

PLANNING WITH PURPOSE

LEGAL BASICS FOR LGBT ELDERS



NATIONAL CENTER FOR LESBIAN RIGHTS

JUNE 2009



ABOUT THE NATIONAL CENTER FOR LESBIAN RIGHTS

The National Center for Lesbian Rights (NCLR) is a national non-profit, public interest legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual and transgender (LGBT) people and their families through litigation, public policy advocacy, and education. NCLR works in many legal and advocacy contexts, including elder law, employment law, families and parenting, healthcare, immigration, marriage and relationship recognition, sports, transgender law, youth, and other related areas of civil rights. NCLR is committed to addressing the full range of legal issues that affect LGBT people in all aspects of work, family and community life.



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**The audacity to fight for justice.
The perseverance to win.**

ABOUT NCLR'S ELDER LAW PROJECT

Since 1999, NCLR's Elder Law Project has been empowering lesbian, gay, bisexual, and transgender (LGBT) seniors to protect themselves, and advocating for equal treatment of LGBT seniors in law, public policy, health care and senior health, and social services. NCLR is committed to bringing LGBT people into the aging services network nationwide and to bringing elders into the center of the larger LGBT movement for justice and equality.

NCLR'S ELDER LAW PROJECT PROVIDES:

- **Free legal education and resources** about LGBT elder rights, including workshops, information and publications, and legal assistance.
- **Lifelines** - a guide that provides information about essential legal documents to help LGBT people of all ages understand how to protect themselves and their loved ones in the event of illness, disability, or death, published in both English and Spanish.
- **Cultural Competency Trainings** for senior service providers and professionals who are involved in the interrelated areas of law, medicine, social services, and academia.
- **A Legal Information Helpline**, available at info@nclrights.org or **800.528.6257**, that provides legal information about LGBT people's rights and assistance finding a LGBT-friendly attorney.
- **Technical assistance for attorneys** representing clients with LGBT-related legal issues.
- You can visit the NCLR web site at www.nclrights.org to find more information about LGBT elder law and NCLR's work in this and other areas.

ABOUT SAGE

SAGE (now Services & Advocacy for GLBT Elders) is the world's oldest and largest non-profit agency addressing the needs of LGBT older adults. With LGBT older adults twice as likely to live alone than heterosexual seniors, and are more than four times as likely to have no children, the informal caregiving support we assume is in place for older adults may not be there for LGBT elders. SAGE works with older LGBT people to address and overcome the challenges of discrimination in senior service settings, while also being an essential component in the creation of informal caregiving support, and development of new "family" networks. SAGE's programs include:

- **The nation's first Friendly Visiting program** for frail and homebound LGBT people.
- **The nation's first support group** for LGBT older adults with HIV.
- **The nation's first program dedicated to caregiving services** for LGBT older adults.
- **The nation's first LGBT Senior Drop-In Center.**
- **The creation of the first national conferences** devoted to LGBT aging concerns.

Programs like SAGE become an important "safety net" for LGBT elders. Despite advances in LGBT civil rights, many senior care providers never stop to consider that their older clients may be members of the LGBT community. As a result, LGBT older adults often avoid seeking needed services out of fear of discrimination or go "back in the closet" when accessing home health care or residing in assisted living or residential care facilities. Today, there are a growing number of retirement communities, senior housing and other high-end housing options targeting LGBT seniors. But for hundreds of thousands of LGBT seniors who will be aging in place in their own communities, SAGE programs and services provide the link they need to a safe and welcoming community.

Note: Additional work on this guide was done by Kim Dayton, Professor of Law at William Mitchell College of Law, and Nicole Wood, then a student at William Mitchell College of Law. We thank them for their invaluable assistance.

WHO THIS GUIDE IS FOR: LGBT PEOPLE AND YOUR FAMILIES AND CAREGIVERS

This manual is written for LGBT people, and will also be useful for the people who care for or assist you. LGBT elders are often invisible within America's fast-growing aging population. There are an estimated 3.5 to 4 million LGBT persons age 65 and older in the U.S. But as LGBT people age, you may confront institutions and public policies that do not recognize your needs or acknowledge your families, or that discriminate against you based on your sexual orientation or gender identity or expression.

Elder law is recognized as a distinct area of law because of the vast public and private health and social services systems serving older people that are governed by federal and state laws. Within this legal area, LGBT-related elder law is distinct because the government still discriminates in many vital areas of services and benefits that seniors need, and LGBT seniors may also face discrimination from private actors such as health care providers or facilities.

As a result, LGBT elders may be denied rights, benefits and protections that are available to non-LGBT elders, especially those rights, benefits, and protections that are provided on the basis of marriage. You may also face discrimination based on your sexual orientation and/or gender identity or expression under circumstances where the law simply does not yet protect you.

This manual makes no assumption about your situation: you may be lesbian, gay, bisexual or transgender and married, partnered, or single, with or without a disability, at any income level, and with or without minor children to care for. The purpose of this manual is to give you some legal information, and to help you think about "planning with purpose" and how to best protect yourself within a legal system that does not yet provide equality to everyone.

