

# Medical Legal Partnerships: The Intersection of LGBT Health & Justice

*Tracey L. Gersh, PhD*  
*Daniel Bruner, JD, MPP*  
*Aaron Merki, JD*



32<sup>nd</sup> Annual GLMA Conference

September 11, 2014

Baltimore, Maryland



## Casey Health Institute

The Casey Health Institute is a non-profit, community-based health and wellness center that provides a new model of integrative health care that transforms the patient's experience and relationship with their care team.



# Whitman Walker Health

- A community health clinic in Washington, DC with special expertise in HIV specialty care and LGBT primary health care.
- Medical home for 6000 persons in the greater Washington, DC metropolitan area, 50% of whom identify as LGBT.
- In-house legal services for patients, and others living with HIV or in the LGBT community, since 1986.

FreeState  Legal

Free State  
Legal

FreeState Legal is one of the only legal services organizations in the United States dedicated to serving low-income LGBT persons, of which there are between 50 – 80 thousand in Maryland.

# Menu

## **Need for Medical-Legal Partnerships:**

- LGBT health disparities across the lifespan
- Influence of poverty on these disparities
- How various legal issues, including discrimination compound these disparities

## **Progress**

## **Medical-Legal Partnerships in Action**

## **Questions and Answers**

Across the  
Lifespan

# **LGBT Health Disparities**

## LGBT Health Disparities: Reference Pool

- 3.5% of U.S. adults identify as lesbian, gay or bisexual.
- .3% identify as transgender.
- Together = ~ 9 million or approx pop of NJ.
- 8.2% (19 million) report same-sex sexual behavior.
- 11% (25.6 million) report same-sex attraction.

*Gates, G.J. April 2011. "How Many People are Lesbian, Gay, Bisexual, and Transgender?"  
The Williams Institute, UCLA School of Law, available at  
<http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/how-many-people-are-lesbian-gay-bisexual-and-transgender>*

## LGBT Health Disparities

Few Collect SOGI data. The tide is changing, which will bring us richer information.

# LGBT Health Disparities: Youth

## In General:

- As many as 40% homeless youth are LGBT.
- 2-3x more likely to attempt suicide.

## LGBTQ youth who have been rejected by their families are:

- 8.4 times more likely to have attempted suicide.
- 5.9 times more likely to exhibit high levels of depression.
- 3.4 times more likely to engage in illicit drug use.

*Caitlin Ryan et al., Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults, 123 PEDIATRICS 346, 346 (2009), available at*

<http://pediatrics.aappublications.org/content/123/1/346.full.pdf+html>.

## LGBT Health Disparities: Adults

- **Lower rates of accessing health care**, including preventive cancer screenings (pap tests, mammograms, prostate exams).
- **Higher rates of:**
  - Depression
  - Obesity in the lesbian population
  - Alcohol and tobacco use
  - Cardiovascular disease for lesbians
  - HIV/AIDS for gay and bisexual men
  - Poverty

*Institute of Medicine of the National Academies (IOM), "The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding," 2011.*

*Albed, R, Badget, M.V.L., Schneebaum, A, and & Gates, G, "Poverty in the lesbian, gay, bisexual community," 2009.*

# LGBT Health Disparities: Elders

- **More likely** to be isolated:
  - 2x as likely to live alone.
  - 50% less likely to be partnered.
  - 4+x times more likely to be childless.
- **Less likely** to have access to family support, which accounts for 80% of long-term care in the United States.
- **Increased incidence** of poverty and income insecurity.
  - Nationally, same-sex partnered older adults lag behind different-sex married households in income, assets and home ownership.
  - Elder same-sex partnered households have 37.4% less income from retirement savings than elder heterosexual married couples.
  - Elder lesbian couples are 2x more likely to be poor as heterosexual married couples.

*Movement Advancement Project & SAGE, "Improving the Lives of LGBT Older Adults," 2010.*

*Knauer, Nancy J., "Gay and Lesbian Elders: History, Law, and Identity Politics in the United States," 2011.*

## LGBT Health Disparities: Elders

**Less likely** to access needed services (e.g., visiting nurses, food stamps, senior centers, meal plans) than the general aging population.

