



# AFTER DOMA

## WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

### Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

## MEDICARE SPOUSAL PROTECTIONS

This guidance addresses the spousal protections of Medicare, the federal health insurance program for adults 65 and older, as well as for certain younger people with disabilities. Several aspects of Medicare are implicated by whether a person is married, including eligibility based on a spouse's work history, premium amounts, and enrollment penalty exemptions related to remaining on a spouse's private health plan. Access to these Medicare protections was blocked or affected by the federal Defense of Marriage Act (DOMA). Now that DOMA has been declared unconstitutional by the United States Supreme Court, this guidance summarizes the benefits, who qualifies, special concerns, and how to apply.

For more information, visit the federal Medicare website, [www.medicare.gov](http://www.medicare.gov) and the Social Security Administration's Medicare page, [www.ssa.gov/pgm/medicare.htm](http://www.ssa.gov/pgm/medicare.htm).

### INTRODUCTION TO MEDICARE BENEFITS AND WHO MAY BE CONSIDERED A SPOUSE

Medicare is a federal health insurance program designed to help senior citizens and those with certain disabilities with the costs of health care. It has four major components:

- Medicare Part A - hospital insurance, covering inpatient stays in hospitals, skilled nursing facilities, and hospice care, and some types of home health care.
- Medicare Part B - medical insurance, covering medically necessary doctors' services, outpatient care, medical supplies, and preventive services. (Together, Parts A & B are known as "Original Medicare.")
- Medicare Part C - Medicare Advantage Plans, which are private health plans that contract with Medicare to provide both Part A and Part B benefits, as well as, most often, prescription drug coverage.
- Medicare Part D - prescription drug coverage added to Original Medicare, as well as to some types of Part C plans with no drug coverage.

For most people, becoming eligible for Medicare is as simple as turning 65 years old, but other aspects of the program – requirements and amounts of premiums, eligibility for certain types of plans, and timing for enrollment, among them – may turn on your work history, your access to other health care, your health status, and your income. In several situations, having a spouse alters the way you access these benefits. This publication is designed to address those circumstances.

For more information on the basics of Medicare benefits, see Centers for Medicare and Medicaid Servs., *Medicare & You 2013*, at [www.medicare.gov/publications/pubs/pdf/10050.pdf](http://www.medicare.gov/publications/pubs/pdf/10050.pdf), or Social Security Administration, *Medicare*, at [www.ssa.gov/pubs/EN-05-10043.pdf](http://www.ssa.gov/pubs/EN-05-10043.pdf).

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### Who is considered a spouse for purpose of Medicare?

The definition of spouse for purposes of Medicare is tied to the same definitions for purposes of Social Security. A person is a spouse for purposes of Medicare if:

- She/he is validly married under the law of the state where she/he lives at the time of filing for benefits; or
- She/he has the same rights as a husband or wife for purposes of the distribution of intestate personal property under the laws of the state where she/he lives at the time of filing for benefits.

See Social Security Administration, *Program Operations System Manual*, §§ HI 00801.022, HI 00805.266, RS 00202.001; Social Security Handbook § 306.1, at [www.socialsecurity.gov/OP\\_Home/handbook/handbook.03/handbook-0306.html](http://www.socialsecurity.gov/OP_Home/handbook/handbook.03/handbook-0306.html).

### Does this definition apply to married same-sex couples who live in a state that recognizes their marriage?

Yes. Social Security law provides that a person is considered a spouse if the courts of the state where the person lives at the time of filing the application would find that the couple was validly married, or if a spouse has died, the state where the spouse died would find that the couple was validly married. See 42 U.S.C.A. § 416 (h)(1)(A)(i).

### Does this definition apply to couples who have comprehensive spousal statuses like civil unions or registered domestic partnerships in those states that recognize those statuses?

Although this is untested, we think the answer should be yes if you live in a state that recognizes your relationship as one in which you could inherit personal property without a will as a spouse would. The Social Security law states that even if the state law of domicile at the time of application would find that you are not married, you are nevertheless eligible for spousal benefits if you can inherit personal property without a will under your state's law as would a "wife, husband, widow or widower." 42 U.S.C. § 416(h)(1)(A)(ii). All of the state civil union and registered domestic partner laws allow intestate inheritance as a spouse, as do the more limited laws in places such as Wisconsin. Consult a local practitioner to learn more about your state's relationship recognition and intestacy laws.

### What if we got married in a state that allows same-sex couples to marry, but I live in a state that does not recognize my marriage? Am I eligible for Medicare's spousal-based benefits?

