



FEDERAL PRIORITIES September 2009

All levels of government are struggling to restructure our financial, health and social services systems to meet the needs of our rapidly aging population. Within this frame, it is critically important to remember that there are populations of older adults who face particular challenges and whose well-being requires a concentrated policy focus. Lesbian, gay, bisexual and transgender (LGBT) older adults are one such population.

The much heralded arrival of baby boomers into the senior ranks is a complex challenge to LGBT older people. There are generations of LGBT older adults who experienced decades of traumatizing repression. For those LGBT Baby Boomers who came of age in the early years of the modern gay rights movement, there is an increased confidence to fight for their rights and remain “out of the closet” as they age.

Despite advances in LGBT civil rights, many senior service providers do not consider that their older clients may be lesbian, gay, bisexual or transgender, and those who do often do not know how to provide services in effective and culturally competent ways. This means older LGBT people still face particular difficulties in the mainstream aging world, ranging from outright discrimination to formidable barriers that prevent access to services.

Further, due to anti-gay discrimination in the federal “safety net” for seniors, older LGBT people are at high risk for financial insecurity in their later years. Research documents that LGBT older people face the twin burden of taking on a higher level of caregiving responsibility than their heterosexual counterparts, and at the same time are much less likely to have a reliable caregiver in their own advanced aged.

SAGE is advocating for key recommendations that, if addressed, would immediately and substantially benefit LGBT older Americans, and continue to support all older adults:

NEAR-TERM PRIORITIES

1. **Include LGBT people as a “vulnerable senior constituency and identity” and as those with “greatest social need” as states and area agencies on aging develop their planning and service delivery systems, as mandated by the Older Americans Act.**
2. **Identify federal funding opportunities that can be targeted to programs that specifically serve LGBT older people.**
3. **Include sexual orientation and gender identity categories as a designated and mandated component of federally funded aging research and data collection.**
4. **Allow for Medicaid exemptions to apply to same-sex partners. The inclusion of LGBT older adults in this poverty-prevention program will allow for the federal safety net to be extended equally to all.**
5. **Expand Social Security to include LGBT same sex partners in accessing survivor benefits and spousal enhancement benefits.**

ADDITIONAL KEY ISSUES AFFECTING OUR CONSTITUENTS

- **Create a US National AIDS Strategy that includes older adults by expanding HIV Prevention Efforts to Include Older Adults, and ensuring that funding under the Older Americans Act includes services, outreach, training and research on issues of concern to older HIV-positive older adults and to prohibit discrimination by providers who take these funds on the basis of HIV status and sexual orientation.**
- **The Centers for Medicare and Medicaid Services (CMS) should revise its National Coverage Determination to ensure medically-necessary treatments related to gender transition and to remove barriers to health care related to an individual’s pre-transition gender.**
- **Amend the Fair Housing Act and other housing laws to include explicit non-discrimination policies that protect LGBT people, and tie compliance to the receipt of federal and state funding for the program.**

This work is reflected in similar advocacy efforts conducted by several national LGBT organizations, including the National Gay & Lesbian Task Force.

Include LGBT people as a “vulnerable senior constituency and identity” and as those with “greatest social need” as states and area agencies on aging develop their planning and service delivery systems, as mandated by the Older Americans Act.

Current Law:

OAA currently grants the authority to the Administration on Aging (AoA) to allot monies to the states at their discretion to fund programs which carry out vulnerable elder rights protection activities. In reference to vulnerable constituencies and others, the phrase “greatest social need” is used numerous times in the legislation and is undefined. OAA defines neither ‘vulnerable elder’ nor ‘greatest social need,’ leaving the decision about which programs may receive financial assistance at the discretion of each state receiving funding from AoA. (42 U.S.C. 3021)

This broad language at the federal level is appropriate, considering the diversity of our country’s senior populations. However, when it comes to implementation, such as guidance the AoA offers to states and area agencies on aging in determining their plans under the OAA, examples of “older individuals who have the greatest economic need” does include some sample populations.

The Administration on Aging requires state offices to provide plans on a two-, three-, or four year period determined by the State Agency. Those plans must identify the State agency’s periodic evaluations of, and public hearings on, the effectiveness of services provided to “individuals with greatest economic need, greatest social need, or disabilities (with particular attention to low-income minority older individuals, older individuals with limited language proficiency, and older individuals residing in rural areas.)