If you take one lesson away from this guide, it should be this: If you are LGBT, you must be proactive to protect yourself and your loved ones as you age, because the law does not provide you the same safety net that it does for non-LGBT people. There are concrete steps that you can take to build your own safety net. Do not wait until something happens—act NOW!

WHAT IS IN THIS GUIDE

This guide provides basic information about select areas of the law that are important to LGBT elders, especially individuals and couples who are age 55 and over, based on our experience advocating for LGBT elders. We include information about issues related to relationship recognition, finances, health care, long term care, and planning for the care of minor or disabled children and inheritance. This guide covers many of the areas where rights, benefits, and protections are generally provided based on spousal status, but are denied to same-sex couples, even if married or in other legal unions. Where there are specific considerations for transgender people, we note them.

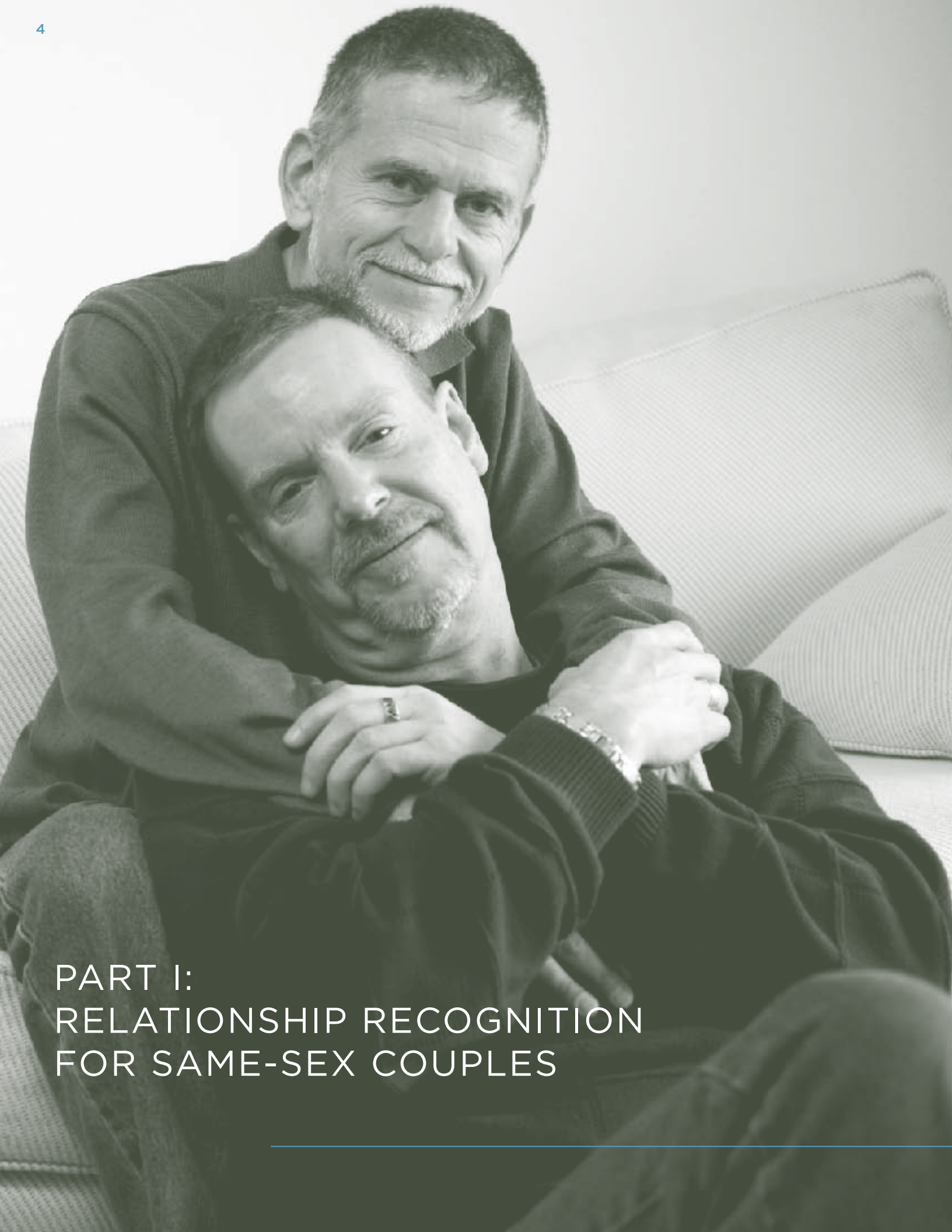
LGBT people have made progress on our civil rights, but there is still a lot to know and think about if you are an older LGBT person in the U.S. While it may not be easy to think about your life from a legal perspective, it is extremely important that you learn about and use all of the legal protections that are appropriate for your situation. In this guide, we focus on providing information about essential documents that you may want to put in place to protect yourself and your loved ones, particularly in the event of illness, disability, or death. We also provide information on how to address instances of discrimination on the basis of your sexual orientation and/or gender identity and expression you may face as an older LGBT person.

