

# How Health Care Reform Will Help LGBT Elders

Kellan Baker • Jeff Krehely

## Introduction

Older lesbian, gay, bisexual, and transgender (LGBT) Americans make up a significant and growing share of the LGBT and over 65 populations. Today LGBT elders are gaining visibility with the aging of LGBT baby boomers, who are the first generation of LGBT people to have lived openly gay<sup>1</sup> or transgender lives in large numbers.

These individuals confront the same challenges as all people who age. But they also face at least three unique barriers and inequalities that impact their financial security, good health and access to health care, and positive engagement with their communities (Movement Advancement Project & Services and Advocacy for Gay, Lesbian, Bisexual and Transgender Elders, 2010).

The first barrier is the effects of social stigma and prejudice, past and present. Historical prejudice against many LGBT elders negatively impacts their connections to their families of origin, their chances of having and raising their own children, and their opportunities to earn a living and save for retirement. This prejudice impedes equal access to health and community services, programs, and opportunities that are critical for their well-being.

The second barrier is reliance on informal “families of choice” for social connections, care, and support. Family members provide about 80 percent of long-term care in the United States, and more than two-thirds of adults who receive long-term care at home depend on family members as their only source of help (Family Caregiver Alliance, 2001). Because LGBT elders are more likely than their non-LGBT counterparts to be single, childless, and estranged from biological family members, they must often rely on friends and other community members as their chosen family (de Vries, 2008). However, government policies, laws, and institutional policies generally prioritize legal and biological family members, and often deny other caregivers the support afforded to opposite-sex spouses and biological family members.

The third barrier is that many laws and programs fail to address—or create extra barriers to—social acceptance, financial security, and better health and well-being for LGBT elders. Safety-net programs and laws intended to support and protect older Americans often fail to provide equal protection for gay and transgender elders. This is largely because these laws and programs

either do not acknowledge or do not provide protections for LGBT elders’ partners and families of choice. They also often fail to address the ongoing stigma and discrimination that result in substandard treatment of LGBT elders.

This article explains how the Affordable Care Act (ACA), which is the health care reform law that Congress passed and President Obama signed into law in March 2010, can help mitigate the health-related problems that the three barriers create. Before the analysis of the ACA, we first present a brief discussion of the health-specific challenges that gay and transgender elders face.

## Health Challenges for LGBT Elders (Krehely & Adams, 2010)

**Inability to access affordable and comprehensive insurance coverage.** LGBT people have lower rates of health insurance coverage than the general population, which is a result of higher costs and outright exclusions from insurance plans. Looking at costs, for example, when employers offer health insurance to the same-sex partner of an employee or retired employee, federal law treats the value of the partner’s insurance as taxable income, and the LGBT retiree must pay income taxes on this benefit. Employers must also pay payroll taxes on the cash value of employee domestic partner benefits. By contrast, married heterosexual couples can receive these benefits tax-free (and employers do not have to pay payroll taxes on them). Taxation of health benefits costs the average employee with same-sex domestic partner benefits \$1,069 more per year in taxes than a married heterosexual employee with the same coverage, while employers pay \$57 million in additional payroll taxes (Badgett, 2007).

Because of this inequity—and the fact that LGBT people are generally less financially secure than others—many LGBT older adults simply are not offered, or cannot afford to receive, these benefits.

In terms of exclusion from plans, transgender elders are particularly disadvantaged in access to both public (i.e., Medicare) and private health insurance coverage. Medicare and most private policies carry specific exclusions for transition-related care, which are sometimes interpreted in practice to deny coverage to transgender people for even basic medical care. In the case of Medicare, the federal Centers for Medicare and Medicaid Services (CMS) have clarified that Medicare covers hormone replacement therapy and routine preventive care such as prostate screenings, mammograms, and pelvic exams, regardless of the gender marker in the individual's Social Security record. However, few providers and transgender patients are aware of these rules or of the existence of a special billing code (condition code 45) developed by CMS to avoid automatic denials of coverage in cases involving apparent gender discrepancies.

Moreover, Medicare specifically excludes coverage for sex reassignment surgery. This exclusion, which is based on a decades-old policy that inaccurately categorizes such services as experimental and cosmetic, certainly hinders access to medically necessary care for transgender elders. But it also encourages private insurers, state Medicaid plans, and the veterans' health care system to continue to allow similar exclusions that target care for transgender people (National Center for Transgender Equality, 2011).

### **Lack of culturally competent health care services.**

Lack of LGBT cultural competency in the health care system means that gay and transgender elders are more likely to delay getting necessary care and prescriptions than their heterosexual and non-transgender peers. They are also more likely to resort to visiting emergency rooms for care, often due to fear of discrimination by doctors and facilities that provide preventive and non-emergency care. Further, transgender people who are visibly gender non-conforming face particular barriers in access to health services, since they cannot choose to disclose their transgender status selectively depending on the attitude of their health care providers.

