Center for American Progress

# One Simple Step for Equality

## States prove that the federal government can offer domestic partner benefits with ease

Winnie Stachelberg, Josh Rosenthal, and Claire Stein-Ross September 2008

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# Executive Summary

Health care looms large on the agenda as the nation looks toward a new Congress and president in 2009. Health care costs are growing faster than even energy costs, rising $45 billion more than energy in the past eight years.[1] Americans with chronic diseases and other preexisting conditions often wonder if their treatment will be covered by insurance, or if they will be able to afford insurance at all. And almost 46 million Americans still live without health insurance coverage, while many more get by without adequate access to care.[2]

The federal government could take one simple, but essential step that would immediately expand quality coverage to millions of Americans: extending health benefits to same-sex partners of federal employees, who are twice as likely to be uninsured as their heterosexual counterparts.[3] Federal employees in same-sex partnerships currently have no access to benefits for their partners. Domestic partner benefits present an opportunity for the federal government to improve the quality of its workforce, and indicate its acceptance of all American families.

Congress is currently considering the Domestic Partner Benefits and Obligations Act (H.R. 4838/S. 2521), which would extend these benefits, along with the other rights and responsibilities of married couples, to federal employees in same-sex domestic partnerships. Congressional passage of this bill would place the federal government among the ranks of thousands of private companies, hundreds of municipalities, and 15 states and the District of Columbia that have already put such policies into action.*

This report examines the experiences of these states, which have extended benefits to same-sex domestic partners without complications or added expenses. In fact, many have actually been able to attract higher quality staff. The states show that a domestic partner benefit program for federal employees would likely have the following characteristics:

- **Low enrollment:** Few employees will enroll in the expanded benefit program. For example, only 0.7 percent of Connecticut states employees took advantage of the domestic partner program for same-sex couples.

* Vermont, New York, Oregon, California, Connecticut, Maine, Rhode Island, Washington, New Mexico, New Jersey, Montana, Illinois, Alaska, Arizona, and Hawaii.

- **Minimal costs:** The benefits would create only a marginal added cost. In Iowa, for example, only 0.5 percent of benefit spending goes toward domestic partners. Even this percentage is higher than we expect the federal government would experience, since many states include both same-sex and different-sex partners in their domestic partner benefit programs, unlike the proposed federal program.

- **Higher retention and recruitment rates:** Gay and lesbian employees often cite benefit programs as a key factor in their decision to leave or stay at a job. As more private-sector employers offer domestic partner benefits, states such as Vermont and Washington have found that matching this benefit helps them to attract the best workforce

- **Strong public support:** When Arizona considered offering domestic partner benefits in 2006, 787 of the 913 public comments concerning the decision were supportive of extending the benefits. Recent polling also shows that 69 percent of Americans believe that same-sex partners should receive benefits.

The Domestic Partnership Benefits and Obligations Act offers an easy choice to legislators. There are both practical and ethical arguments for extending benefits to domestic partners—including the fact that a majority of Americans believe it is the right thing to do.[4] And the experiences of state governments clearly show that domestic partner benefits do not exact a significant cost on the employer.

## An Essential Recruitment Tool: Experiences in the Private Sector

The private sector has been the clear leader in offering equitable benefits to employees. Over 8,600 for-profit companies offer same-sex domestic partner benefits to their employees.[5]

Private employers cite a number of factors driving the decision to open up their benefits systems. Chief among these is the correlation between benefits and worker contentment. There is strong evidence that employees—both heterosexual and homosexual—value the option of domestic partner benefits. Forty-eight percent of lesbian, gay, and bisexual workers said in 2003 that domestic partner benefits would be the most important consideration in a potential job switch.[6] And 69 percent of heterosexual workers polled in 2004 said all employees should be guaranteed equal benefits, regardless of sexual orientation.[7]

Even after staff are recruited, domestic partner benefits help employers retain good employees. Eighty percent of employees who were "highly satisfied" with their benefits expressed strong job satisfaction and 83 percent said that their benefits were a factor in their decision to remain at that job.[8] A majority of employers similarly see benefits as an important retention tool.[9] With this in mind, it is necessary for public employers to maintain the same level of coverage that private companies offer, or risk losing out in the competition for the most desirable workforce.