Even if you believe that you understand the law and have all of the necessary documents in place, looking through this guide may alert you to changes in the law or areas of the law that you might not know about and additional steps you should take. This guide can also help you learn about discrimination against LGBT elders and what you can do about it.

WHAT IS CONTAINED IN THIS GUIDE IS NOT LEGAL ADVICE, AND IS NOT INTENDED TO BE LEGAL ADVICE. There is no substitute for a good lawyer with experience in elder law and LGBT issues, one who understands your specific situation and can help you put in place the best possible documents to protect you and inform you about the state and local anti-discrimination laws.

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PART I:
RELATIONSHIP RECOGNITION
FOR SAME-SEX COUPLES

I. RELATIONSHIP RECOGNITION FOR SAME-SEX COUPLES

The legal landscape for LGBT couples in the area of law that we call “relationship recognition” is changing rapidly, as a growing number of states recognize the right of same-sex couples to enter into marriages, civil unions, or domestic partnerships. LGBT elders must be aware of how both federal and state laws will treat your relationship.

A. FEDERAL LAW DISCRIMINATES AGAINST SAME-SEX COUPLES

It is important for LGBT elders and their families to understand that, at this time, the federal government will not recognize a marriage, civil union, or domestic partnership between two people of the same sex. The federal government discriminates against same-sex couples under a federal law called the Defense of Marriage Act (DOMA), which says that a relationship between a same-sex couple will not be recognized as a marriage for any federal purpose, even if the marriage, domestic partnership or civil union was legally recognized when and where the couple entered into it, and even if the relationship is legally recognized where the couple currently lives. When a transgender person’s relationship is legally considered a same-sex union, the government may also discriminate against you under DOMA. Federal recognition of marriages in which one or both spouses are transgender can be complicated—if you are married and you and/or your spouse are transgender, we encourage you to speak with an attorney about areas of federal recognition you are concerned about.

Here are some of the most important ways that DOMA affects LGBT elders:

- i. Most elder Americans rely on Social Security as their primary source of income. Like everyone else, LGBT elders may qualify as individuals for Social Security benefits. But elders in same-sex relationships are disadvantaged under federal law, and may not be eligible for many Social Security program benefits that protect lower-earning spouses and surviving spouses.
- ii. Federal tax law does not treat any same-sex relationship as a marriage, even if your state treats you as married. This means that for purposes of federal law, same-sex couples cannot file joint tax returns, make certain tax-free property transfers between partners, or use the marital tax deduction for property that goes to the surviving partner when one partner dies.¹ This is true even if your state recognizes same-sex unions as marriages for state tax purposes.
- iii. Some pension plans allow a married retiree to choose to take less money during their life, so that after their death, their spouse will still receive income from the pension benefits. Employees with same-sex partners do not always have this option, although they may be able to in certain states and for certain kinds of plans.
- iv. Some retirement plans, including 401(k) plans and 403(b) plans, let surviving spouses roll the retirement account over into an individual retirement account (IRA) without paying most taxes. This is a federal benefit, and until recently was only available to heterosexual married spouses. As of January 1, 2007, however, these retirement plans may allow a non-spouse beneficiary, including a domestic partner, parent or sibling, to roll over inherited



¹ Adam Chase, *Tax Planning for Same-Sex Couples*, 72 Denv. U.L. Rev. 359 (1995).



PROTECTING YOURSELVES WITH RELATIONSHIP AGREEMENTS:

Whether or not you live in a state that recognizes relationships between same-sex couples, NCLR strongly encourages all same-sex couples and couples in which one or both partners is transgender to have a written personal relationship agreement, sometimes called a Memorandum of Understanding, that includes a detailed account of each partner's rights and responsibilities with regard to finances, property, support, children, and any other issues that are important to the couple. A competent attorney can help you with this.

retirement benefits to an inherited IRA tax-free. And as of January 1, 2010, these retirement plans will be required to allow a non-spouse beneficiary to roll the retirement benefits they have inherited over to an inherited IRA tax-free. If you are told that you must pay taxes on a retirement plan that you have inherited from a domestic partner, you can contact NCLR's Legal Information Helpline at info@nclrights.org or [800.528.6257](tel:800.528.6257) for more information about the new law.

B. MARRIAGE, CIVIL UNIONS, AND DOMESTIC PARTNERSHIP: WHERE THE LAW STANDS IN THE STATES

State laws on relationship recognition for same-sex couples is changing rapidly, and each state has its own rules and procedures. As of June 2009, more than thirteen states offer some type of legal recognition to same-sex couples. Same-sex couples can marry in Massachusetts, Connecticut, and Iowa. Same-sex couples will be able to marry in Vermont as of September 1, 2009, in Maine as of September 15, 2009, and in New Hampshire as of January 1, 2010. New York recognizes marriages between same-sex couples performed in another state, although same-sex couples cannot yet marry there. In California, there are more than 18,000 same-sex couples who married before November 4, 2008, when the California Constitution was changed to prohibit marriage for same-sex couples, and those couples remain legally married.

