

# GLBT Elders

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Family policy issues affecting GLBT elders include unequal treatment under income support programs, caregiving issues, and anti-gay bias in senior centers, nursing homes, and long term care facilities. Many of these inequalities require changes in federal law, but state legislators and state-level activists can lobby for and effect changes by influencing the disbursement of federal funds through Area Administrations on Aging (AAAs), which distribute Older Americans Act funds at the local level. Although many services have been created to meet the unique needs of older Americans, GLBT elders often feel that they must stay closeted to gain access to elder services. In a recent study, fully 75 percent of GLBT elders reported not being completely open about their sexual orientation to health-care workers.<sup>448</sup> Discrimination following disclosure of sexual orientation has been reported in nursing homes, senior centers, domestic violence centers and other care settings.<sup>449</sup>

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## INCOME SUPPORT PROGRAMS

### Social Security

Nearly two-thirds of U.S. retirees rely on Social Security for more than half of their annual income; for 15 percent of seniors, Social Security is their only source of income.<sup>450</sup> But GLBT people in same-sex partnerships are not eligible for the spousal benefit or the survivor benefit. This lack of eligibility costs GLBT elders hundreds of millions of dollars in unaccessed income per year.

Social Security survivor benefits allow widows, widowers and dependent children to put food on the table, and provide a sense of fairness when an employee pays into the system his or her whole life, but dies before being able to enjoy these retirement sav-

ings. But same-sex partner survivors are not eligible for these benefits. In 1998, 781,000 widows and widowers received an average of \$442 a month in survivor benefits, a total of \$4.1 billion dollars that year (Social Security Administration). If only 3 percent of the total population of seniors who survived their life partner are gay, lesbian, or bisexual same-sex partners, the failure to pay survivor benefits costs these seniors about \$124 million a year. The September 11 attacks illustrated the unfairness of this policy, as same-sex survivors of victims were denied survivor benefits as well as funds from the victims compensation fund administered by the U.S. Justice Department.

The spousal benefit allows husbands and wives to receive an amount equal to 50 percent of their spouse's monthly Social Security check, if that amount is higher than what their own earnings would make them eligible for each month. In marriages where one spouse earns significantly more than the other and/or has a longer work history, taking the spousal benefit instead of the individual's own payment makes sense. However, same-sex partners are not eligible for the spousal benefit.<sup>451</sup>

### **Unequal Treatment Under Pension Regulations**

Because GLBT people can still be discriminated against in employment in most of the country, and because same-sex couples are not treated equally under Social Security, pension income is an important policy issue affecting GLBT elders. For workers with defined-benefit pensions, their same-sex partners do not receive the same legal protections provided to married spouses. The Retirement Equity Act of 1984 created spousal rights to a worker's pension benefits while both are living and after the worker's death. Though such rights can be waived, the measure was intended to protect widows or widowers from severe loss of income. The same-sex partner of a pension plan participant cannot claim such rights; the pension wealth belongs to the worker alone. When a retired worker dies, gay or straight, the remaining pension wealth can be distributed to a named non-spouse beneficiary. Thus, a surviving same-sex partner can inherit pension proceeds. However, certain tax rollover treatment for these distributions—a significant advantage—is only available to a legal, opposite-sex spouse.

If a person dies after becoming vested in a pension plan, but before reaching the age of retirement, a legal spouse is entitled to plan benefits beginning in the year that the deceased would have started receiving the pension. Or the spouse can take a lump-sum distribution and roll the amount over into an Individual Retirement Account (IRA) where it maintains its tax-deferred status. A surviving same-sex partner, again, can be a named beneficiary of the pension upon the participant's death, but the proceeds are not tax favored. If no one is named as a beneficiary, a same-sex partner would not receive the pension benefits, but rather the deceased's "intestate heirs," or next of kin such as parents or siblings, would. In contrast, a spouse would be considered the deceased's heir and would be entitled to the pension benefits.

