

Policy Issues Affecting Lesbian, Gay, Bisexual, and Transgender People in Retirement

By Sean Cahill and Ken South

Although they share many of the same human needs and concerns with their heterosexual peers, gay and lesbian elders often experience particular barriers as well. Those barriers include discrimination; unequal treatment under Social Security, pension plans, and 401(k)s; and concerns related to housing, healthcare, and long-term care.

The lesbian, gay, bisexual, and transgender (LGBT) elderly population, currently estimated at from 1 million to 3 million people, will increase to between 4 million and 6 million by 2030 (Cahill, South, and Spade, 2000). We can only estimate because most research does not ask about sexual orientation or gender identity. Gerontologists and government researchers could capture much needed information on gay elders by adding a standard sexual orientation "self-identifier" to all surveys.

Many gerontologists do acknowledge the need for more research on LGBT elders. But the limited research that does exist indicates that older gay people tend to live out the last

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decades of their lives very much as they have lived the middle decades. Several studies point to a phenomenon called "crisis competence," whereby the stress and pain of living through years as the targets of homophobia and discrimination do serve to prepare gay elders

for the stresses of getting old. In addition, LGBT baby boomers— "out" for most of their lives—are increasingly unwilling to retreat to the closet when they encounter homophobia in aging services.

Most gay people of all ages have experienced both "heterosexism" and homophobia. The psychologist Gregory Herek defines heterosexism as "an ideological system that denies, denigrates and stigmatizes any non-heterosexual form of behavior, identity, relationship or community." Homophobia is the fear or hatred of lesbian and gay people based on perceived or actual sexual orientation (Herek, 1992). People also experience gender-related bias because they do not fit into expected male-female gender roles (Green, 1994).

People acting out antigay bias may use derogatory language, engage in discriminatory behavior, or even perpetrate violence against LGBT people. Heterosexist attitudes and assumptions can interfere with the well-being and happiness of LGBT elders. As gay people grow older and rely increasingly on public programs and social services for care and assistance, they may become less independent from heterosexist institutions and peers. The fear of experiencing discrimination can reinforce social isolation and keep gay elders from making use of healthcare and other services.

Gay elders often experience homophobia in senior services. For example, in a 1994 study, 46 percent of New York state's Area Agencies on Aging (AAAs)—the regional entities that distribute federal funds for senior services—reported that openly gay and lesbian elders would not be welcome at senior centers in their areas. And only 19 percent of the lesbian and gay elders interviewed had any involvement with their local senior center (Lesbian and Gay Aging Issues Network, 1994).

INCOME SUPPORT PROGRAMS

Gay and lesbian elders have various problems in relation to the traditional income support mechanisms of Social Security, pension plans, and plans like 401(k)s.

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 elders, Social Security is their only source of income (Liu, 1999). But lesbians and gay men in same-sex partnerships are not eligible for the spousal benefit or the survivor benefit that Social Security offers to their heterosexual counterparts. This lack of eligibility costs lesbian and gay elders hundreds of millions of dollars in unaccessed income every year.

Social Security survivor benefits allow widows, widowers, and dependent children to put food on the table when the beneficiary dies. These benefits provide not only needed resources, but also 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 savings. But gay and lesbian survivors are not eligible for Social Security survivor

benefits. In 1998, some 781,000 widows and widowers received an average of \$442 a month in survivor benefits, a total of \$4.1 billion that year (Social Security Administration, 2002). If only 3 percent of the total population of elders who have survived their life partner are gay or lesbian, the failure to pay survivor benefits costs gay elders about \$124 million a year.

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 in which one spouse earns significantly more than the other or has a longer work history, taking the spousal benefit instead of the individual's own payment makes sense. However, people in same-sex relationships have no such option because they are not eligible for the spousal benefit.

Pension plans. Because LGBT people can still be discriminated against in employment in most of the country, and because gay couples are not treated equally under Social Security, pension income is a particularly important policy issue affecting gay elders. Social science research indicates that, contrary to a widely held stereotype of gay affluence, gay men and lesbians earn no more than heterosexual men and women. Gay men earn about 15 to 25 percent less than heterosexual men. Lesbians earn the same as heterosexual women, but because women on average earn less than men, households that consist of lesbian couples earn significantly less than households of heterosexual couples (Badgett and Lee, 1995; Klawitter and Flatt, 1998; Allegretto and Arthur, 2001). Many transgender people suffer from significant economic hardship.