For purposes of Medicare, federal law likely prevents legally married same-sex couples who live in states that discriminate against their marriages from accessing spousal benefits on equal terms. The Social Security statute uses a "place of domicile" rule that assesses marital status based on the law of the state of domicile (i.e., primary residence), and this will likely result in the agency denying crucial benefits to same-sex couples. Our organizations will be working urgently to attain respect for all marriages regardless of where you live, but for Medicare, it will take changes in the law.

### What if I entered into a civil union or comprehensive domestic partnership but I live in a state that does not recognize those spousal statuses and would not consider us to be spouses? Am I eligible for Medicare spousal benefits?

Unfortunately, for the same reasons discussed above, the answer is likely no. Medicare looks to the law of the place where you live when you apply for benefits, and if your home state does not recognize you as a spouse or allow you to inherit as a spouse, neither will Medicare.

### I used to live in a state that recognizes the spousal relationships of same-sex couples, but have since moved to a state that does not. Am I eligible for Medicare spousal benefits?

If you applied for the benefit while living in a state that respected your marriage or allowed you to inherit without a will as a spouse and only moved *after* you started receiving benefits, you should continue receiving your Medicare benefits in your new home state, regardless of its own relationship recognition laws because benefits are determined by your marital status in the state where you applied for benefits.

If you moved before applying for benefits, then as discussed above, discriminatory state laws will likely block your access to spousal-based benefits until such time as Medicare law includes a "place of celebration" rule, recognizing your marriage for federal Medicare purposes if it was valid where entered, rather than the current "place of domicile" rule.

## MEDICARE ELIGIBILITY BASED ON SPOUSAL WORK HISTORY

### How does being married affect my eligibility for Medicare Part A?

Ordinarily, for a person age 65 or older to obtain Medicare Part A without paying a premium, you must have paid Social Security and Medicare payroll taxes while working for forty quarters, or about ten years. If you do not have enough credits on your own, however, you may qualify for Part A benefits without paying a premium or paying a reduced premium based on your spouse's work history. Under some circumstances, you may even qualify based on the work record of a deceased or ex-spouse. Otherwise, you can buy into Part A, but you must pay a monthly premium of up to \$441 and there are penalties for failing to buy Part A coverage when you are first eligible.

### Who is eligible for no-premium Medicare Part A based on a spouse's work history?

To qualify for Medicare Part A with no premium based on a spouse's work history, you must

- Be at least 65 years old;
- Be a United States citizen or a legal resident for five years; and
- Have a current or former spouse who is at least 62 years old and receives or is eligible to receive Social Security or railroad retirement benefits (having worked at least 40 quarters, or 10 years) or has worked the same length in a government job where Medicare taxes were paid, with the following limitations:
  - **If you are currently spouses:** you have to have been spouses for at least one year before applying.

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- **If you are divorced:** you must have been recognized as spouses for at least 10 years, and you must be single at the time of application.
- **If you are widowed:** you must have been recognized as spouses for at least nine months under the law of the state where your spouse lived before she/he died, and you must be single.

See the section above on who is recognized as a spouse for Medicare purposes. To qualify for a reduced premium based on a spouse's work history, the spouse has to have worked 30 quarters (at least seven and a half years), but the same parameters apply regarding length of the marriage, divorce, and death.

For more general information about Part A enrollment, see Centers for Medicare and Medicaid Servs., *Enrolling in Medicare Part A & Part B*, at [www.medicare.gov/Pubs/pdf/11036.pdf](http://www.medicare.gov/Pubs/pdf/11036.pdf);

Social Security, *Medicare*, at:

[www.ssa.gov/pubs/EN-05-10043.pdf](http://www.ssa.gov/pubs/EN-05-10043.pdf);

[www.ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/400/-/how-to-qualify-for-medicare](http://www.ssa-custhelp.ssa.gov/app/answers/detail/a_id/400/-/how-to-qualify-for-medicare);

[www.cms.gov/Medicare/Eligibility-and-Enrollment/OrigMedicarePartABEligEnrol/index.html?redirect=/origmedicarepartabeligenrol/01overview.asp](http://www.cms.gov/Medicare/Eligibility-and-Enrollment/OrigMedicarePartABEligEnrol/index.html?redirect=/origmedicarepartabeligenrol/01overview.asp); 42 U.S.C. §426, § 1395i-2(d).