# Simple Processes and Cost Savings: Lessons from the States

Since Vermont first offered domestic partner benefits in 1994, 15 other states and the District of Columbia have followed suit. Across the board, the costs of expanding the benefits has been negligible; the process has been smooth; potential employees have been attracted by the benefits and current employees have been more inclined to remain; and providing the benefits has in turn lowered the cost of other social services, leading to net savings for states. The process in each state is similar. They each require the employee to fill out an affidavit and provide documentation verifying the validity of the relationship. As with a marriage license, there is a fee attached to this declaration, which provides revenue to the state.

The number of employees who have applied for partner benefits varies from state to state, but it is generally very low. And states have seen no more than marginal cost increases when benefits are extended to domestic partners. Most insurance providers consider the same factors when insuring a domestic partner as a spouse, and the premiums therefore remain the same. A Hewitt Associates study revealed that coverage that includes domestic partners is no more expensive for employers than coverage that does not.[10]

Case studies by the Williams Institute show that, if benefits are extended to all partners in the state, the state will actually experience net savings. As more residents are covered by insurance, costs for Supplemental Security Income, Temporary Assistance for Needy Families, Medicaid, and the State Children's Health Insurance Program would decrease, more than offsetting any potential rise in state benefit costs.[11]

The Congressional Budget Office conducted a study on the potential value for the federal government in recognizing domestic partnerships. The study found that enrolling the same-sex partners of retired employees in the Federal Employees Health Benefits Program would increase costs by less than $50 million a year through 2014 (current employees and spouses' insurance is covered through appropriations funding). The CBO also concluded that if all 50 states and the federal government were to allow same-sex couples the same rights and responsibilities as opposite-sex couples, the federal government would save nearly $1 billion per year through resulting increases in tax revenue and decreases in the costs of government support programs.[12]

The one complicating factor for the provision of domestic partner benefits is that many states, as well as the federal government, tax domestic partner benefits as "imputed income," unlike benefits for other family members. As explored in the Center for American Progress and Williams Institute 2007 report "Unequal Taxes on Equal Benefits," this unequal tax treatment imposes an unnecessary financial and accounting burden on both employers and employees. Both Oregon and Rhode Island made a special effort to correct the inequality; two years after the benefits became available, Oregon began exempting the benefits from employers' tax liability, while Rhode Island established a loan program to assist some employees with the increased taxation.

The federal government will be able to look for guidance to the 15 states and the District of Columbia who already offer same-sex domestic partner benefits for their employees as it enters the process of considering the Domestic Partner Benefits and Obligations Act. States began offering these benefits in different ways—from union negotiation to legislation to judicial decisions—but all have seen lower rates of enrollment and lower costs than expected. Their experiences show that the federal government has a lot to gain from offering same-sex domestic partner benefits without serious costs.

## Vermont

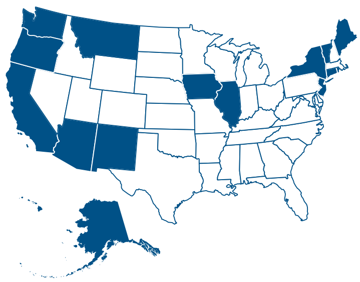
Vermont became the first state to begin offering benefits to the domestic partners of state employees, in 1994. The program now covers between 300 and 400 employees each year, and the availability of such benefits has been advantageous in recruiting potential new employees. The original plan was to expand coverage to same-sex partners only, but the legislation that was passed extended benefits to both same-sex and opposite-sex partners. Although there were initial, marginal increases in premium costs following the provision of benefits, they have ultimately had no effect on state costs.[13] As the earliest state to champion equal benefits, Vermont's experience is perhaps the best indicator that the benefits' effects are positive, both in the short- and long-term.