For workers with defined-benefit pensions, their gay partners do not receive the same legal protections provided to married spouses in similar situations. (Different types of these plans exist, but all have important features in common.) 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 unmarried partner of a pension plan participant

cannot claim such rights; the pension wealth belongs to the worker alone. Upon the death of the pension plan participant, the remaining pension wealth can be distributed to a named nonspouse beneficiary. Thus, a surviving gay partner can inherit pension proceeds. However, certain tax rollover treatment for these distributions—a significant advantage—is only available to a legal 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 money maintains its tax-deferred status. Again, a surviving same-sex partner can be a named beneficiary of the pension upon the participant's death, but the proceeds are not tax favored.

401(k) plans. 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 legally married to the holder of the 401(k), then the beneficiary 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 some states.) The spouse can maintain the funds in an IRA until he or she turns 70½, the age at which withdrawals from retirement accounts become mandatory. However, if the surviving beneficiary is a same-sex partner, the pension distribution is subject to a 20 percent federal withholding tax (AARP, 2002).

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, Patricia, 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, Pat and Deborah could have chosen to marry, and, as Deborah's widower, Pat would now receive the full \$100,000 and be able to shield it from income taxes until age 70½. The survivor of the legally married couple would have a nest egg to invest that is at

least 25 percent larger than that of the surviving partner in the same-sex couple, who, of course were not able to legally marry. 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 twenty years' time, this unequal treatment could end up costing 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 gay elders access to funds to which they should be entitled, from systems they pay into throughout their working lives, but which they cannot obtain because of the heterosexism of current policies. These income sources to which they should rightfully be entitled could help ensure economic security in old age.

HOUSING ISSUES

Under the Clinton administration, the practice of the Department of Housing and Urban Development was to make decisions about renting the country's three million subsidized senior apartments without regard to the sexual orientation of applicants. However, this administrative practice lacked the legal force of a written regulation or federal nondiscrimination law. Inclusion of sexual orientation and gender identity in amendments to the Fair Housing Act of 1968 would ban anti-LGBT discrimination in senior housing. Inclusion of sexual orientation in the targeting provisions of the act, along with outreach training for the staff of subsidized senior housing developments and other congregate housing facilities, would help ensure more comprehensive fairness in housing (Freedman and Martinez, 1994).

There are now several gay senior housing projects in various stages of development in Seattle, Boston, and Palmetto and Fort Myers in Florida. While gay senior housing developments can be useful, of course, most units will only be accessible to upper-income people. The housing needs of rural, poor, and middle-income LGBT elders can best be addressed by making all senior housing "gay-friendly" and

passing a federal nondiscrimination law that covers housing as well as employment.

HEALTHCARE

In addition to the need for accessible healthcare and prescription drug coverage, which gay elders share with all older people, LGBT elders may experience bias on the part of their physicians and other healthcare providers and often lack access to health coverage from a partner's work benefits.

Bias in healthcare is widespread. A 1994 study by the Gay and Lesbian Medical Association found that two-thirds of doctors and medical students reported knowing of biased caregiving provided to LGBT patients by medical professionals; half reported witnessing it; and nearly 90 percent reported hearing disparaging remarks about gay, lesbian, or bisexual patients (Schatz and O'Hanlan, 1994).

Assuming LGBT elders can find appropriate care, they must then face the problem of paying for it. For many, Medicare plays an especially important role in covering medical expenses because life-long incomes may be lower than they would be in similar households headed by a heterosexual. One shortcoming of Medicare is, of course, that it does not pay for prescription medications. This lack of prescription coverage is especially harmful for the larger proportion of older gay and bisexual men who are living with HIV/AIDS and need expensive antiretroviral medications. And, while married spouses often take employer-provided health coverage for granted, most employers in the private and public sector do not provide such coverage to same-sex partners.

For all of these reasons, many gay people may enter retirement without having had regular access to healthcare during their lives.

Long-term care. Heterosexism and homophobia are widespread in nursing homes and are symptomatic of a larger reluctance among care providers to address the sexual concerns of older people. Many LGBT older people experience isolation in care facilities as well as actual abuse from care providers. Few facilities have instituted policies to address this homophobic behavior, leaving some LGBT elders in hostile and dangerous environments.