In New Hampshire and New Jersey, same-sex couples can enter into a civil union, which is a legal union that provides all of the same rights and responsibilities as marriage under state law. California allows same-sex couples to enter domestic partnerships that must provide all protections provide through marriage to different sex couples. Oregon allow same-sex couples to enter into domestic partnerships that have virtually all the same rights and responsibilities as marriage under state law. Washington State and Nevada have passed similar laws, but those laws are not yet in effect. In the meantime, Washington State has domestic partnerships that provide many of the rights and responsibilities of marriage, as does the District of Columbia. A few states grant couples limited rights, such as hospital visitation: Maryland and Maine (domestic partnerships), and Hawaii (reciprocal beneficiaries).

What these state laws can and cannot do for same-sex couples is discussed in more detail below. And unfortunately, most states still do not offer same-sex couples the freedom to marry or to enter into any other legal union, instead treating same-sex partners as strangers to each other. But even in those states, there are some steps that you can take to protect your relationship, as long as you stay informed and take the initiative.

C. SPECIAL CONSIDERATIONS ABOUT LEGAL UNIONS FOR LGBT ELDERS

For LGBT elders, entering into a state-recognized union may provide additional protections, but it is important to know your state's law and to understand its full implications for you and your loved ones. Most importantly, with legal rights come legal responsibilities. Your status as married, or in a civil union, domestic partnership, or reciprocal beneficiary relationship, may affect your eligibility for benefits and your financial obligations. For this reason, you may need to seek advice from a competent attorney about when and whether to enter into a legally recognized relationship with your partner, based on your individual situation.

At the same time, it is helpful to understand generally what relationship recognition

laws do, or do not do, for LGBT couples. Again, the rights and responsibilities that come with legal unions such as marriage, civil unions, and domestic partnerships vary from state to state (and remember that, as of June 2009, the federal government will not recognize any of them).

The rights and responsibilities that may be available through a legal union that are especially important to LGBT elders include:

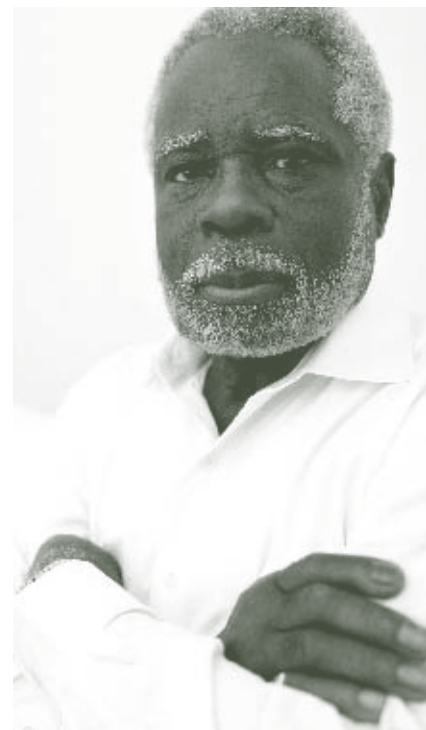
- being legal next of kin for all purposes;
- the right to inherit without a will if your partner or spouse dies;
- the right to make medical decisions for your partner or spouse;
- the right to have a partner or spouse, or another person you choose, make medical decisions for you;
- the right to control the disposition of your partner's body when he or she dies, and to decide whether to authorize an autopsy;
- the right to have your partner or spouse make decisions about the disposition of your body when you die, and to have your partner or spouse decide whether to authorize an autopsy;
- the right to make funeral arrangements for your partner when he or she dies; and,
- the right to have your partner make funeral arrangements for you when you die.

In states where marriages between same-sex couples are recognized, married same-sex couples are entitled to the full package of state-level rights, responsibilities and protections. Most states with a same-sex relationship recognition law, whether it is civil unions, domestic partnerships, or reciprocal beneficiaries, provide at least some of these rights, but not every state includes all of them. It is important to learn exactly what your state's laws provide. You should talk to a competent attorney or contact a legal organization like NCLR to make sure you understand the law.

Because the law is a patchwork, with most states providing little or no protection to same-sex couples, it is also crucial for LGBT people with partners to know how to best protect yourselves as a couple when you travel out of state. Most states currently have laws saying that they will not recognize marriages between two people of the same sex, and many states also do not recognize civil unions, domestic partnerships, or reciprocal beneficiary relationships.

LGBT elders can work around some, though not all, of these limitations to create a safety net for themselves and their loved ones, but it takes planning and action. It is important to create legal documents that protect you and your chosen family, and that set out your wishes. These documents are discussed below in separate sections. In addition, LGBT individuals can use investments, insurance, and different ways of owning property to provide stability for their partners and families. But to do so, you need to seek advice specific to your situation, and to plan far in advance.