## New York

New York has been providing benefits to the partners of state employees since the beginning of 1995. Although there was some negative reaction when the benefits were initially announced, as well as debate over whether to include both same-sex and opposite-sex couples, the benefits system has been unproblematic. The New York state government currently covers 4,881 domestic partners, and the majority of these are opposite-sex partners.

The plan has, overall, been easy to implement. Any employee with dependent children is already enrolled in a family benefits program; adding a partner to this has no effect on the employee's premium. If one employee seeks to provide coverage for another state employee, the total costs actually decrease. As in other states, New York requires that employees provide proof of the partnership in order to expand the coverage. This docu-

**Year States Instituted Domestic Partner Benefits**



| | |
|---|---|
| **Vermont** | 1994 |
| **New York** | 1995 |
| **Hawaii** | 1997 |
| **Oregon** | 1998 |
| **California** | 1999 |
| **Connecticut** | 2000 |
| **Maine** | 2001 |
| **Rhode Island** | 2001 |
| **Washington** | 2001 |
| **DC** | 2002 |
| **Iowa** | 2003 |
| **New Mexico** | 2003 |
| **New Jersey** | 2004 |
| **Montana** | 2005 |
| **Alaska** | 2006 |
| **Illinois** | 2006 |
| **Arizona** | Oct. 2008 |

mentation has caused only minimal problems, as has confusion over income imputation to cover additional costs. New York does not keep records on the effect that the benefits program has had on employee attitudes, but the state believes that the coverage for domestic partners has been helpful in recruiting potential employees.[14]

## Hawaii

Hawaii adopted the Reciprocal Beneficiaries Act in 1997, which allows residents who are barred from marriage to register for certain privileges that are afforded to married couples. The benefits are available to anyone who cannot legally be married, although most who have filed under this law are same-sex domestic partners. The law, however, places no legal requirements on Health Maintenance Organizations or Mutual Benefit Societies. The state's attorney general further decided to remove the law's application to private entities.[15]

The law was renewed in 1999, but some elements that provided government employees with health insurance were not, and many advocates for gay rights argue the program has been ultimately ineffective in advancing equality. The system remains in place, but few have taken advantage of it,[16] giving the legislature little motive to expand the rights and benefits.

## Oregon

The Oregon Supreme Court ruled in 1998 that denying equal benefits to the domestic partners of government employees was a violation of the state's constitution. Oregon was the first state to successfully frame the debate in this way, and also the first state to require both local and state government to equalize their benefit plans.

Beginning in tax year 2000, Oregon also distinguished its benefits program by exempting the benefits from taxes for qualified domestic partners. The state legislature later passed the Oregon Family Fairness Act in 2007 that, while respecting the voter-approved ban on same-sex marriage, establishes a procedure for obtaining a civil union, and extends to those who seek one the privileges of married couples, including insurance benefits.[17]

The Williams Institute earlier this year released an analysis of the effect of a state-wide domestic partnership registry on Oregon's budget. Overall, they estimate state savings of between $1.5 million and $3.7 million biennially—between $100,000 and $1.2 million due to the inclusive benefits plan alone. The death benefits that may become available to surviving domestic partners through the Oregon Family Fairness Act would increase state costs by an estimated $20,000 per year for the first three years, with the cost diminishing after that.[18]

## California

California passed three laws in 1999 to promote equality for the gay and lesbian community. One of the three measures provided for the creation of a domestic-partner registry for which both same-sex partners and opposite-sex partners age 62 or older are eligible. The laws also established hospital visitation rights for all partners, and health insurance coverage for state employees.[19] Fewer than one half of 1 percent of state employees have applied for the partner benefits since they have been offered.[20]

Last year, California became the first state to go one step further and require all contractors with the state to provide benefits. The Equal Benefits Ordinance applies to any business with a state contract for more than $100,000.[21] It grants a few exceptions, but lack of compliance can result in a termination of the contract.[22]

This year, the 2008 California Supreme Court decision to extend marriage to same-sex couples also established equal benefits for all families in the state (with the exception of federal taxation of those benefits). These equal benefits are at risk of being revoked by the anti-marriage Proposition 8.