A nursing assistant who enters a room without knocking sees two elderly male residents engaging in oral sex. The two are separated immediately after the assistant notifies her supervisor. Within a day, one man is transferred to a psychiatric ward and placed in four-point restraints. A community health board holds that the transfer was a warranted response to "deviant behavior."

This episode, reported in an article in *Contemporary Long Term Care* (Parsons, 1999), would not surprise anyone familiar with the experiences of LGBT elders. In a society that desexualizes older people in general, the compounding influence of homophobia can create an environment that is truly hostile for these elders.

Homophobia and resultant neglect appear widespread in nursing homes. In a recent survey of nursing home social workers, more than half said their coworkers were intolerant or condemning of homosexuality among residents, while most other respondents avoided answering the question. The staff in one nursing home refused to bathe a resident because they did not want to touch "the lesbian," and a homecare assistant threatened to "out" a gay client if he reported her negligent care (Raphael, 1997).

Gay elders entering assisted living facilities and other institutions are often presumed to be heterosexual and may feel compelled to hide their sexual identity. Long-term relationships may be unrecognized or devalued (Fairchild, Carrino, and Ramirez, 1996). Those in charge of assisted living centers, congregate housing sites, and home healthcare services need to take proactive steps to minimize discrimination, abuse, and neglect directed at LGBT elders. Caregivers should be trained to be competent addressing clients' issues concerning sexuality and gender. Given the evidence of existing bias among senior care providers, such training is essential.

As part of residents' rights policies, nursing homes should include a thorough presentation of policies regarding resident sexuality. These policies should be designed to accommodate the appropriate, private expression of the sexual needs of residents, be they homosexual, bisexual, or heterosexual.

The lack of coverage for long-term care for most LGBT elders constitutes a crisis in their care

as well as their personal finances. Often, elders who enter nursing homes spend all of their assets on 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 couple to remain in the couple's home for the rest of his or her life without jeopardizing the spouse's right to Medicaid coverage. Upon the surviving spouse's death, the state may then take the home to recoup the costs of terminal care. However, same-sex couples cannot marry, and thus these 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 getting the medical coverage to meet a partner's healthcare needs, on the one hand, and keeping the couple's home and life savings. Medicaid regulations should be changed to treat same-sex couples and heterosexual couples equally. A same-sex partner should be able to remain in the couple's home without jeopardizing the other partner's right to Medicaid coverage, as a spouse can do (Dean et al., 2000).

Gay elders may also have particular care needs. Since most caregiving in the United States is provided by biological children, and since gays and lesbians are less likely to have children and appear more likely to live alone in old age, an urgent question presents itself: Who will care for LGBT elders (Rosenfeld, 1999)? LGBT activists and elder policy advocates should address the unmet caregiving needs of gay elders and lobby to open up mainstream caregiving institutions to gay elders. The Medicaid Community Attendant Services and Supports Act could afford gay elders the choice of staying home with caregiving assistance instead of entering expensive institutions. This legislation would also prevent separation from a long-term partner. More choice in long-term-care living options could mean better care for LGBT elders.

CONCLUSION

These facts, studies, and trends clearly indicate that LGBT elders are at a disadvantage in retire-

ment. They have significant barriers to overcome during the planning years simply because they are gay. A society dedicated to equal opportunity must question current policies and practices in all sectors that compromise the opportunities and quality of life for LGBT elders in their retirement years.

Throughout this article we have pointed to the inequalities same-sex couples face compared to the rights and privileges legally married heterosexual couples take for granted; yet, there has been some progress. While same-sex couples are not yet able to be legally married, employers in both the private and public sector are increasingly offering a range of benefits for partners in same-sex, committed relationships. More than 150 Fortune 500 companies currently offer domestic partner benefits, as do almost 4,000 private companies and 158 colleges and universities. Eight state governments also provide some form of domestic partner benefits for their employees, as do 124 municipal governments (Human Rights Campaign, 2002).

Vermont was the first state in the nation to adopt a civil union law, which took effect on July 1, 2000. This historic recognition of same-sex couples allows them to enjoy, at least within the state of Vermont, nearly all the rights and privileges of legally married couples.

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) (Yang, 1999). 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) (*INSIDE-OUT*, 2001). In addition, in January 2002 the Democratic National Committee called for equal treatment of LGBT elders by the Social Security Administration. Those concerned with fair treatment of gay elders, including mainstream aging advocacy organizations, should support the LGBT community's push for such equal treatment. ☺

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