Impact on LGBT Older Adults:

The terms “vulnerable seniors” and “greatest social need” apply to the large majority of LGBT older adults. While this does not preclude state agencies from providing funding to support rights protection activities for LGBT elder constituencies, it does leave the decision as to whether organizations or programs qualify for vulnerable elder federal funds at the discretion of those on the state level. At the state and local levels, many government agencies include examples of vulnerable populations (e.g., rural, grandparents, immigrants, Asian-Pacific Islander, and other minority populations) to ensure special attention is drawn to those communities. If LGBT older adults are not identified as a vulnerable population, it makes it less likely that LGBT rights protection activities on the state and local level ever receive deserved federal funding.

Some states have identified older LGBT people as a vulnerable population. (For example, California’s Older LGBT Equality and Protection Act requires state units on aging and area agencies on aging to address LGBT older adults’ needs.) In

these municipalities, there an increase in services and programs directed to this vulnerable population, as well as increased cultural competency training opportunities to ensure that service providers are better equipped to address the special needs of LGBT older adults. However, there is no nationwide recognition of the needs of this vulnerable population.

Recommendation:

Administration on Aging should create administrative regulations defining the term “vulnerable elder” and “greatest social need” in a way that clearly includes LGBT older adults as a vulnerable population. Since the terms are not defined in the legislation, AoA has the authority to interpret which programs do and don’t fit in the “vulnerable elder” and “greatest social need” categories via administrative regulation. Further, each time the term “greatest social need” is used in the administrative guides, including planning guides for area agencies on aging and state offices on aging; it should be amended to add “lesbian, gay, bisexual, or transgender individuals” to the list of vulnerable populations which get particular emphasis or attention in the receipt of federal funds.

Include sexual orientation and gender identity categories as a designated and mandated component of federally funded aging research and data collection.

Current Law:

The Older Americans Act provides funding for the Administration on Aging to do research and data collection, or for AoA to provide funding to state agencies for research and data collection for a variety of areas, such as nutrition, elder legal services, and elder rights and protections. Currently, none of the research or surveys gathers information on LGBT elders and the services provided/available to them, and the state agencies are not required to conduct research or data collection for LGBT populations. We don't know of any states that use AoA research funds to collect data on LGBT populations. (42 U.S.C. 3058bb)

Impact on LGBT older adults:

Virtually no national governmental organizations collect data on LGBT Americans. This leaves us with a dearth of information about what types of services LGBT elders more frequently use, which services are most often denied, what geographic areas are generally more or less accommodating to LGBT elders. Moreover, data collection will provide for the first time hard numbers on how many LGBT people are accessing which types of services and provide better baselines for future estimates of increases in needed services.

Recommendation:

Agencies such as the AoA should create administrative regulations which stipulate that funding given to the state agencies for data collection is dependent on collecting data on LGBT populations. A variety of agencies, such as AoA, National Institutes of Health, Centers for Disease Control, and the Census Bureau should, if they have the authority, add to its data collection standards information regarding LGBT people. Many of such agencies have the authority to tie funds to the collection of data for sexual orientation and gender identity via administrative regulation because the enacting instrument doesn't limit which data may be collected as part of the funding provided, merely that those funds are to be used for data collection.

Identify federal funding opportunities that can be targeted to programs that specifically serve LGBT older people.

Current Law:

The Older Americans Act provides funding for the Administration on Aging to direct funding for certain projects and populations. For example, Title III (Grants for State and Community Programs) funds can be directed to specific vulnerable populations, and Title IV allows for funds to be directed to demonstration projects.

Impact on LGBT older adults:

Less than \$1 million dollars of AoA funds reach programs that directly serve LGBT older adults. Yet the need for culturally competent services and programs continues to grow. SAGE receives hundreds of requests each year from isolated LGBT seniors around the country seeking services in their communities that will treat them with respect and dignity. Over the last three years, the number of SAGE affiliates has more than doubled, and other LGBT aging services are growing rapidly. At the same time, AoA-funded aging services are attempting to better understand and serve this vulnerable population, and reaching out to SAGE and other programs for training and support.

Recommendation:

The Administration on Aging has the capacity to identify funding for specific programs and populations. Demonstration programs that serve certain minority populations, technical assistance grants, and other opportunities that have been used in the past can be directed to programs specifically serving LGBT older people at the local, regional, and national levels.

Allow for Medicaid exemptions to apply to same-sex partners.