Finally, you should be aware that for you and your partner to receive the state-granted



BE AWARE:

For some couples, it may be inadvisable to enter into a marriage or another legal union, or to use certain documents.

In particular, you should be especially cautious about entering into a legal union if you or your partner is a member of the military, receiving government benefits, or not a U.S. citizen or permanent resident.

A competent attorney can tell you what will work best for you.



rights and protections that come with legally recognized relationships—marriage, civil unions, domestic partnerships, or reciprocal beneficiaries—it is not enough simply to live in one of the states that recognizes same-sex relationships. You must comply with all of the requirements for entering into the legal union, including officially registering your relationship with the state government. In addition, many cities and counties allow same-sex couples to register as “domestic partners,” but these city and county domestic partnerships *do not* provide any of the state rights and responsibilities. Just because you are registered as domestic partners with a city or county does not mean you have any additional rights and responsibilities based on your relationship.

D. TRANSGENDER PEOPLE AND MARRIAGE

Transgender people face unique legal issues regarding marriage. Transgender individuals who have transitioned are often able to marry in their post-transition gender. Indeed, there are thousands of transgender persons who are married to a different-sex spouse across the country. A transgender individual may also be married to a person of the same sex – either because the transgender person transitioned *after* entering into a different-sex marriage, or because the couple lives in a state where same-sex couples are permitted to marry.

Although many transgender people are married, the legal validity of marriages involving a transgender spouse is not yet firmly established in some states. Many transgender persons who are married do not encounter any legal difficulties relating to their marriage; however, when legal challenges do arise, the results may be devastating. For this reason, it is critical that transgender people who are married become aware of their potential legal vulnerability and take steps to protect themselves as much as possible. In general, if a marriage is legally valid at the time that the spouses enter into it, it remains valid. Transgender persons who are married should certainly consider themselves married, and should not hesitate to exercise their rights as legal spouses. At the same time, it is important to create a safety net in the event that the validity of the marriage is challenged. You can create such a safety net using certain legal documents.

The basic documents described throughout this guide are just as important for transgender people as for lesbian, gay, and bisexual people. Transgender people who are married should have a written personal relationship agreement, sometimes called a Memorandum of Understanding, that includes a detailed account of each spouse’s rights and responsibilities with regard to finances, property, support, children, and any other issues that are important to the couple. But in addition, if one spouse is transgender and one is not, the agreement should include an acknowledgment that the non-transgender partner is aware that his or her spouse is transgender, to avoid any later claims of fraud or deception. If both spouses are transgender, the agreement should include acknowledgements from each partner that he or she is aware that his or her spouse is transgender. If possible, it is best to sign the Memorandum of Understanding before the marriage takes place.

With this and the other essential planning documents named in this guide in place, transgender people who are married can help ensure that the spouses can inherit each other’s estates and retain control over their own financial and medical decisions, even if the validity of the marriage is challenged. In many cases, the safety net created by extra legal planning will never have to be used. But if it is needed,



YOU CAN FIND MORE INFORMATION ON TRANSGENDER PEOPLE AND MARRIAGE IN THE NCLR PUBLICATION:

[Transgender People and Marriage: The Importance of Legal Planning](#)

Available at:
www.nclrights.org



PART II:
FINANCES: HOW THE LAW
CAN COST LGBT ELDERS



II. FINANCES: HOW THE LAW CAN COST LGBT ELDERS

Planning for retirement raises unique issues for LGBT people and same-sex couples. Many sources of retirement income are structured to provide benefits, or more benefits, based on federally-recognized marriages, and same-sex couples do not yet have any of the protections that prevent elders in different-sex marriages from losing their homes when one spouse becomes seriously ill or dies. In addition, tax burdens on inheriting property from persons other than a spouse make financial planning even more critical for many LGBT seniors, whether partnered or not.

The purpose of this section is to give you information to help you make the legal and financial plans you need to achieve your retirement goals, including maximizing your social contact with supportive peers and making long-term care and estate plans.

Below, we list the larger and more well-known federal retirement income and income assistance programs, and give very basic information about them: who and what they cover, and what problems arise from existing discrimination in the law. We also highlight the areas where LGBT people and same-sex couples face additional tax burdens that you should be aware of as you plan for the years ahead. Finally, we describe the documents you should put in place to ensure that someone you trust will manage your finances for you if you should become incapacitated.

A. RETIREMENT INCOME: EMPLOYEE RETIREMENT PROVISIONS

Although many employees are able to designate only a spouse or legal children as beneficiaries of their retirement benefits (and the same is true for survivor benefits and accidental death benefits), a growing number of private firms offer benefits, including retirement benefits, to a domestic partner or other person the employee chooses. It is important to research what your employer allows you to do and what the requirements are, including whether you can change your beneficiary designations in the future and under what circumstances.