## Connecticut

Connecticut began offering domestic partner coverage to its employees in 2000, after several unions came together to argue that the state should provide the insurance. Prior to the implementation of benefits, the state expected approximately 1 percent of its 50,000 employees to register a partner and the cost to equal approximately 0.5 percent of total benefit costs.[23] During the first two years that benefits were available, 336 employees—approximately 0.7 percent of state workers—sought the benefits for a partner, bringing the cost of state-provided benefits up by $825,000. This amounts to roughly 0.1 percent of the state's total benefits cost.[24] As in many other states, benefits for domestic partners of employees are eligible for taxation, unlike the benefits for spouses, which contributes to the states' income tax revenues.[25]

## Maine

Maine's State Employee Health Commission authorized in 2001 the extension of health insurance to the domestic partners of state employees. Later that year, the state legislature voted to establish a domestic partner registry, which offers further rights to all committed same-sex couples in the state. There was initially negative feedback from a small number of employees, particularly retirees, but this quickly abated and the state employee domestic partnership program was implemented without difficulty.

About 240 employees and retirees currently receive the benefits, and the cost to the state is $1,718,844 annually.[26] Because adding a partner is equivalent to adding a spouse, the only real change to cost or procedure is the need for a manual calculation of the premium deduction and the taxable benefit.[27]

## Rhode Island

Rhode Island's state assembly amended Statute 36-12-1 in 2001 to provide insurance benefits to the domestic partners of state employees. The state realized in 2005 that federal law requires employees to pay federal income tax on these benefits and to fix this unequal treatment, and the assembly passed Statute 36-12-15, creating the Domestic Partner Income Tax Loan Account. This program offers a one-time no-interest loan to state employees with additional tax burdens of $500 or more from their domestic partner benefits for tax years 2002-2005.[28] A number of large private employers in Rhode Island began offering the benefits long before the state, including the Hasbro Corporation in 1997, and Brown University in 1994.[29]

## Washington

The Public Employees Benefits Board voted in 2000 to begin offering insurance benefits to the domestic partners of Washington state employees.[30] The states made projections about the cost of legalizing same-sex marriage, many of which would also be applicable to extending domestic partner benefits. When a spouse or partner is included in an employee's benefit package, the overall cost typically decreases. The state expected to save between $300,000 and $2.1 million each year on benefit spending alone, depending on the structure of the benefits.[31]

During the implementation process, some problems arose around the role of a partner as a dependent. Complications surrounded the share of benefit costs that an employee was required to pay, and how the benefits' value would be taxed. The state eventually made slight changes to the payroll process and reverted to making manual changes as necessary, rather than altering the entire system. As the state transitioned to offer the benefits, the benefits board voted to also include the children of domestic partners and extend Medicare benefits to qualifying partners. This necessitated another slight tax change, done manually at the close of each tax year.

Washington currently insures approximately 1,000 employees' partners; the Public Employees Benefits Board has requested that this coverage be expanded to opposite-sex partners as well, which would add approximately 3,000 employees to the benefits program. The most common issues still raised about the benefits are their tax implications, and whether to begin including opposite-sex partners. The state does not separate out costs related to domestic partner coverage, but no marked change has been seen. Because the state passed a non-discrimination law in 2006, and a law establishing a partner registry the following year, the way in which eligibility is determined has been modified. This is expected to increase administrative costs. However, the state's Human Resources Department reports seeing a positive boost in recruitment and retention since the benefits were instituted.[32]

