



NSCLC

National Senior Citizens Law Center

Protecting the Rights of Low-Income Older Adults

The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at www.NSCLC.org.

Back into the Closet: An Overview of the LGBT Older Adult Experience in Long-Term Care Today

www.lgbtlongtermcare.org

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On-Line Survey

769 respondents

– 284 of respondents were LGBT older adults

Survey designed to surface issues, not to produce statistically significant results

Report Released Early 2011

- LGBT Older Adults in Long-Term Care Facilities: Stories from the Field
 - Available at www.lgbtlongtermcare.org

Report Summary

Key areas of concern:

- Fear of being out (78%)
- Harassment by residents and staff
- Refusal to accept medical power of attorney
- Refusal to use preferred name / pronoun
- Refusal to provide care
- Wrongful discharge

Report Results

When asked whether LGBT older adults could be open with facility staff, only 22% of LGBT respondents answered “yes”.

78% responded that they could not or would not be open about their sexual orientation and/or gender identity with staff at a nursing home.

Afraid to Be Out: Vera & Zayda's Story

- Together 58 years
- Vera moved to assisted living
 - Zayda claims to be “sister”
- Later, after Vera dies, Zayda herself moves to an assisted living facility.
 - Scared to exhibit photos of the couple
 - Afraid to share or tell the truth
 - Other residents talk much about spouses, grandchildren, etc., but Zayda keeps her personal life hidden

Afraid to Be Out: Advocate's Response

- Speak to resident.
- With resident's permission, speak to facility staff (e.g., social service designee, activity director, director of nursing)
 - Nursing facility can take steps to make facility atmosphere more welcoming to LGBT residents
 - cultural competence training
 - Can be considered part of individual accommodation under Nursing Home Reform Law, or under assisted living laws in many states

Discrimination in Service Provision: John & Jack's Story

- Jack went 16 days before shower, evidently because staff members were “uncomfortable” assisting him
 - John now brings Jack home when Jack needs shower

Discrimination in Service Provision: Advocate's Response

- Refusal to provide care is clear violation of Nursing Home Reform Law, or state assisted living law
- Maybe also want to do some affirmative cultural competence training

Decisionmaking Disputes: When “the Family” Swoops In

- Biological family decided partner had no rights to property or decisions
 - Partner not allowed to visit
 - Family sells home

Decisionmaking Disputes: Advocate's Response

- Decisionmaking rules vary somewhat from state to state
 - #1 Rule – put your wishes in power of attorney or other document, even if state provides for LGBT marriage or domestic partnerships
- As this point, references in CMS Surveyor's Guidelines to “family” do not include LGBT partners (*e.g.*, visitation and notice)
 - Federal “Defense of Marriage Age” prohibits federal government from treating LGBT couples as “married”

The Future (#1)

- Likely some movement from CMS (surveyor's guidelines, etc.)
- Mandate training
 - *E.g.*, Cal. Health & Safety Code § 1257.5
 - Health professionals working in nursing facilities must receive state-prescribed training on preventing and eliminating discrimination based on sexual orientation and gender identity

The Future (#2)

- Good argument to be made that cultural competence is good business
 - LGBT seniors are looking for setting in which they can be out and comfortable

Other Report Recommendations

- Identifying LGBT elders as a vulnerable population
- Addressing LGBT concerns in planning processes
- Adding LGBT focus to ADRC design
- More money, data collection, and research

Visitation in Hospitals

- April 15, 2010 – President Obama issues memo.
 - Directs CMS to promulgate regulations to ensure that hospitals respect patients' rights to designate visitors.
 - Visitation should not be restricted to spouses and blood relations.

Revised Hospital Regulations

- Revision to 42 C.F.R. § 482.13(h) (hospitals) and § 485.535(f) (critical access hospitals).
 - Must have visitation policies.
 - Patient must be informed of visitation rights, including any clinical restrictions.
 - Patient must be informed of right to receive designated visitors, including but not limited to a domestic partner.

Revised Hospital Regulations (cont.)

- No discrimination based on race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

Survey Guidelines for Hospitals

- Patient representative can exercise patient rights listed in 42 C.F.R. § 483.13.
- Revisions to guidelines directs hospitals to give deference to patients' wishes concerning their representatives, whether expressed in writing, orally, or through other evidence.
 - Revisions Issued on Sept. 7, 2011.
 - S & C 11-36 – Hospital/CAH

Medicaid Eligibility in Nursing Facilities

- State Medicaid Directors Letter 11-006 (June 10, 2011)
- Works around limits posed by federal Defense of Marriage Act.
- CMS is giving suggestions for states – discretion rests with states.

Liens

- Liens can be imposed if state determines that resident is not going to be able to return home, but not if spouse, or minor or disabled child lives in the home.
 - States are advised that that they can choose not to pursue liens when same-sex partner remains in the home.

Transfer of Assets

- Ineligibility for # of months that transferred money could have paid for NF care.
- No penalty if undue hardship:
 - States may adopt criteria that find undue hardship when “shared home” has been transferred to same-sex spouse or domestic partner.
 - *See* California Assembly Bill 641 (Feuer)

Estate Recovery

- State recovers paid benefits, but not when there is “surviving spouse,” or disabled or minor child.
- No estate recovery if “undue hardship”:
 - Policies “may include establishing reasonable protections applicable to the same-sex spouse or domestic partner of a deceased Medicaid recipient.”

Questions?

www.nsclc.org

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