### **Unequal Treatment Under 401(k) Regulations**

If a person with a 401(k) plan dies, the tax implications for the beneficiary depend on whether or not the beneficiary is a legal spouse. If the beneficiary is a legally married spouse, then he or she may roll over the total amount of the distribution into an IRA with no income tax implications. (There may also be estate taxes depending on the size of the decedent's estate and inheritance taxes in those states where applicable.) The spouse can maintain the funds in an IRA until he or she turns 70<sup>1/2</sup>, the age at which

withdrawals from retirement accounts become mandatory. However, if the surviving beneficiary is a same-sex partner who is unable to legally marry, the pension distribution is subject to a 20 percent federal withholding tax.<sup>452</sup>

The effect of this unequal treatment is striking. Assume that Deborah dies at age 50 with \$100,000 in her 401(k) account, which she leaves to her life partner, Pat, also age 50. Pat will receive the sum less taxes (at least \$20,000), for a total of \$80,000 or less. Pat is not able to roll the sum over into a tax-free IRA. If Pat were a man and Deborah's widower, Pat would receive the full \$100,000 and be able to shield it from income taxes until age 70-1/2. The survivor of the legally married couple would have a nest egg to invest which is at least 25 percent larger than that of the surviving partner in the same-sex couple. The nest egg could grow in a tax-deferred account until the maximum age of disbursement for the surviving spouse in a legally married couple. The surviving partner of the same-sex couple, however, would not be able to roll the initial disbursement into an IRA. Over 20 years time, this unequal treatment could add up to cost the surviving lesbian partner tens of thousands of dollars in potential retirement income.

Unequal treatment of same-sex couples under Social Security and retirement plan regulations denies GLBT elders access to funds to which they are entitled, from systems they pay into throughout their working lives, but which they cannot access due to the heterosexism of current policies. These unaccessed income sources could help ensure economic security in old age.

There is majority public opinion support for treating same-sex couples equally in Social Security (57 percent in a 1997 poll) and inheritance rights (62 percent).<sup>453</sup> A 2001 poll conducted by the Kaiser Family Foundation reported even higher levels of support for access to Social Security benefits (68 percent) and equal inheritance rights (73 percent).<sup>454</sup> In addition, in January 2002 the Democratic National Committee called for equal treatment of same-sex couples by the Social Security Administration. Those concerned with fair treatment of GLBT elders, including mainstream aging advocacy organizations, should support the GLBT community's push for such equal treatment.

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## SENIOR SERVICES AND SENIOR CENTERS

The federal Older Americans Act (OAA) provides funds for home-based and community-based services to seniors.<sup>455</sup> This Act enables the provision of a wide range of services to people over 60, including social services, in-home services, community services and caregiving services. Funds are awarded each year through a National Aging Network composed of 57 state units on aging, 661 Area Agencies on Aging (AAAs), and 222 tribal organizations, all of which coordinate programs through 27,000 community based service providers.<sup>456</sup> In order to access the funds through the Older Americans Act, Area Agencies on Aging are required to submit an area plan to the federal Administration on Aging. This plan, which includes community input and comment, is an assessment of the service needs for elders in a particular jurisdiction and justifies allocation of funds for the proposed services. GLBT activists should lobby and participate in their local AAAs to ensure equal access to senior services.

Few agencies specifically address the social service needs of GLBT elders. Some, like Senior Action in a Gay Environment in New York, do heroic work with few resources. Mainstream aging service providers could do more to serve GLBT clients. A 1994 study of 24 Area Agencies on Aging and 121 lesbian and gay elders aged 60 and older who lived in those 24 regions found that AAAs have a long way to go in providing services to gay and lesbian seniors. Almost all of the AAAs (96 percent) did not offer any services specifically designed for gay, lesbian, bisexual and transgender elders, and did not target outreach efforts to GLBT seniors. Only 17 percent reported staff training in the area of sexual orientation, but half said they thought there was a need for such training and 88 percent said they would be willing to provide an in-service training to staff were it available.<sup>457</sup> Despite this apparent willingness to address the problem, this study of New York State Area Agencies also found that 46 percent of the AAAs interviewed reported that gay and lesbian elders would not be welcome at the senior centers in their areas if their sexual orientation were known. Although things have likely improved since the mid-1990s, outreach to GLBT seniors and cultural competency training would make senior centers and senior services more likely to be accessed by GLBT seniors.