Elders **often lack** traditional support systems and would benefit greatly from these supportive services.

*Movement Advancement Project & SAGE, "Improving the Lives of LGBT Older Adults," 2010.*

*Brotman, Ryan S., and R.B. Cormier. "The Health and Social Service Needs of Gay and Lesbian Elders and Their Families in Canada." *The Gerontologist* 43(2): 192-202, 2003*

*Cahill, S., South, K., Spade, J., "Outing age: Public policy issues affecting gay, lesbian, bisexual and transgender elders," *The Policy Institute of the National Gay and Lesbian Task Force.* 2000.*

*The MetLife Mature Market Institute. "Survey of American Attitudes Toward Retirement," 2005.*

LGBT Health  
Disparities

**Influence of poverty**

# LGBT Poverty

- Same-sex couples are more likely to be in poverty, or at risk of poverty, than different-sex married couples.
- Poverty rates are particularly high for African-American same-sex couples compared to different-sex African-American couples, and for same-sex women couples.
- Comparisons of LGB and heterosexual adults in national surveys mostly show higher rates of poverty among LGB persons, although some of the results are not statistically significant.
- The children of LGB parents are especially at risk for poverty.

*M.V. Lee Badgett, Laura E. Durso, & Alyssa Schneebaum, New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community, The Williams Institute (June 2013), <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-poverty-update-june-2013>.*

# LGBT Poverty: Food Insecurity

An analysis of recent national surveys found:

- 29% of LGBT adults lacked enough money to feed themselves or their families at some point in the past year. They were 1.7 times more likely to experience food insecurity than non-LGBT adults.
- 21% of LGB adults age 18-44 received food stamps. They were 1.3 times more likely to participate in SNAP than non-LGB adults 18-44.
- 43% of LGB adults age 18-44 who were raising children received food stamps – a rate 1.8 times higher than comparable non-LGB.

*Gary J. Gates, Food Insecurity and SNAP (Food Stamp) Participation in LGBT Communities, The Williams Institute (February 2014), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-in-LGBT-Communities.pdf>.*

## LGBT Poverty: Transgender Women and Men are Especially at Risk of Poverty and Homelessness

A recent survey of 6,450 transgender and gender non-conforming persons in all 50 states, DC, Puerto Rico, Guam and the U.S. Virgin Islands found:

- The respondents were almost 4 times as likely to have an annual income less than \$10,000 than the general population.
- Their unemployment rate was twice that of the national population. Transgender people of color were had 4 times as likely to be unemployed as the general population.
- 90% reported experiencing harassment or discrimination on the job, and 16% were forced to work in the underground economy (e.g., sex work or selling drugs).

*Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, & Mara Keisling, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, National Center for Transgender Equality and National Gay and Lesbian Task Force (2011),*

[http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

# LGBT Poverty and Health Disparities Have Legal and Social Roots

- LGBT Poverty: The Legacy of Stigma and Discrimination
- LGBT persons have been denied career, employment and educational opportunities.
- LGBT people have higher rates of un- and under-insurance.
- LGBT couples/families have been denied access to tax and other financial benefits available to married persons.

## LGBT Discrimination in Health Care

- Explicit discrimination by health care providers and facilities, including failure to recognize LGBT couples and families.
- Stigma and assumptions of heterosexuality discourage the communications between patient and provider necessary for good health care.
- Discrimination in health insurance.

## Transgender Discrimination in Health Care

- Trans discrimination and stigma in health care is widespread.
- Trans care exclusions are written into most health insurance policies.
  - Private policies almost always contain them
  - Most state employers' policies contain them
  - And sometimes they are written into the law
- Many transgender individuals coming to Whitman-Walker and Free State Legal for assistance with name & gender marker changes have not seen a doctor in years.

Hope

**Progress**

# Progress: The Affordable Care Act (ACA)

- Dramatic expansion of the availability of nondiscriminatory, affordable health insurance options.
- Full implementation is an LGBT health issue!
- Uncertainty over claims of religious exemptions.

