

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 239

(Senator Feldman)

Budget and Taxation

Appropriations

State Employee and Retiree Health and Welfare Benefits Program – Domestic Partnerships

This bill requires that the terms “spouse,” “family,” “immediate family,” or “dependent” (or any other terms that denote the spousal relationship) in Title 2, Subtitle 5 of the State Personnel and Pensions Article (which governs the Health and Welfare Benefits Program) be construed to include a party to a domestic partnership. The provisions of the State Employee and Retiree Health and Welfare Benefits Program that apply to spouses must also apply to parties who have entered into a domestic partnership. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: To the extent that State employees and retirees elect to enroll their domestic partners and/or the dependents of their domestic partners in the State Employee and Retiree Health and Welfare Benefits Program under the bill, Department of Budget and Management (DBM) expenditures increase by an indeterminate amount beginning in FY 2024, as discussed below. Revenues are not materially affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Section 6-101 of the Health-General Article defines “domestic partnership” as a relationship between two individuals who (1) are at least 18 years old; (2) are not related to each other by blood or marriage within four degrees of consanguinity under civil

law rule; (3) are not married or in a civil union or domestic partnership with another individual; and (4) agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship, even if both individuals are not required to contribute equally to the relationship.

An individual who asserts a domestic partnership may be required to provide (1) an affidavit signed under penalty of perjury by two individuals stating that they have established a domestic partnership and (2) proof of any two of a specified list of documents, including joint liability for a mortgage, lease, or loan; the designation of one of the individuals as the primary beneficiary of the other individual's life insurance policy, retirement plan, or will; or coverage on a health insurance policy.

State Employee and Retiree Health and Welfare Benefits Program

The State Employee and Retiree Health and Welfare Benefits Program offers medical, prescription, and dental plans to active employees and State retirees, as well as flexible spending accounts, term life insurance, and accidental death and dismemberment plans.

Under the Code of Maryland Regulations 17.04.13.01, with respect to State employee and retiree health benefits, "spouse" means an individual who is lawfully joined in marriage to an employee or retired employee. The spouse of an employee or retired employee and the dependent child or another dependent child relative of an employee or retired employee are also eligible for benefits.

DBM promulgated regulations (effective July 1, 2009) that extended health insurance; life insurance; and personal, accidental death and dismemberment insurance benefits to State employees, retirees, and their dependents in same-sex domestic partnerships. With the passage of Chapter 2 of 2012 (the Civil Marriage Protection Act), same-sex marriage became legal in Maryland effective January 1, 2013. DBM subsequently determined that the need to offer domestic partner benefits had been alleviated. Thus, new enrollments of same-sex domestic partners and their dependents ended June 30, 2013, and domestic partner coverage terminated on January 1, 2015.

Other Domestic Partnership Provisions in Maryland Law

Individual and group health insurance policies and contracts that allow family coverage must provide, at the request of an insured or group policy holder, the same benefits and eligibility guidelines that apply to other covered dependents for a domestic partner or a child dependent of the domestic partner of the insured.

Insurance under a policy of group life insurance may be extended to cover a domestic partner of an insured employee or member who elects to obtain that coverage. Such coverage is treated in the same manner as that for a spouse or dependent child.

Hospitals, nursing homes, and residential treatment centers must allow visitation by a patient's or resident's domestic partner and members of the domestic partner's family. A domestic partner can make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent or whose health care agent or appointed guardian is unavailable. If a domestic partner has a health care agent, that health care agent retains the authority to make any decisions for a domestic partner until the health care agency is revoked. A domestic partner may petition the circuit court to enjoin the provision or withholding of medical treatment to the patient upon a finding by a preponderance of the evidence that the action is not lawfully authorized by State or federal law. A domestic partner may have priority to consent to the donation of the decedent's organs or tissues. A domestic partner may provide consent for a postmortem examination of the decedent; have priority in arranging for the final disposition of a body; and request reasonable access to a burial site for restoring, maintaining, or viewing.

Persons in domestic partnerships or former domestic partnerships, as specified, may qualify for an exemption from recordation and State and county transfer taxes for residential property used as a common residence. The receipt by a decedent's domestic partner of an interest in a joint primary residence that at the time of the death was held in joint tenancy by the decedent and the domestic partner is exempt from the State inheritance tax.

State Expenditures: Due to Internal Revenue Service (IRS) and other federal tax rules and regulations, employers that offer health insurance benefits to domestic partners and/or their dependents must follow certain rules and regulations regarding pre-tax and post-tax payroll deductions, including the calculation of imputed income. Thus, to implement coverage of domestic partners and their dependents, DBM must rewrite the contribution tables and eligibility rules in both the Employee Benefits Division system of record and legacy system; reestablish post-tax payroll deductions and corresponding imputed income calculations for IRS Form W-2; and review all documents to determine eligibility, including notification and follow-up on incorrect or incomplete documentation.

To the extent State employees and retirees elect to enroll their domestic partners and/or the dependents of their domestic partners in the State Employee and Retiree Health and Welfare Benefits Program, DBM expenditures increase by an indeterminate amount beginning in fiscal 2024 (for coverage for the 2024 plan year, beginning January 1, 2024) to provide benefits for additional enrollees. As the number of domestic partners and dependents who may enroll is unknown, actual expenditures cannot be reliably estimated at this time.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Budget and Management; Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2023
rh/ljm Third Reader - March 20, 2023

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