Unfortunately, in too many places, no benefits are available to surviving unmarried partners or persons other than a federally-recognized spouse. In these circumstances, a support trust, life insurance, or an annuity may be the best way to replace the safety net that retirement, survivor and accidental death benefits provide. A competent financial planner can help you to decide what will work for you.

B. RETIREMENT INCOME: SOCIAL SECURITY RETIREMENT BENEFITS

Social Security retirement benefits, which are governed by federal law, are the main source of earned income for most elder Americans.

- 62% of elders (people age 65 and older) use Social Security for half or more of their annual income
- 26% of elders use Social Security for up to 90% of their income
- 15% of elders use Social Security as their only source of income

Social Security retirement benefits become available based on your employment and tax payment history. You become eligible by paying a certain amount into the Social Security retirement system, through taxes withheld from your paycheck or quarterly

self-employment taxes. The amount that you qualify to receive after retiring depends on how much you paid in and over what period of time, and on what age you are when you retire. This means that if you do not pay in a certain amount over a specified period of time, you may not qualify for these benefits. You may also be eligible to receive benefits if you become fully disabled before you reach the normal age of retirement eligibility.

Social Security retirement benefits are available to all individuals who qualify, but same-sex couples still face discrimination in the Social Security retirement benefits system. Different-sex married spouses are eligible for earned Social Security spousal benefits, which can allow them to receive a benefit equal to half of their spouse's Social Security benefit if it is larger than their own earned Social Security benefit. Same-sex couples are currently ineligible for this protection, even if they are married or in a civil union or domestic partnership. This is very costly for many LGBT retirees, and means that people with same-sex partners must be more aware and proactive to secure enough financial resources for retirement.

C. SOCIAL SECURITY SURVIVORS BENEFITS

Some of the money that workers pay into the Social Security system through taxes goes toward survivors benefits, which are paid to surviving spouses (or surviving divorced spouses) and disabled or minor children of wage earners who have died. According to the Social Security Administration (SSA), about 5 million people currently receive monthly Social Security benefits based on a deceased spouse's earnings record, and these benefits are what keep many of these survivors out of poverty.² Unfortunately, as with Social Security retirement benefits, current law discriminates against same-sex couples—because the federal government will not recognize legal unions between persons of the same sex, surviving same-sex partners are denied Social Security survivors benefits.

Minor children may receive Social Security benefits if a parent passes away, or if a parent receives retirement or disability benefits. These benefits are generally only available where there is a legally-recognized parent-child relationship. This means that children of LGBT parents who are legal parents through biology, adoption, or other state law (including through a marriage, civil union, or domestic partnership) are eligible for these benefits. If an LGBT parent is not a legal parent, however, their child will usually not be able to receive these Social Security child benefits. If you are unsure if you are a legally-recognized parent to your child, we encourage you to speak with an attorney with experience in Social Security benefits as soon as possible or contact one of the resources at the end of this manual.

D. INCOME ASSISTANCE: SUPPLEMENTAL SECURITY INCOME (SSI) AND STATE SUPPLEMENTARY PAYMENTS (SSP)

Supplemental Security Income (SSI) is a federally-funded program administered by the Social Security Administration that provides modest income support to individuals who are age 65 or older, or blind or disabled. SSI is a “needs-based” program, which means that your income and financial resources must be below a certain level before you can qualify to receive SSI benefits. The way that the government calculates your income to determine your eligibility for SSI depends in part on whether you are in a federally-recognized marriage. This means that different income rules apply to different-sex married couples than apply to same-sex couples.



ESTIMATING YOUR SOCIAL SECURITY RETIREMENT BENEFITS:

Each year, the Social Security Administration (SSA) mails a Social Security Statement to all workers and former workers age 25 and older, summarizing your past earnings and estimating the benefits you may receive in the future. Your statement can help you plan for the future, although the amounts on it are only estimates. You can also request a Social Security Statement on the SSA's website, www.socialsecurity.gov.

² Survivors Benefits For Your Widow Or Widower, available at <http://www.socialsecurity.gov/survivorplan/onyourown2.htm>



If you qualify for SSI benefits, you may also qualify for additional, state-funded benefits under your state's State Supplementary Payment (SSP) or Optional State Supplement (OSS) program. The names of these programs vary from state to state, but they all provide payments based on eligibility rules that are similar or identical to the eligibility rules for SSI and are funded with state money. In some states, they are administered by the SSA, and recipients get a single check for both their SSI and SSP benefits, but other states administer their own SSP programs, and recipients get a separate check from the state. You can ask your local Social Security office or contact NCLR or SAGE for help in finding more information about your state's program.

E. INCOME TAX PLANNING

If you have a partner or share a home or other property with someone other than a different-sex spouse, you should be aware of the special tax planning needs of same-sex couples and LGBT people looking towards retirement. It is also very important to speak with a qualified tax professional about how to save the money you will need for retirement and protect yourself and your loved ones from extra tax burdens. This is a short summary of how the tax laws can affect LGBT people differently.