## District of Columbia

The District of Columbia City Council passed in 1992 the Health Care Benefits Expansion Act, making it the one of the earliest government entities to recognize domestic partners. The law allowed for District employees' partners to receive insurance coverage, but congressional funding did not permit its implementation until 2002. The law enables employees to use leave time to care for a partner or his/her dependents, to attend the funeral of a partner or dependents, or for the birth or adoption of a dependent. It also guarantees domestic partners hospital visitation rights.[33]

The District of Columbia has experienced no problems with cost or implementation,[34] and a number of additional laws have passed since that extend rights and responsibilities to domestic partners. The lack of distinction made between domestic partner benefits and traditional coverage in D.C., as well as in many other states, serves as a testament to the facility with which such a program can be introduced and put into practice.

## Iowa

Iowa has been providing equal benefits to domestic partners and spouses since 2003 after an effort led by the American Federation of State, County, and Municipal Employees. Iowa state employees are allowed to add a partner to coverage just as they would any other family member, and any difference in cost is solely due to having a family plan versus a single plan. The state's contribution toward medical benefits is the same for each; the state does not contribute to dental benefits for any of its employees.[35]

Domestic partner coverage amounts to less than one-half of 1 percent of the roughly $300 million budget for employee insurance and benefits. Because of the tax implications of the benefits, only 74 employees currently utilize the benefits—far fewer than originally expressed interest. There are still some complaints about the tax structure for the benefits, but the process and implementation were both quick and relatively seamless. Although the state has not catalogued any particular effect in recruitment, most large Iowa employers do offer the benefits.[36]

## New Mexico

Governor Bill Richardson of New Mexico issued Executive Order 2003-010 in 2003, which extended health insurance benefits to the partners of state employees. Richardson instructed his staff to further investigate recognizing domestic partnerships on a statewide level. The Williams Institute provided a memorandum early in 2008 to the sponsor of the Domestic Partners Rights and Responsibilities Act (HB 9), which would have allowed both same- and opposite-sex couples to register as domestic partners.[37]

The Williams Institute's research indicates that, in addition to the financial boon that comes with commitment ceremonies and celebrations, domestic partnerships would have a positive effect on businesses. They conclude that domestic partner benefits increase employer competitiveness; enrollment and costs would likely be minimal; the state budget would see a net gain; and emphasizing diversity and equality has a positive long-term effect on businesses.[38] Although HB 9 never left the state legislature, the Williams Institute findings nonetheless demonstrate the financial and practical incentives of extending insurance benefits to domestic partners.

## New Jersey

The New Jersey state legislature passed the Domestic Partnership Act in 2004, which required all New Jersey businesses to offer insurance coverage to employees' registered same-sex partners. However, existing state law places no obligation on employers to cover the cost of benefits, meaning that the financial effect on employers would be, if anything, marginal.[39]

Benefit costs for the expanded coverage are determined in the same manner as they had been prior to the legislation. Family coverage includes a partner just as it would for spouses and children, which means that if an employee already has children included in his or her benefits plan, there would be no change. If an employee pays for part of his or her coverage, the same level of payment would be required to cover a partner. Although the benefits are not included in calculating state income tax, the employee is still required to pay federal income taxes, as well as Social Security and Medicare taxes on the value of the benefits—spouses and children's benefits are not subject to this taxation.[40]

Residents have not been able to register for domestic partnerships since New Jersey's civil union law took effect in 2007. Partnerships established prior to 2007 are still recognized, and state employees who enter civil unions are eligible for any benefits that would be accorded a heterosexual spouse, though these are taxed in the same way as domestic partner benefits.[41]

## Montana

A court decision in 2005 added Montana to the list of states providing domestic partner benefits to state employees. Around 140 employees have included their domestic partners in the state plan. There has been no noticeable increase in benefit costs to the state. Additionally, the state has found that, given that workers accept decreased salaries when they enter the public sector, generous benefits help keep the state's package competitive.[42] This echoes the Williams Institute's findings that offering equal benefits increases recruitment and reduces turnover, as well as creates a healthier environment for workers.[43]