Current Law

In order to avoid the additional burden on married partners, Medicaid established a system of exemptions from the combined asset allocation to prevent either a denial of care to those who truly need it or requiring a healthy partner to live in poverty to qualify their spouse for critical care provided by Medicaid coverage. A married couple's home, household goods, automobile and burial funds are not included in the couple's combined resources, nor is the healthy spouse's income counted in the combined resources. (42 U.S.C. 1396r-5)

Further, States can "look back" to find transfers of assets for 36 months prior to the date the individual is institutionalized or, if later, the date he or she applies for Medicaid. If a transfer of assets for less than fair market value is found, the State must withhold payment for nursing facility care (and certain other long-term care services) for a period of time referred to as the penalty period. The penalty doesn't apply to spouses transfers of assets to a spouse or to a third party for the sole benefit of the spouse. (42 U.S.C. 1396p)

Impact on LGBT Older Adults

Older LGBT people are at a high risk for financial insecurity in their later years. Due to anti-gay discrimination codified in the federal "safety net" for older adults, there is a high rate of poverty for older LGBT people.

Recent data has shown that gay men on average earn at least 10% less than similarly qualified heterosexual men. Lesbian couples age 65 and over are twice as likely to live in poverty as heterosexual couples. Many older LGBT people spent the majority of their working years during an era when discrimination was legal (as it still is now in many parts of the country), job opportunities were limited, and the jobs available to LGBT people were less likely to include health benefits or pensions. All of these factors result in a significantly high number of LGBT older adults living at or near Medicaid level. For example, an estimated 70% of SAGE clients have annual pre-tax incomes under \$20,000.

None of the existing Medicaid exemptions for spouses apply to same-sex partners. In 1998, it was estimated that LGBT older adults lose \$124 million in unaccessed benefits because of the inability to obtain spousal benefits. That number is probably much higher today.

Recommendation:

Allow for Medicaid exemptions to apply to same-sex partners. The inclusion of LGBT older adults in this poverty-prevention program will allow for the federal safety net to be extended equally to all.

Allow for Social Security spousal and survivor benefits to apply to same-sex partners.

Current Law

Social Security is the most important federal safety net for Older Americans. Approximately 62% of all seniors use Social Security for half or more of their annual income, and another 26% use Social Security for up to 90% of their income.

Currently, married spouses and children are eligible for survivor benefits. In addition, spousal support to enhance Social Security income is available to married and previously married spouses (provided the marriage lasted 10 years). This does not apply to non-married partners no matter how many years they may have lived with and supported their partners. Further, in states that do not recognize second-parent adoptions, in the event of the death of the second parent, children are deprived of minors' survivor benefits, which the children of married heterosexual parents would receive.

The spousal benefit allows a married spouse to earn more than he or she is entitled to in Social Security benefits based on his or own personal work history. A married lower-earning spouse can opt for one half of the monthly amount of Social Security benefits to which the higher-earning spouse is entitled. Thus, spousal benefit is the difference between what Spouse A is entitled to under his/her work history and half the benefit Spouse B is entitled to based on his/her work history.

This spousal benefit is permitted even to divorced couples, provided their marriage lasted for 10 years. Same-sex couples, no matter how long they have been together, are denied this benefit.

Impact on LGBT Older Adults

The income earned by LGBT working people is already demonstrated to be lower than that of their heterosexual counterparts, which directly impacts Social Security benefits. Employment discrimination among LGBT people is widespread, and gay men on average earn at least 10% less than similarly qualified heterosexual men. Transgender people are particularly likely to experience high rates of unemployment and underemployment.

Further, many older LGBT people spent the majority of their working years during an era when discrimination was legal (as it still is now in many parts of the country), job opportunities were limited, and the jobs available to LGBT people were less likely to include health benefits or pensions. As a result, many LGBT older adults have extremely low incomes; for example, an estimated 70% of SAGE clients have annual pre-tax incomes under \$20,000. Nationally, lesbian

couples over the age of 65 are twice as likely to live in poverty as heterosexual couples.

LGBT couples receive unequal treatment in regards to spousal benefits because the benefits afforded to married couples are not available to unmarried couples. Whereas in a married couple, when one spouse earns much more, the lower earning spouse can apply for a spousal benefit and, instead of their own Social Security benefit amount, can receive 50% of their higher-earning spouse's Social Security benefit. For example, if a married couple receives Social Security benefits in the amount of \$1500 for one spouse and \$500 for the other spouse, the lower earning spouse can apply for the spousal benefit and receive \$750 per month instead of \$500. This would increase their household income by \$3,000 per year. For an unmarried same-sex couple, this benefit is not available, so the lower-earning couple cannot apply for the spousal benefit. When one partner passes away, the surviving partner will only receive \$500 per month instead of \$750, thus losing \$3,000 a year.