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## LONG TERM CARE ISSUES

### Anti-GLBT Bias in Nursing Homes

Heterosexism and homophobia (and presumably biphobia and transphobia) are widespread in nursing homes, and are symptomatic of a larger sexphobia often associated with those providing services to seniors. In addition to isolation, many GLBT people experience actual abuse from care providers. Few service providers have instituted policies to address this homophobic behavior, leaving some GLBT elders in hostile and dangerous environments.

The staff in one nursing home refused to bathe a resident because they did not want to touch “the lesbian,” and a home care assistant threatened to “out” a gay client if he reported her negligent care.<sup>458</sup> A random survey of social workers in New York State uncovered disturbing attitudes among nursing home staff toward lesbian and gay residents.<sup>459</sup> The majority (52 percent) reported intolerant or condemning attitudes toward lesbians and gay men specifically. An additional 38 percent, however, simply avoided answering the question about homosexuality at all, leaving the impression of a less than accepting attitude. Of the 29 nursing homes represented in the study, only one offered formal training to staff on sexuality and the rights of residents to express themselves sexually. One respondent commented that her nursing home does not allow same-sex partners, stating, “It’s part of the admissions requirements.”<sup>460</sup>

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Gay, lesbian and bisexual elders entering assisted living facilities and other institutions are often presumed to be heterosexual and may feel compelled to

hide their sexual orientation. Long-term relationships may be devalued and unrecognized.<sup>461</sup> Assisted living centers, congregate housing and home health care services need to take proactive steps to minimize discrimination, abuse and neglect directed at GLBT elders. Caregivers should be trained to be competent in issues of sexuality and gender. Diversity training is critical given documented examples of bias among senior care providers.

Nursing homes should also include detailed sexuality policies within residents' rights policies, and accommodate the appropriate, private expression of the sexual needs of residents, be they homosexual, bisexual or heterosexual. Nursing home staff should also be trained to understand and better serve the needs of GLBT clients.

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## MODEL LEGISLATION

### *Residential Care Facilities for the Elderly*

California Regulations For Residential Care Facilities For The Elderly:

#### Section 87118--NONDISCRIMINATION

- (a) All licensed facilities shall receive persons on a nondiscriminatory basis according equal treatment and services without regard to race, color, religion, national origin, actual or perceived sexual orientation or ancestry.

NGLTF recommends that this language be expanded to include gender expression and identity.

### **Unequal Treatment Under Medicaid Regulations Regarding Nursing Home Stays**

Because they lack long term care insurance, most seniors who enter nursing homes experience a crisis in their care as well as personal finances. Often seniors who enter nursing homes spend all of their assets on their care, and then simply apply for Medicaid when they have next to nothing left, a phenomenon known as the "Medicaid spend-down."

Medicaid regulations allow one member of a married heterosexual couple to remain in the couple's home for the rest of his or her life without jeopardizing his or her spouse's right to Medicaid coverage. Upon the survivor's death, the state may then take the home to recoup the costs of terminal care. However, since same-sex couples cannot marry, Medicaid regulations do not offer the same protection for same-sex partners, even if they have spent their entire adult lives together. This unequal treatment can force same-sex couples into a Hobson's choice between giving up a home and life's savings in order to get medical coverage to meet a partner's health care needs versus forsaking medical coverage in order to keep the home and savings. Medicaid regulations should be changed to treat same-sex couples equally to married heterosexual couples. Same-sex partners should be able to remain in their home without jeopardizing their partners' right to Medicaid coverage.<sup>462</sup>

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## CAREGIVING

Most seniors turn to their families of origin for support in their old age. Surveys have shown that family members and close friends—usually spouses, daughters and daughters-in-law—provide the majority of caregiving to elderly people in this country.<sup>463</sup> In fact, women are both the majority of caregivers—including 70 percent of unpaid caregivers—and the majority of care recipients.<sup>464</sup> The Administration on Aging has reported that 67 percent of American seniors live with a spouse or other relative and less than a third live alone.<sup>465</sup>