Income Tax Issues for Same-Sex Couples: In most states, unlike different-sex couples who are married, same-sex couples are unable to transfer property to each other without paying taxes on it. This is a costly problem for LGBT people who own a home and wish to add their same-sex partner onto the title of that home. The owner of the home will have to pay taxes on the share of the property that is transferred to his or her partner.

In addition, different-sex married couples pay taxes only once on the value of any spousal benefits provided by one partner's employer, but because federal law does not recognize the relationships of same-sex couples, both the partner who earns the benefits and the partner who receives them may end up being taxed. This double taxation is fundamentally unfair and can cost LGBT people hundreds or thousands of dollars every year.

Finally, under federal law and in most states, same-sex couples cannot file income taxes jointly or under the category of "married filing separately." Instead, each person must file as an individual taxpayer, which can be costly to the couple depending on income.

Tax Issues for LGBT People Who Inherit From a Loved One: LGBT people often inherit money or other property from people to whom they were not married, but with whom they have had a relationship of mutual support. In addition to the fact that the federal government currently does not recognize same-sex relationships, older LGBT people are more likely in general to live with, support and be supported by people other than romantic partners.³ Unfortunately, this means that without advance planning, LGBT people are likely to pay higher estate taxes on property inherited from a loved one who has passed away.

When one spouse in a married different-sex couple dies, the surviving spouse gets an exemption from the estate tax that any other person inheriting the property would have to pay. This is one of the most important protections provided by



APPLYING FOR SSI:

For information about whether you are eligible and to apply for SSI assistance, visit or call a local Social Security office, or visit the Social Security Administration website at www.socialsecurity.gov. Office locations near you can be found in the telephone directory under "United States Government."

³ MetLife Mature Market Institute, *Out and Aging: The MetLife Study of Lesbian and Gay Baby Boomers*, available at <http://www.sageusa.org/uploads/OutandAging.pdf>

marriage and is based on a presumption that most married couples are financially interdependent and should be treated as an economic unit. Partners in same-sex couples currently do not receive this exemption because the federal government does not currently recognize same-sex relationships. This means that even if a same-sex couple is financially interdependent, and even if the surviving partner will suffer serious financial harm by having his or her inheritance taxed, same-sex couples are treated as legal strangers when one passes away, and the surviving partner will need to pay the estate tax that a legal stranger would pay.

When you inherit a retirement account, like a 401(k) or 403(b), from someone who has died, you may also be taxed on it. But as discussed earlier in this guide, as of January 1, 2007, retirement plans like these *may* allow a non-spouse beneficiary like a domestic partner, parent or sibling to roll over inherited retirement benefits to an inherited IRA tax-free, and as of January 1, 2010, these retirement plans will be *required* to allow this. This is a positive change in the law for same-sex couples. If you are told that you must pay taxes on a retirement plan that you have inherited from a domestic partner or spouse, you can contact NCLR's Legal Information Helpline at info@nclrights.org or [800.528.6257](tel:800.528.6257) for more information about the new law.

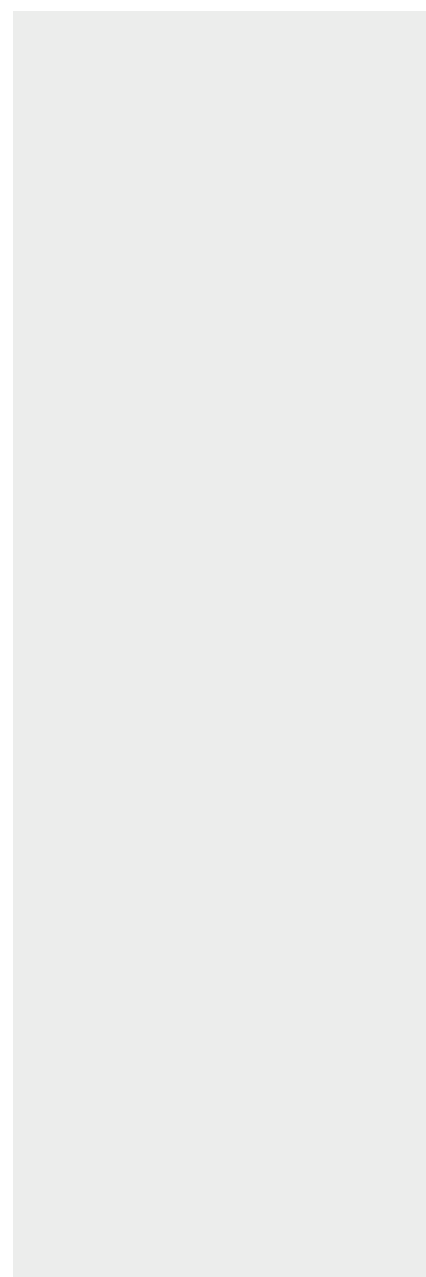
F. DOCUMENTS FOR HANDLING YOUR FINANCES IF YOU ARE INCAPACITATED: THE DURABLE POWER OF ATTORNEY FOR FINANCES

It is important to have a plan in place in case you become ill and cannot take care of things like paying bills. When people become unable to manage their own financial affairs because they are incapacitated, a court may appoint someone to have control over their assets—this person is called a conservator or a guardian. If you have not already legally authorized your partner or someone else you trust to act on your behalf, a court is likely to choose a biological relative, like an adult child or a parent. Some people are comfortable with their adult child or a parent controlling their assets. But if you are not, it is important to make the choice yourself in advance. You can do this with a **durable power of attorney for finances**.