### How do I enroll in Medicare Part A when I am qualifying based on my spouse's work history?

If you already receive retirement benefits based on your spouse's work history from Social Security or the Railroad Retirement Board, you will be automatically enrolled for both parts of Original Medicare starting the first day of the month in which you turn 65.

If you are close to 65, but are not receiving retirement benefits, you have to sign up. If you are eligible for Part A without having to pay a premium, you can sign up at any time, starting three months before the month in which you will turn 65. (By contrast, if you are required to pay a premium, you may only enroll during one of three designated enrollment periods.)

To enroll, you can call Social Security at 18007721213, enroll online at [www.socialsecurity.gov/medicareonly/](http://www.socialsecurity.gov/medicareonly/), or make an appointment at your local Social Security Office, which you can find at [www.secure.ssa.gov/ICON/main.jsp](http://www.secure.ssa.gov/ICON/main.jsp).

For more information, see [www.medicare.gov/sign-up-change-plans/get-parts-a-and-b/when-sign-up-parts-a-and-b/when-sign-up-parts-a-and-b.html](http://www.medicare.gov/sign-up-change-plans/get-parts-a-and-b/when-sign-up-parts-a-and-b/when-sign-up-parts-a-and-b.html); Centers for Medicare and Medicaid Servs., *Medicare & You*, at [www.medicare.gov/publications/pubs/pdf/10050.pdf](http://www.medicare.gov/publications/pubs/pdf/10050.pdf); Centers for Medicare and Medicaid Servs., *Enrolling in Medicare Part A & Part B*, at [www.medicare.gov/Pubs/pdf/11036.pdf](http://www.medicare.gov/Pubs/pdf/11036.pdf).

### What if I am paying a premium for Part A because DOMA prevented me from qualifying on my spouse's work history? Can I qualify for premium-free Part A now? Can I get the money I paid for premiums back?

It remains to be seen, but this is an area where we expect agency guidance to be forthcoming. At a minimum, it should be clear that you can ask to have your premium reduced or eliminated going forward based on your spouse's work history, but we do not yet know how the agency will process those requests or whether there will be any way to seek relief for past premiums. Medicare law allows the Social Security Administration to provide

equitable relief to people whose Part A or B enrollment or coverage rights "have been prejudiced by the error, misrepresentation, action or inaction of an employee or agent of the Government. This relief may include, but is not limited to, providing special enrollment and/or coverage periods and appropriate adjustment of premium liability." See Social Security Administration, *Program Operations Manual System*, § HI 00830.001, at [www.secure.ssa.gov/apps10/poms.nsf/lrx/0600830001](http://www.secure.ssa.gov/apps10/poms.nsf/lrx/0600830001). Whether and how this relief may be available for Medicare recipients who had previously been disadvantaged by DOMA is likely to be a work in progress, and we will have to wait and see how the Administration approaches this issue.

## SPOUSAL PROTECTIONS RELATED TO MEDICARE PART B ENROLLMENT

### What does being married have to do with enrolling in Medicare Part B?

As a general matter, when you turn 65, you have to enroll in Medicare Part B or face a 10% lifetime penalty for every year you fail to enroll. There are two exceptions, however: one, if you yourself are working and remain on your employer or union's health plan (and for 8 months after you stop working), or two, if you remain on your spouse's current employment-based health plan. So long as you are on your own or your spouse's employment-based health plan, no late enrollment penalty applies.

Additionally, being on a spouse's health plan means that you will be able to participate in a special enrollment period for Medicare Part B once that spousal coverage ends.

### Who can qualify for the spousal exemption to Medicare Part B late penalties?

To avoid penalties for enrolling in Part B:

- You must be considered a spouse at the time you apply,
- You must have been spouses at the time you turned 65,
- You must be covered through your spouse's employer or union group health plan, and
- Your spouse must still be working.

See the section above on who is recognized as a spouse for Medicare purposes. If you meet these criteria, you will not face a penalty when you enroll.

### What if I have been receiving employment-based domestic partnership benefits through my partner, but we have no state-wide legal status? Can I avoid late penalties when I enroll in Part B?

In most circumstances, no. The only plans that exempt you from the late penalty are your own or that of a person recognized as a spouse. If, however, you receive incorrect information about this from someone at Social Security and delay enrolling in Part B based on that error, you may be able to get equitable relief from those penalties under some circumstances. See 42 U.S.C. § 1395p(h); Social Security Administration, *Program Operations Manual System*, § HI 00805.322, at [www.secure.ssa.gov/apps10/poms.nsf/lrx/0600805322](http://www.secure.ssa.gov/apps10/poms.nsf/lrx/0600805322); Medicare Rights Center, *Equitable Relief: Navigating the Process*, at [www.medicarerights.org/fliers/Part-B-Enrollment/Equitable-Relief.pdf?nrd=1](http://www.medicarerights.org/fliers/Part-B-Enrollment/Equitable-Relief.pdf?nrd=1).