One estimate of the loss in survivor benefits is \$124 million a year (assuming 3% of the total senior population is an LGBT person in a same-sex relationship).

Again, for a married couple, if the higher-wage earner dies before her/his spouse dies, the survivor is entitled to the higher benefit – even if the couple is divorced.

Recommendation:

Unequal treatment of same-sex couples by the Social Security system costs LGBT seniors money they deserve and which could help ensure their economic security in their old age. Allow for Social Security spousal and survivor benefits to apply to same-sex partners.

Other Policy Issues SAGE Supports

Create a US National AIDS Strategy that includes older adults by expanding HIV Prevention Efforts to Include Older Adults, and ensuring that funding under the Older Americans Act includes services, outreach, training and research on issues of concern to older HIV-positive older adults and to prohibit discrimination by providers who take these funds on the basis of HIV status and sexual orientation.

Current Law:

Currently, the US has no national strategy on addressing HIV/AIDS. Numerous government and private studies have pointed to the need of better planning, e.g., the Institute of Medicine's 2004 report noted that federal financing of AIDS-related health care "does not allow for comprehensive and sustained access to quality HIV care" in the United States.

Impact on HIV-Infected older adults:

If current trends in infection rates remain stable, in less than ten years half of all people living with HIV in the US will be over age 50. Between 2001 and 2007, the number of people 50 years and older living with AIDS nearly doubled. Almost 27% of all people living with AIDS in the United States are over the age of 50, and more than 70% of those with HIV are over 40, providing us a view of what the epidemic will look like for the second half of the Baby Boomer generation.

Further, 15% of all new HIV infections occur among those 50 and older, and there is data that suggests this proportion may be larger, but is hidden because of lack of inclination on the part of medical providers to test older adults for HIV, and the inherent ageism in medical systems that assume older adults are either not having sex, or have information available to reduce risk-taking behavior.

Older adults are frequently marginalized or ignored in the discussion about HIV/AIDS, severely limiting data collection, prevention efforts, and available treatment. Further, underdiagnosis and late diagnosis occurs at a very high rate in older adults, since physicians and health officials do not perceive older adults to be at risk for HIV infection, and are not likely to test them for the virus. Later diagnosis of the infection makes management of the disease more difficult.

Comorbidities

The success of highly-active anti-retroviral treatment has clearly had a positive impact on these older adults; however **there is almost no research on the intersection of HIV/AIDS with other chronic diseases frequently found in older adults.**

Prevention

Older adults are frequently marginalized or ignored in the discussion about HIV/AIDS, severely limiting data collection, prevention efforts, and available treatment. Age-appropriate HIV/AIDS risk reduction messages are nominal for older adults, and thus causes older adults to identify themselves as being at low risk for STDs including HIV.

Recommendation:

National AIDS Strategy

As a candidate, President Barak Obama endorsed the call for the development of a national AIDS strategy. Such a strategy is essential to reducing new infections, connecting more people to care, and ending health disparities.

Data Collection

SAGE recommends that older adults be included as identifiable groups at every stage of the HIV medical and pharmacological research process. In addition, we recommend increased federal funding for basic research into the particular medical and mental health needs and experiences of older adults with HIV, including:

- research into the interactions between HIV and common diseases and chronic conditions of older adults;
- research into the interactions between medications treating HIV and the common diseases and conditions of older adults;
- research aimed at treating depression and other mental health conditions that are exacerbated with an HIV diagnosis, including substance use and sexual risk-taking

AIDS Drugs Assistance Programs (ADAP) as True Out Of Pocket Costs for Medicare Recipients

SAGE recommends that money paid to ADAPs by Medicare Clients count toward their true out-of-pocket limit. Doing so will give needy individuals access to Medicare catastrophic coverage and free ADAPs to help other individuals in need. Additionally, Medicare beneficiaries with HIV/AIDS would have better access to the host of medications they need to treat co-occurring conditions and side-effects from their HIV treatment.

Prevention and Wellness Programs

Recognizing the high rate of depression in older adults with HIV/AIDS, we recommend that standards of care be re-examined and include mental health services as a part of “core medical services” currently funded by federal dollars through the Ryan White Care Act.