## Illinois

Illinois Governor Roy Blagojevich issued an executive order, effective July 1, 2006, that extended health, dental, and vision insurance coverage to the domestic partners of state employees. The 37,000 state employees who are members of the American Federation of State, County, and Municipal Employees began receiving these benefits in 2004 following a contract negotiation, and the state will adopt that contract's guidelines for all state employees. The state expected an enrollment increase of roughly .5 percent, with an annual state cost increase of approximately $2.2 million. The state also expected net savings once it began providing the same set of benefits to all its employees. State government officials, including the human resources director and insurance benefits director, joined advocacy groups to praise the governor's decision to extend the benefits.[44]

## Alaska

Alaska's Supreme Court ruled in 2006 that the state was required to provide the same health insurance to employees' same-sex partners as they granted to employees' spouses. The decision was handed down in an equal protection case that had been brought by several state employees. All Alaska state employees at the time applied the same proportion of their salary toward insurance, yet only married employees were able to obtain coverage for a partner. Conservative activists and legislators attempted to constitutionally bar the equal benefits following this ruling, but their efforts were ultimately unsuccessful.[45]

Alaska hired a consulting firm to project enrollment and cost increases, taking into consideration the state university system and the city of Juneau, which had previously instituted the benefits. Extending benefits to same-sex and opposite-sex domestic partners was considered. If coverage was only added for same-sex domestic partners, enrollment was expected to increase 0.5 percent and costs were projected to rise between $84,000 and $120,000 for active employees and between $533,000 and $760,000 for retired employees. If coverage was expanded to different-sex domestic partners as well, enrollment was projected to increase by 2.0 percent, and costs were projected to increase between $390,000 and $544,000 for active employees and between $2,226,000 and $3,181,000 for retired employees.[46]

## Arizona

Arizona's domestic partner benefits program will take effect in October 2008, and will include coverage for the partners of state and public university system employees. The decision to begin offering the benefits came out of a Department of Administration proposal and was unanimously approved by the Governor's Regulatory Review Council this spring. Under the new rules, domestic partners, as well as their dependents, will qualify for state employee benefits.

Those in favor of expanding benefits argue it will improve recruitment and retention; given the prevalence of the benefits at other institutions and organizations, it can be difficult for the state to remain competitive without providing similar benefits. Governor Napolitano and her staff also pointed to the issue of fairness in championing the benefits. The state predicts enrollment of between 317 and 853 employees, costing the state up to $4.25 million. The issue has undergone much debate in Arizona, but public opinion supports the council's ruling; 913 individuals and groups wrote to the Department of Administration about the benefits, with 787 writing in favor and only 112 in opposition.[47]

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## Acknowledgements

Anna Kirsanova (Alaska Department of Administration), Greg Beatty (California Department of Personnel Administration), Valerie Wilkins (DC Human Resources), Donald Cohn (DC City Council Committee on Health), Ed Holland (Iowa Department of Administrative Services), Barbara Marchant (Iowa Public Employee Relations Board), Myke Selha and Rick Davis (LGBT Community Center of Central Iowa), Tanya L. Plante (Maine Office of Employee Health and Benefits), Alicia Kellogg (Maine Department of Administrative & Financial Services), Justin Brown (Maine Housing Authority), Samantha Walker (Maine Marriage and Divorce Representative), Dale McCormick, Casi Hunter (Montana Health Care and Benefits Division), Kathleen Field (Montana Department of Administration), Darryl L. Decker (New York Governor's Office of Employee Relations), Kathryn S. Callaghan (Vermont Administrative Services Division), Renee Bourbeau and Mary Fliss (Washington Public Employee Benefits Board), Beth Dupre and Dennis Martin (Washington Health Care Authority), Megan Moreno (Washington Secretary of State's Office), The Williams Institute, Human Rights Campaign.

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