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### If I have been on my spouse's health plan and that coverage is about to end, when can I enroll in Medicare Part B?

If you didn't sign up during the initial enrollment period (the seven months surrounding your 65<sup>th</sup> birthday) because you were covered by your spouse's employment-based group health plan, you are eligible to enroll during a special enrollment period. This means you can sign up for Part B any time you are still covered by your spouse's health plan (though you may want to discuss the ramifications of enrolling in Medicare with your benefits administrator), or during the eight month period starting the month after either your spouse's employment or the plan coverage ends, whichever comes first. How soon you receive the benefit depends on when you apply. By contrast, if you have not been covered by a group health plan and you did not enroll in Part B during the initial enrollment period, you are limited to enrolling during the general enrollment period of January 1 – March 30 every year, which may result in a gap in coverage, as coverage will not begin until July 1.

For more information about enrollment periods, see Centers for Medicare and Medicaid Servs., *Medicare & You*, at [www.medicare.gov/Pubs/pdf/10050.pdf](http://www.medicare.gov/Pubs/pdf/10050.pdf); Centers for Medicare and Medicaid Servs., *Enrolling in Medicare Part A & Part B*, at [www.medicare.gov/Pubs/pdf/11036.pdf](http://www.medicare.gov/Pubs/pdf/11036.pdf); Social Security, *Medicare*, at [www.ssa.gov/pubs/EN-05-10043.pdf](http://www.ssa.gov/pubs/EN-05-10043.pdf).

### How do I enroll in Medicare Part B if I have been on my spouse's health insurance?

To enroll, you can call Social Security at 18007721213, enroll online at [www.socialsecurity.gov/medicareonly/](http://www.socialsecurity.gov/medicareonly/), or make an appointment at your local Social Security Office, which you can find at [www.secure.ssa.gov/ICON/main.jsp](http://www.secure.ssa.gov/ICON/main.jsp).

### What if I was on my spouse's health insurance, but was assessed a late enrollment penalty because of DOMA? What if I had to enroll in Part B even while I remained on my spouse's health insurance because of DOMA? Can I get my premium amount changed going forward? Can I get back the money I overpaid?

It remains to be seen. Medicare law allows the Social Security Administration to provide equitable relief to people whose Part A or B enrollment or coverage rights "have been prejudiced by the error, misrepresentation, action or inaction of an employee or agent of the Government. This relief may include, but is not limited to, providing special enrollment and/or coverage periods and appropriate adjustment of premium liability." See Social Security Administration, *Program Operations Manual System*, § HI 00830.001, at [www.secure.ssa.gov/apps10/poms.nsf/lnx/0600830001](http://www.secure.ssa.gov/apps10/poms.nsf/lnx/0600830001). Whether and how this relief may be available for Medicare recipients who had previously been disadvantaged by DOMA is a work in progress, and we will have to wait and see how the Administration approaches this issue.

**CAUTION:** *Even if these processes become available, they may or may not be helpful to you depending on your situation. Eligibility for equitable relief is a highly individualized assessment that may be even more complicated for seeking recoupment of Part B premiums paid while you still had coverage through your spouse than seeking to undo late enrollment penalties. We strongly encourage that you seek private legal advice about your specific situation to help you make the cost/benefit analysis of whether to pursue any particular form of relief.*

### SPOUSAL PROTECTIONS RELATED TO PART D ENROLLMENT

#### How does being married or being considered legal spouses affect my enrollment in Part D?

Similar to Part B, if you are covered by a spouse's health insurance, you may be able to delay enrollment in Part D without paying late enrollment penalties. As well, the end of your coverage by your spouse's health insurance makes you eligible for a special enrollment period.

#### How do I avoid late enrollment penalties for Part D?

If you don't join Part D during the initial enrollment period, you can avoid paying late penalties for enrollment later if you have **creditable** prescription drug coverage through the employer- or union-based health plan of your own, your spouse, or another family member. A plan is considered creditable if it is at least as good as the basic federal plan, and the employer or union providing the coverage will notify you each year if the coverage is creditable.