The US Government has focused its prevention and wellness programs primarily on younger people. It is essential to develop interventions and supports for older adults living with HIV and for prevention of HIV infection that will frankly discuss risk behavior including sexual risks. This must include training care providers to discuss sexuality with their patients, regardless of age. Administration on Aging funds for health and wellness need to be utilized to provide age-appropriate messaging to older adults about healthy sexual practices to reduce risk of STD and HIV/AIDS infection.

Continuum of Care

SAGE recommends an internal review of services and programs currently addressing the health and home care needs of adults with HIV as they age to ensure a smooth transition from federally funded services through HRSA and other programs to AoA-funded care.

The Centers for Medicare and Medicaid Services (CMS) should revise its National Coverage Determination to ensure medically-necessary treatments related to gender transition and to remove barriers to health care related to an individual's pre-transition gender.

Current Law

Medicare coverage policies directly determine whether an item or service is “reasonable and necessary for the diagnosis and treatment of illness or injury” and effective and efficient such that it should be allowed to all Medicare beneficiaries. However, CMS has issued a National Coverage Decision (NCD) excluding “sexual reassignment surgery” from Medicare coverage by categorizing the surgery as cosmetic

Impact on older LGBT people:

The exclusion of sexual reassignment surgery from Medicare coverage not only denies coverage for medically-necessary treatment to Medicare beneficiaries, but also has a “ripple effect” to public and private health insurers that it is permissible to exclude such coverage in their own programs.

This exclusion has an impact on other gender-related medical care. For example, coverage for long-term hormone therapy is not clearly available to Medicare recipients under Part D. Depending on its categorization, hormone therapy could be covered to the extent is prescribed for a “medically accepted” indication, but if it is prescribed “for cosmetic purposes” it would not be covered. Due to the degree of discretion left to a Part D Plan provider, and a lack of clear direction from CMS, it is unclear whether, from plan to plan, a transgender Medicare beneficiary will have coverage for medically-necessary hormone therapy.

Finally, transgender Medicare beneficiaries who have undergone gender transition, and successfully modified the gender marker in their Social Security records, are at risk at being denied coverage for the treatment of medical conditions associated with their pre-transition gender. NCDs limit access to screening mammography and cervical cancer screenings to women and prostate cancer screenings to men. As a result, transgender Medicare beneficiaries – many of whom are in age groups at high risk for breast, cervical, and prostate cancer – may be denied access to critical preventative care.

Recommendation

CMS should review all relevant clinical data and revise NCDs regarding sexual reassignment surgery and access to breast, cervical and prostate cancer screenings to remove barriers to treatment for transgender Medicare beneficiaries. CMS should issue an NCD indicating that hormone therapy as part of gender transition is a necessary, medically accepted use of drugs that must be covered by all Part D plans.

Amend the Fair Housing Act and other housing laws to include explicit non-discrimination policies that protect LGBT people, and tie compliance to the receipt of federal and state funding for the program.

Current Law

The Fair Housing Act (42 U.S.C. 3601) and numerous other housing-related laws contain provisions barring discrimination on the basis of race, color, religion, sex, handicap, familial status, or national origin, and gives the authority for administering such policies to the Department of Housing and Urban Development. While these laws do not explicitly target LGBT elders for exclusion, they are silent on allowing same-sex couples to share a bedroom in a nursing home or assisted living care, leaving those decisions at the discretion of those maintaining the facility.

Impact on older LGBT people:

The impact of housing inequality is disproportionate on older Americans because many housing opportunities and standards involve long-term care facilities such as nursing homes and assisted living facilities, or very low income housing.

In some housing options such as long-term care facilities, visiting hours and care decisions are only open to immediate family members, where “family” or “immediate family” is undefined. Therefore, decisions as to who may qualify as family are at the discretion of the facility operator. Lack of clarity in the laws often leaves bigoted, uneducated, or untrained people making decisions about whether LGBT people are permitted access to their partners under the vague rules.

Recommendation

All housing laws, such as the Fair Housing Act and others, should be amended to include explicit non-discrimination policies and enforcement mechanisms for LGBT people, compliance in which should be linked to the receipt of federal and state funding for the operation of the program.

Further, the agencies which implement housing laws should clarify the definition of family to be explicitly inclusive of same-sex relationships and the children of same-sex partners. Such a change would include recognition of domestic partnerships, civil unions, and marriages, as well as biological, adopted, and partners’ children.

The housing laws themselves, such as the Fair Housing Act, explicitly identify groups which may not be discriminated against in housing. The law itself must be amended to include protections for LGBT people, as opposed to an administrative regulation change, because HUD is not authorized under these laws to make non-discrimination policies linked to funding that further protect than the law allows.