People without children may be less likely to have caregivers that are willing and able to provide long-term care for an extended period. This could be particularly problematic for gay men—and to a lesser extent, lesbians—as they age, since they are less likely than heterosexual men to have children. Formal sources of care are often prohibitively costly. Moreover, public programs generally offer inadequate coverage or require participants to deplete their financial resources in order to gain eligibility. Partners who act as caregivers might not be eligible to take leave from work and may encounter difficulties in obtaining information from hospitals or nursing home staff if they are not viewed as “immediate family.” Individuals might also have primary caregivers who are close friends, relatives or partners who live separately. Legislative and institutional policies created to support caregivers should recognize that individual choice in naming caregivers is an important component of care plans and that the chosen caregiver may or may not be the individual’s next of kin or partner.

Anecdotal evidence indicates that GLBT children often serve as the primary caregivers for their elderly parents, as their heterosexual siblings are busy raising families of their own and gay siblings—sometimes closeted—are viewed as “single.” One-third of respondents in one recent study of GLBT seniors said that due to their sexual orientation (and, presumably, the non-recognition of their partner) family members expected them to provide more of the family care.<sup>466</sup> So aging GLBT people may actually have heavier caregiving burdens than aging people in general. In focus groups that NGLTF and Pride Senior Network conducted with GLBT seniors across New York City in 2000, many GLBT people reported frustration and resentment at heterosexual siblings who look to them to provide primary care for ailing elderly parents because they are—often falsely—seen as “single,” while heterosexual siblings are presumed to be busy with a married partner and/or children. These experiences can shape GLBT seniors’ expectations, fears and anxieties about their futures as caregivers.

Among the 341 New York City GLBT people 50 and older surveyed by Pride Senior Network and NGLTF through the elder caregiving study, 20 percent had children, and 7 percent had grandchildren. Lesbian and bisexual women were more likely to have kids and grandkids compared with gay and bisexual men—30 percent and 10 percent respectively. Nearly two thirds lived alone, and 40 percent were partnered, with the women more likely to be partnered than the men. Eight percent reported currently needing caregiving assistance, while 19 percent had needed it in the past.<sup>467</sup>

Forty five percent were currently providing care to a member of their family of origin (usually parents) or to partners or friends. Eighteen percent were providing care to a family of origin member, 23 percent to a family of choice member (partners and friends), and 4 percent to both. Women were twice as likely as men to provide care to a family of origin member. In general those with partners said they would go to their partners first for caregiving needs; those without partners said they’d go to friends first.<sup>468</sup>

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## POLICY RECOMMENDATIONS

- *Enact laws and regulations that prohibit discrimination based on sexual orientation or gender expression and identity in public accommodations, including senior centers, receipt of senior services, and long term care facilities.*
- *In the absence of state- or federal-level nondiscrimination legislation, incorporate nondiscrimination language into all legislation and policy concerning health care, social services, senior centers and senior services.*
- *Fund outreach and programming for GLBT seniors throughout each state.*
- *Include the concerns of GLBT seniors within the annual plans of Area Agencies on Aging.*
- *Require and fund GLBT competency trainings for senior service providers, including case managers, senior center staff, home care workers, assisted living and nursing home staff.*
- *Enact legislation allowing for domestic partners and other caregivers to take family leave to care for someone.*
- *Broaden the definition of caregiver to any person named by an individual receiving care and create programs to support caregivers.*
- *End discrimination against same-sex couples in the areas of health care benefits, Social Security benefits, disability benefits, pensions and 401(k) plans.*

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## CONCLUSION

Homophobia, biphobia, transphobia and neglect appear widespread in nursing homes. GLBT elders also experience similar attitudes in senior services and health care. They may have particular caregiving issues, as they are less likely to have children, who provide the bulk of informal caregiving to elders in the United States. Finally, income support programs and Medicaid regulations discriminate against same-sex relationships. Policymakers and elder services advocates should incorporate the particular needs of GLBT elders into their efforts and push for equal treatment of seniors in same-sex relationships.

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## CHAPTER NOTES

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