Unlike Part B, this exemption from late penalties is not limited to plans through a spouse, and there is no requirement that your spouse must be currently working. Creditable plans may include retirement health benefits and COBRA coverage.

For more information, see:

[www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances/join-plan-special-circumstances.html](http://www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances/join-plan-special-circumstances.html);

Centers for Medicare and Medicaid Servs., *Medicare & You*, at [www.medicare.gov/Pubs/pdf/10050.pdf](http://www.medicare.gov/Pubs/pdf/10050.pdf);

Social Security, *Medicare*, at [www.socialsecurity.gov/pubs/media/pdf/EN-05-10043.pdf](http://www.socialsecurity.gov/pubs/media/pdf/EN-05-10043.pdf).

#### What if I have been receiving employment-based domestic partnership benefits through my partner, but we have no state-wide legal status? Can I avoid late penalties when I enroll in Part D?

Yes. Medicare Part D requires only that you have creditable coverage, regardless of the source.

#### If I have been on my spouse's health plan and that coverage is about to end, when can I enroll in Medicare Part D?

If you didn't sign up during the initial enrollment period (the seven months surrounding your 65<sup>th</sup> birthday) because you were covered by your spouse's employment-based group health plan, you are eligible to enroll during a special enrollment period. This special enrollment period lasts 63 days, and if you are not receiving Part D coverage before it ends, there may be a late penalty. If you miss the deadline for enrolling during the special enrollment period, you may enroll during the general enrollment period of October 15-December 7.

For more information, see:

[www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances/join-plan-special-circumstances.html](http://www.medicare.gov/sign-up-change-plans/when-can-i-join-a-health-or-drug-plan/special-circumstances/join-plan-special-circumstances.html);

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Social Security, *Medicare*, at [www.socialsecurity.gov/pubs/media/pdf/EN-05-10043.pdf](http://www.socialsecurity.gov/pubs/media/pdf/EN-05-10043.pdf).

### How do I enroll in Medicare Part D if I have been on my spouse's health insurance?

You can enroll by phone at 1-800-633-4227, online at [www.medicare.gov/find-a-plan/questions/enroll-now.aspx](http://www.medicare.gov/find-a-plan/questions/enroll-now.aspx), or through the website or phone number of the plan of your choice. You can find information about available plans in your area on Medicare's website.

## COMBINING SPOUSAL INCOME FOR MEDICARE PREMIUMS

### How does having a spouse affect how much I pay for Medicare?

A couple's income is considered jointly in determining the amount of your premium for Parts B and D. Although most people pay the standard premiums for Part B and Part D every month, if your income is above a certain amount, you may pay more. For single individuals, the threshold for having to pay more is \$85,000, but if you have a spouse, the threshold for having to pay more is \$170,000 combined. The premiums continue to increase at varying higher income levels, with different amounts for individuals and spouses.

### How are my Part B and Part D premiums calculated if I am married?

If you are recognized as spouses (see the section above on who is recognized as a spouse for Medicare purposes), your premium is based on your and your spouse's modified adjusted gross income (MAGI), as reported on your IRS tax return from two years ago. Your MAGI is your adjusted gross income plus your tax exempt interest income.

**CAUTION:** *For some people, having your MAGI considered together with your spouse will lower your premium, while for others, it will raise your premium. For more specific information about income thresholds and increased premiums, see Social Security, Medicare Premiums: Rules for Higher-Income Beneficiaries, at [www.socialsecurity.gov/pubs/10536.pdf](http://www.socialsecurity.gov/pubs/10536.pdf).*

### Two years ago, DOMA forced me to file as "single." How will Medicare consider our income together?

Even if you weren't recognized as married two years ago, Medicare will combine the MAGI on the tax return you filed as "single" with the MAGI on the tax return your spouse filed as "single" to determine your joint income. If you amend your federal income tax returns (see Tax Fact Sheet), and the amended returns change your MAGI, notify Social Security, sending them a copy of the amended return you filed and the receipt from the IRS. Social Security should update its records and make adjustments. See Social Security, *Medicare Premiums: Rules for Higher-Income Beneficiaries*, at [www.socialsecurity.gov/pubs/10536.pdf](http://www.socialsecurity.gov/pubs/10536.pdf).