As with many older adults dealing with the challenges of their aging bodies, LGBT older adults often must rely on professional caregivers during their later years. Such care ranges from home-based services such as health aides or Meals on Wheels, to treatment in clinics, offices, and institutions such as nursing homes or long-term care facilities. Providers along this continuum of caregivers—doctors and pharmacists to hospital and nursing home staff—might be openly hostile towards LGBT elders, untrained to work with them, or unaware that gay and transgender older adults even exist.

Transgender people in particular have grounds to fear discrimination by medical professionals. As noted by the Transgender Aging Network, "Trans individuals' non-congruent' bodies may lead to embarrassing, disrespectful, and perhaps even hostile treatment. [...] Particularly worrisome to many trans older adults is the prospect of needing intimate personal assistance from paid aides or, even worse, needing to reside in a nursing home." (Cook-Daniels, 2007, p.13)

Prejudice and hostile treatment from staff, fellow patients, and other patients' families can create extremely unwelcoming environments for LGBT elders. In response, they might withdraw or be excluded from social activities, compounding feelings of isolation and loneliness. Staff might deny visitors of whom they disapprove, or an LGBT older adult might feel uncomfortable having a same-sex partner or LGBT friend visit because it might lead to harassment. Nursing homes also have been known to refuse to allow same-sex couples to share rooms, or to bar partners or other loved ones from participating in medical decision-making. For transgender elders, staff members might refuse to place them in a gender-segregated ward that matches their gender identity, refuse to use appropriate names and pronouns or to provide appropriate clothing, or even perpetrate harassment or violence against the transgender patients in their care. These issues become even more severe when patients are mentally or physically incapacitated and unable to advocate for themselves.

**Health disparities.** Governments and service providers rarely track and, as a result, are largely unaware of the health disparities that many LGBT older adults experience. However, the limited available data suggest that later life carries unique health challenges for LGBT persons in areas that include HIV/AIDS, mental health, and chronic health conditions.

**HIV/AIDS.** HIV diagnoses among those over age 50 are on the rise, and the proportion of people living with AIDS in that age group is now more than double that of people under age 24. Yet there are almost no HIV prevention programs targeted at older adults, and health care providers do not generally talk to their older patients about HIV/AIDS risks. Additionally, older adults might suffer from the long-term effects of drug treatment for HIV/AIDS, such as increased and earlier chances of cognitive decline and increased risk of developing chronic conditions such as kidney failure, severe depression, cancer, and osteoporosis.

**Mental health.** Research shows that gay and transgender people experience high rates of stress, much of which is related to coping with a lifetime of stigma and systematic discrimination. Numerous studies have shown

that the LGBT population experiences higher rates of smoking, alcohol use, drug use, suicide, and depression, and these disparities are exacerbated for LGBT older adults (Cochran & Mays, 2007).

**Chronic health conditions.** Studies indicate higher levels of chronic health problems among LGBT older adults, including asthma, diabetes, HIV/AIDS, obesity, rheumatoid arthritis, and various forms of cancer (Adelman, Gurevitch, de Vries, & Blando, 2006; Barker, 2004; Barker, Herdt, & de Vries, 2006). Gay and transgender people are also less likely than their heterosexual and non-transgender counterparts to receive appropriate screening and preventive care for conditions such as heart disease, cancer, HIV, and depression. Often left undiagnosed and untreated until too late, these chronic conditions cause significant excess morbidity and mortality among LGBT elders.

Another area of concern for transgender elders is the lack of research on the long-term effects of hormone use, as well as on the effects of potential interactions between exogenous hormones and other medications, including HIV medications.

### Health Care Reform's Impact on LGBT Elders

The Affordable Care Act is the most significant and far-reaching reform of America's health system since the creation of Medicare and Medicaid in the 1960s. In particular, the law envisions a much-needed overhaul of the health insurance system through the introduction of new protections and options for consumers in the private health insurance market. The law also expands access to more comprehensive benefits and services that focus on improving our nation's health and lowering health care costs by investing in keeping people healthy in the first place.

The vast range of the ACA's reforms brings much promise for LGBT Americans. Thanks to the ACA, many gay and transgender Americans who were never able to afford health insurance or health care soon will be able to apply for Medicaid or affordable private coverage in every state. They will not be subject to denials of insurance coverage on the basis of pre-existing conditions or to arbitrary rescission of vital coverage when they become ill. The ACA is also key to efforts such as expanding cultural competency in the health care workforce to include LGBT issues, improving data collection to better identify and address health disparities, and recognizing the increasing diversity of America's families. The law also includes numerous other provisions that will specifically help seniors, including LGBT elders (Baker & Krehely, 2011).

