusts;
- Homestead resource exemptions;
- Burial funds;
- Estates; and,
- Liens and recoveries.

Currently, same-sex marriages are legal in Canada, South Africa, Spain, Belgium, the Netherlands, California and Massachusetts. The Department will make every effort to keep informed of states and jurisdictions that perform legal same-sex unions, and to forward any new information to LDSS. However, it is the responsibility of all LDSS to stay informed as well, because the list may be updated frequently.

Documentation of a legally recognized same-sex marriage is only necessary in the same limited circumstances as documentation of any other marriage -- for example, when an individual seeks spousal budgeting for long term care. LDSS staff are instructed to call their Local District Support Unit Liaison at the number(s) listed above with any questions.

CNS notice language, the Electronic Eligibility Decision Support System (EEDSS), and trainings and protocols are being updated to reflect this change. Districts are reminded to be sure that any manual notices for married individuals are worded in a gender-neutral manner before the notices are used.