**CAUTION:** *Be aware that even if you do not notify Social Security, any amendments you make to past tax returns may have ramifications for your premium amounts. Each fall, Social Security seeks verification of income from the IRS to determine the next year's premiums. If the Social*

*Security Administration finds any differences between the information the IRS provides and that which they have used previously, it is possible they will alter your monthly payment amount. See Social Security, Medicare Annual Verification Notices: Frequently Asked Questions, at [www.socialsecurity.gov/pubs/EN-05-10507.pdf](http://www.socialsecurity.gov/pubs/EN-05-10507.pdf). Consult with tax and other counsel about your specific situation.*

### What if I have already been paying higher premiums based on my own income, and my premiums would have been lower if DOMA hadn't prevented me and my spouse from being considered jointly? Can I get my premiums adjusted?

Maybe. There is a process for requesting a new decision about your income-related monthly adjustment amount if you can show that your income has changed due to a change in marital status, but it is unclear how the Social Security Administration will be considering DOMA's unconstitutionality in this regard. Regardless of whether you may be able to make adjustments to your past premiums, it should be clear that your amount can be adjusted going forward. For more information about making these requests, see Social Security, *Medicare Premiums: Rules for Higher-Income Beneficiaries*, at [www.ssa.gov/pubs/EN-05-10536.pdf](http://www.ssa.gov/pubs/EN-05-10536.pdf).

## COMBINING SPOUSAL INCOME FOR PROGRAMS TO ASSIST WITH MEDICARE COSTS

### How does having a spouse affect my ability to get help paying for Medicare?

A couple's income is considered jointly in determining whether you are eligible for assistance with paying Medicare costs, including premiums, deductibles, and prescription co-payments. Couples with limited income and resources may qualify for the Extra Help program, which assists in paying for the costs of Part D, assistance estimated to be worth about \$4,000. To qualify for Extra Help, an individual's resources must be limited to \$13,300 and his or her income must be limited to \$17,235. For spouses living together, their resources must be limited to \$26,580 and their joint income must be limited to \$23,265.

Many couples who qualify for Extra Help may also be eligible for Medicare Savings Programs, which are state-run programs administered through Medicaid that provide assistance with Part A and B premiums, deductibles, and co-pays. See our fact sheet on Medicaid for more information on being recognized as a spouse for that program, and see [www.medicare.gov/your-medicare-costs/help-paying-costs/medicare-savings-program/medicare-savings-programs.html](http://www.medicare.gov/your-medicare-costs/help-paying-costs/medicare-savings-program/medicare-savings-programs.html) for more general information on Medicare Savings Programs.

### How do I qualify for Extra Help if I have a spouse?

To qualify for Extra Help:

- You must live in one of the fifty states or Washington, DC;
- You must be considered a spouse based on the law of the state where you live at the time of application; and
- If you are living with your spouse and you have no other dependents,
- Your combined income must be less than \$22,695, AND
- Your combined resources must be less than \$26,120.

See the section above on who is recognized as a spouse for Medicare purposes. Resources considered in this evaluation include money in a

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checking or savings account, retirement accounts, stocks, bonds, mutual funds, or real estate other than your primary residence. They do NOT include the value of your primary residence, your cars, personal property (like jewelry, clothes, and furniture), burial expenses, or life insurance.

There are also some circumstances where you may have higher income, but still qualify for Extra Help. For more information, *see* Social Security, *Understanding the Extra Help With Your Medicare Prescription Drug Plan*, at [www.socialsecurity.gov/pubs/EN-05-10508.pdf](http://www.socialsecurity.gov/pubs/EN-05-10508.pdf); [www.ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/1435/-/income-and-resource-requirements-for-the-extra-help-with-prescription-drug-costs](http://www.ssa-custhelp.ssa.gov/app/answers/detail/a_id/1435/-/income-and-resource-requirements-for-the-extra-help-with-prescription-drug-costs).

### How do I apply for Extra Help?

To enroll, you can call Social Security at 18007721213, enroll online at [www.socialsecurity.gov/extrahelp/](http://www.socialsecurity.gov/extrahelp/), or make an appointment at your local Social Security Office, which you can find at [www.secure.ssa.gov/ICON/main.jsp](http://www.secure.ssa.gov/ICON/main.jsp).



## FOR MORE INFORMATION, CONTACT

### LAMBDA LEGAL

[lambdalegal.org](http://lambdalegal.org)

### AMERICAN CIVIL LIBERTIES UNION

[aclu.org/lgbt](http://aclu.org/lgbt)

### GAY & LESBIAN ADVOCATES & DEFENDERS

[glad.org](http://glad.org)

### NATIONAL CENTER FOR LESBIAN RIGHTS

[nclrights.org](http://nclrights.org)

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