Progress:  
ACA  
Section  
1557

(a) ... an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) [race, national origin], **title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) [sex]**, the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 794 of title 29 [disability], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments)....

What is  
Discrimination  
“On the Basis of  
Sex”?

EEOC and some courts have determined that “sex discrimination” includes discrimination based on transgender identity/change of gender.

- Supreme Court in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989): sex discrimination includes discrimination based on sex stereotyping
- *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011)
- *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 EEOPUB LEXIS 1181 (April 20, 2012)
- *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008): analogy to discrimination based on change of religion

## What is Discrimination “On the Basis of Sex”?

Discrimination based on an individual’s relationship with, or attraction to, persons of the same sex instead of the “opposite” sex?

- Strong arguments, adopted by the EEOC in some recent cases:
  - Assumption of heterosexuality as a sex stereotype.
  - Analogy to cases finding that discrimination against an employee/job applicant for having a spouse/partner of a different race is race discrimination.
- Fate in the courts uncertain.

## Progress: Legal Recognition of Same-Sex Marriage

- As of August 22, 2014, same-sex marriage is now the law in 19 states and the District of Columbia.
- Courts have ruled that anti-same-sex marriage laws in 14 additional states are unconstitutional.
- Lawsuits are now pending in every state that does not recognize same-sex marriages and in Puerto Rico.
- The Supreme Court is expected to address the issue again within the next 1-2 years.

## Progress: Legal Recognition of Same-Sex Marriage

- In the *Windsor* decision last year the Supreme Court struck down the federal law that prohibited recognition of legal same-sex marriages in federal laws.
- Since *Windsor*, federal agencies have ruled that a same-sex marriages valid in the state of celebration is valid for purposes of most federal laws – including laws affecting health insurance.

MLPs  
Address  
Health-  
Related Laws  
and Policies

# Medical-Legal Partnerships in Action

Intersection  
of LGBT  
Legal and  
Health Issues  
and the Role  
of MLPs

- Legal partners are helping with health insurance enrollment under the ACA.
  - Whitman-Walker's example

## Intersection of LGBT Legal and Health Issues and the Role of MLPs

- Legal advocates are making progress in the fight against LGBT discrimination.
  - Use of laws banning sex discrimination
    - Title VII
    - ACA Section 1557
  - State and local laws expressly banning LGBT discrimination.

Intersection  
of LGBT  
Legal and  
Health Issues  
and the Role  
of MLPs

- Legal advocates are winning the fight against trans exclusions in health insurance.
  - New ruling of HHS on Medicare
  - New laws in the District of Columbia
  - New coverage of State employees in Maryland – *FreeState Story*
  - Individual cases against private health insurance plans

## Intersection of LGBT Legal and Health Issues and the Role of MLPs

- Name and gender change clinics for the transgender community provide a service critical to safety and security and can serve as an entry into health care.

## Intersection of LGBT Legal and Health Issues and the Role of MLPs

- Lawyers can help patients plan for the future, preserve their integrity and protect their families.
  - Advance Medical Directives
  - Living Wills and other planning documents
  - For aging LGBT individuals and couples, planning for long-term care

## Intersection of LGBT Legal and Health Issues and the Role of MLPs

- In this uncertain legal climate, same-sex marriage may not be the complete answer; legal planning documents remain important.
  - Many states still do not recognize same-sex marriages
  - Religious exemptions may apply?
  - Many LGBT persons are unmarried and many couples are unlikely to marry

## Intersection of LGBT Legal and Health Issues and the Role of MLPs

- Lawyers can provide immigration assistance for LGBT patients facing persecution or inadequate health care in their countries of origin.

## Intersection of LGBT Legal and Health Issues and the Role of MLPs

- Lawyers can help lower-income LGBT patients obtain the public assistance to which they are entitled.
  - Medicaid, Medicare, other health programs
  - Food stamps
  - Disability benefits

## Models for Medical- Legal Partnerships

- Lawyers on the Health Center Staff
  - Whitman-Walker
  - Mazzoni Center
  - Los Angeles LGBT Center
- Partnership Between Health Center and Legal Aid Organization
  - Chase Brexton and Free State Legal

Q&A

Your Turn!