### ACA's Impact on Elders

#### **Reduce prescription drug costs in Medicare Part D.**

In 2010, more than 3.5 million seniors who fell into the Medicare donut hole (the gap in coverage for those whose annual drug costs are between \$2,800 and \$4,550) received one-time \$250 rebates. As of January 1, 2011, they are receiving a 50 percent discount on brand-name medications and increased savings on generic drugs, and the law eliminates the donut hole by 2020. Under the ACA, the average senior who hits the donut hole will save an estimated \$700 per year. These provisions provide significant financial relief for LGBT seniors with chronic conditions that require expensive medications, including HIV and AIDS. In addition, costs for medication purchased through the state-based AIDS Drug Assistance Programs (ADAPs) now help low-income elders reach the other side of the donut hole.

**Provide a free annual wellness visit for all Medicare beneficiaries.** As of January 1, 2011, all Medicare beneficiaries are eligible for a free annual check-up with the provider of their choice.

**Provide free Medicare coverage of vital preventive services.** Starting on January 1, 2011, Medicare covers a wide range of preventive screenings and services at no cost. Depending on age and sex, these benefits may include various vaccinations and screenings for conditions such as type 2 diabetes, colorectal cancer, depression, HIV, breast cancer, and osteoporosis.

**Encourage better care coordination.** More than 60 percent of older Americans have at least one chronic condition and are likely to see multiple doctors in order to receive the care that they need. The ACA provides incentives to providers to develop new models of coordinated care to facilitate communication regarding patient history and follow-up, eliminate duplicate tests, reduce hospital readmissions, and improve overall quality of care and patient outcomes.

**Expand coverage for seniors under age 65.** Almost nine million adults ages 50-to-64 currently do not have health insurance coverage. The ACA expands Medicaid eligibility to all adults with incomes under 133 percent of the federal poverty line (FPL; 133 percent of FPL is approximately \$14,000 per year for an individual and \$29,000 for a family of four). For uninsured Americans with incomes between 133 and 400 percent of FPL (up to \$43,000 for an individual and \$88,000 for a family of four), the ACA provides premium subsidies to purchase coverage through the new state-based Health Insurance Exchanges, which will become operational in 2014. Plans offered through the Exchanges will have to provide coverage for a set of essential benefits, and they will not

be allowed to impose any lifetime spending caps for these services. These benefits include ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

**Protect patient rights and lower costs in the private health insurance market.** Under the ACA, insurers may not deny coverage to anyone on the basis of pre-existing conditions (starting in 2014). Insurers also may not terminate coverage unless in case of fraud, and annual and lifetime caps are prohibited. The ACA introduces restrictions on insurance rating on the basis of health or age; starting in 2014, insurers may not vary premiums by any more than 3:1 on the basis of age.

**Provide new options for long-term care.** Long-term care is paid for by Medicaid rather than Medicare, and most of these resources are focused on nursing homes and other long-term care facilities. This makes it difficult for seniors requiring daily assistance to afford to stay in their homes. The ACA makes it easier for lower-income dual eligibles (people who are eligible for both Medicare and Medicaid) to receive services at home by providing extra funds to states that provide in-home services through Medicaid. The law also increases protections through 2015 for spouses of people receiving Medicaid home care services so that they do not have to spend down their assets in order for an ill spouse to qualify for Medicaid home care. The Obama administration recently issued guidance to state Medicaid directors notifying them that they may treat same-sex partners the same as heterosexual spouses for purposes of Medicaid spousal impoverishment protections.

**Implement the Elder Justice Act.** Millions of elders are emotionally or physically abused or financially exploited by caregivers every year, and the vast majority of cases go unreported. The ACA incorporates the Elder Justice Act, which creates two new national councils on preventing elder abuse, supports the development of long-term care ombudsman programs, provides new financing for state-based Adult Protective Services programs, and dedicates new resources for combating criminal abuse in long-term care facilities.

### Conclusion

Issues affecting LGBT elders are receiving increased attention in numerous public policy forums in addition to the ACA. *Healthy People 2020*, the federal blueprint for a healthier nation between 2010 and 2020, emphasizes the

importance of specific health services and programs for gay and transgender seniors (U.S. Department of Health and Human Services, 2011). The March 2011 report from the Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*, calls for new research into LGBT health needs across the life course, with a particular focus on the dearth of studies of the specific issues facing LGBT elders (Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities, 2011).

Our country is on the cusp of a boom in the number of gay and transgender older adults. These elders live in all corners of the U.S. and many of their needs are the same as those of any other group of seniors: the ability to age with dignity in their communities, access to coverage and services responsive to their particular health needs, financial security, and protection from abuse and neglect. The ACA provides an important framework to help our nation begin to better serve and care for our elder gay and transgender parents, friends, and neighbors.

*Kellan Baker is a Health Policy Analyst with the LGBT Research and Communications Project at the Center for American Progress. Jeff Krehely directs the Project.*

### Endnote

1. For variety and simplicity, we sometimes use the word “gay” as an umbrella term for gay, lesbian, and bisexual.

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