



Board of Pensions
Evangelical Lutheran Church in America
God's work. Our hands.

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MEMO

DATE: February 10, 2010

TO: Board of Trustees

FROM: Robert H. Rydland, Vice President & General Counsel

SUBJECT: Same Gender Plan Amendments

History

At the August, 2009 ELCA Churchwide Assembly in Minneapolis, the voting members of the assembly adopted 676-338 — precisely two-thirds of those voting — “Human Sexuality: Gift and Trust,” the ELCA’s 10th social statement, with minor editorial amendments. The assembly adopted four resolutions that commit the ELCA to bear one another’s burdens and respect bound consciences in these matters; to allow congregations that choose to do so to find ways to recognize and support lifelong, monogamous, same gender relationships and hold them publicly accountable; and to find a way for people in such relationships to serve as rostered leaders in the ELCA. The fourth resolution points toward a specific way to allow rostering while respecting bound consciences. It also adopted a series of implementing resolutions with amendments. Implementing Resolution #7 for the social statement reads *To call upon the ELCA to amend the eligibility provisions of the ELCA Pension and Other Benefits Program, consistent with the policies of this church.*

The relevant policies are spelled out in several documents of this church that guide candidacy, call, and discipline. They are "Vision and Expectations" for each of the rosters, "Guidelines and Definitions for Discipline," the "Candidacy Manual," and the "Manual of Policies for Management

of the Rosters." These documents are being revised as directed by the Churchwide Assembly and will be approved as appropriate by the ELCA Church Council. The revisions need to be consistent with the governing documents of this church. In addition, other guidelines may need to be developed. Specific language is being developed by the appropriate churchwide committees and units in consultation with the Conference of Bishops. The Church Council has the responsibility to approve all final language. The next Church Council meeting is April 2010.

Board of Pensions' Action

The Board of Pensions has committed to being able to enroll eligible same gender partners within 30 days of Church Council approval of the church's policies. Because the Board of Trustees does not meet again until August, plan amendments must be approved at the February meeting in anticipation of the Church Council's approval of the policies and other documents implementing the Human Sexuality social statement. If Church Council action makes additional plan amendments necessary, a mail vote will be undertaken so that eligible same gender partners can enroll in the Pension and Other Benefits Program by mid-May 2010.

Our guiding principle as we implement resolution #7 is to treat an eligible same gender partner the same as we treat a spouse to the extent possible under each plan, and as permitted by federal law. For example, the federal Defense of Marriage act prohibits same gender partners from having tax-free treatment of employer-paid health coverage unless the partner qualifies as the member's tax dependent.

The Board of Pensions is not expanding the Pension and Other Benefits Program to offer benefits to those in opposite gender (heterosexual) partnerships. Because heterosexual partners can get married, extending benefits to them is not being considered at this time.

Plan Amendments

Amendments required by the implementation of resolution #7 will be covered in detail in the Products & Services Committee meeting. However, because of the importance of these amendments and the possibility that written trustee action approving further plan changes may be necessary following Church Council action at its April meeting, we feel it is important the entire Board of Trustees is familiar with the proposed amendments.

- ELCA Medical and Dental Benefits Plan. The ELCA Medical and Dental Benefits Plan is being amended to allow an eligible same gender partner (one who meets the requirements established by the ELCA Board of Pensions as evidenced in an Affidavit of Partnership filed with the ELCA Board of Pensions) benefits similar to those of a spouse of a married member. The eligible same gender partner and his/her children are eligible to be covered under the health plan. If they qualify as the member's tax dependents, the value of the employer-paid cost of coverage will not be taxable income to the member. If the partner and his/her children are not tax dependents, the dollar value of the cost of coverage will be imputed income to the member.

In order to evidence the public accountability requirement of an eligible same gender partnership, we are requiring the Affidavit of Partnership to be acknowledged by the member's bishop (for clergy and rostered lay) or sponsoring employer (for non-rostered active lay employees). The Affidavit must be submitted to the Board of Pensions within 60 days of its completion.

If the member's eligible same gender partner has group health coverage through his/her employer, the member and his/her partner can waive coverage under the ELCA Medical and Dental Benefits Plan.

The member must notify the ELCA Board of Pensions within 60 days after a partnership ends by filing an Affidavit of Dissolution of Partnership. The eligible former partner and any eligible children may continue health coverage at the former partner's expense for up to 36 months after a partnership terminates, as long as the former partner elected to continue the coverage within 60 days of the Affidavit of Dissolution being filed. A surviving partner can continue health coverage for his/her remaining lifetime.

An eligible same gender partner may take the health risk assessment and complete various health related activities in order to earn up to \$450 personal wellness dollars that are deposited into the member's personal wellness account. Reimbursements from the personal wellness account can only be made to the member and his/her tax dependents. Therefore, if the partner is a tax dependent, his/her medical expenses can be reimbursed from the member's personal wellness account.

- ELCA Flexible Benefits Plan. The ELCA Flexible Benefits Plan allows members to set aside pre-tax dollars to pay for eligible health care and dependent care expenses incurred throughout the year. The Internal Revenue Code only allows the member and his/her tax dependents to be reimbursed from these flexible spending accounts. Therefore, if a partner is a tax dependent, his/her health care or dependent care expenses can be reimbursed from the member's flexible spending accounts.

- ELCA Retirement Plan, ELCA Master Institutional Retirement Plan. These Plans were amended to include the requirement for eligible same gender partner written consent if the member wants to name a beneficiary other than the same gender partner as sole primary beneficiary, if the member wants to take a single life annuity, and when a member requests withdrawals. If the member dies with no beneficiary designated, the surviving eligible same gender partner would be the beneficiary, followed by the member's (not the eligible same gender partner's) children. An eligible same gender partner would be allowed access to Plan information such as the member's account balance.

Although federal law generally gives a former spouse the right to an interest in a portion of the member's retirement plan account (through the use of a Qualified Domestic Relations Order – a QDRO), a former partner has no federal right to a portion of the member's retirement plan account if the partnership ends.

The Evangelical Lutheran Good Samaritan Society has asked us not to include same gender partner amendments in its retirement plan.

- ELCA Survivor Benefits Plan. This Plan pays a lump sum death benefit to a designated beneficiary, and also provides monthly surviving spouse and surviving children benefits (for children under the age of 21). If the member dies with no beneficiary designated, the surviving eligible same gender partner would be the beneficiary, followed by the member's (not the eligible same gender partner's) children. An eligible same gender partner and his/her children living in the member's household at the time of the member's death would be eligible to receive survivor benefits.

- ELCA Disability Benefits Plan. This Plan is designed to pay monthly benefits to members who become disabled while working, and also covers the cost of health coverage for the member, his/her spouse and eligible children. An eligible same gender partner and his/her dependents covered under the health plan at the time of the member's disability would be eligible to have the cost of health coverage paid by the Disability Trust. The Plan contains a provision that if the member is incapacitated and cannot care for his/her own affairs, the disability benefit can be assigned to the family. An eligible same gender partner is included in the definition of family member for this purpose.

Affidavits of Partnership and Dissolution of Partnership

Because only a few states formally recognize same gender marriage, the Board of Pensions believes it is important to have affidavits on file evidencing the existence of a same gender partnership and dissolution of partnership. The Affidavits contain important information for the member and partner regarding possible tax consequences of the benefits provided and the legal implications of signing the affidavit.

These affidavits are not part of a plan and therefore can be revised as necessary without Church Council or Board approval.