A durable power of attorney for finances allows you to designate a person, your “agent,” to take care of your finances if you are unable to do so yourself. A general power of attorney for finances authorizes your designated agent to control a broad range of financial matters, including paying your bills, cashing your checks, and receiving benefits. You can also limit the powers of your agent to a specific time frame, or to specific functions, using a limited power of attorney for finances. Executing a general or limited power of attorney for finances can save the expense and difficulty of a conservatorship or guardianship proceeding. It can also prevent relatives from intervening in your financial affairs if you are incapacitated.

The designation of power of attorney should not be taken lightly. By designating a person to be your agent, you are giving that person very broad rights to handle your finances, including the ability to empty your bank account without your knowledge. Your agent should be not only someone who knows how to handle money, but also someone you trust without any reservation.

You should provide copies of your Durable Power of Attorney for Finances to your bank and other financial institutions. Many institutions require you to use their own form, so you should check with your bank and other financial institutions first to determine if this is the case.





PART III:
HEALTH CARE AND HEALTH
CARE PLANNING

III. HEALTH CARE AND HEALTH CARE PLANNING

Health care is a major concern for LGBT elders. The most important issues that LGBT elders face are how to pay for health care, how to obtain non-discriminatory health care, how to ensure that your wishes regarding health care are carried out, and who will make decisions about your care if you are unable to make them for yourself. This guide covers long-term care in a later section.

A. PAYING FOR HEALTH CARE

1. PRIVATE HEALTH INSURANCE

If you can, the best way to maximize your choices in health care and keep your “out of pocket” care costs down generally is to maintain private health insurance for as long as possible. Some employers provide health insurance as part of pension packages, although that is becoming less common, and some employers permit former employees to “buy-in” or otherwise continue their health insurance if the employee pays the policy premiums. It may also be possible to buy into group health insurance policies, for example through an association or other group, at lower policy costs than as an individual buying a policy on the open health insurance market.

2. MEDICARE & MEDICAID: THE BASICS

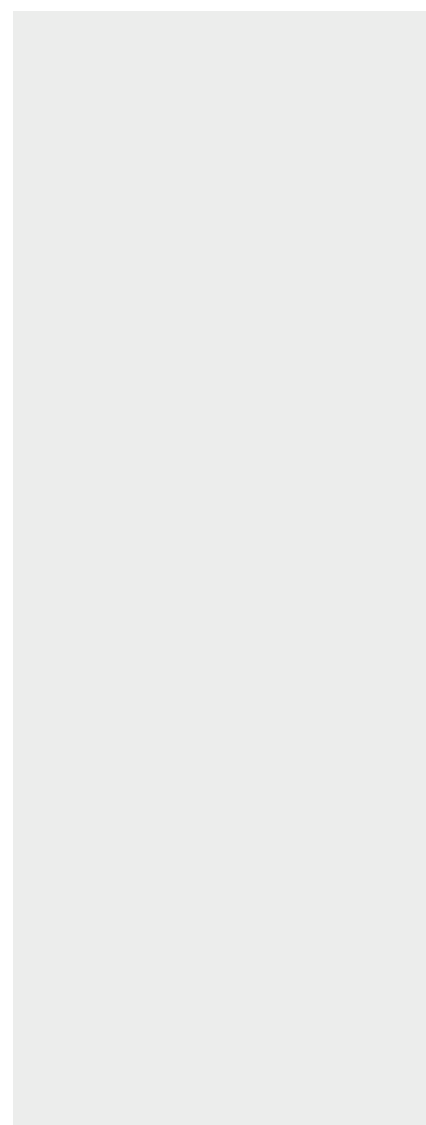
Many people in the U.S., including many older adults, do not have adequate health insurance to cover their medical costs. LGBT elders are also less likely to have access to health benefits through a spouse or partner. Health care reform may be coming, but it remains unclear how the health care system will change. For now, it is helpful to understand the basics of the two U.S. government health care programs, Medicare and Medicaid. There may be other health care programs available, such as HIV/AIDS drug assistance programs.

Medicare is a health care insurance program for people ages 65 and over who have earned Social Security benefits, and for people with disabilities. Medicare **does not pay** for nursing home care or, generally, home health care—this is a common misunderstanding about Medicare.

Similar to the way that people qualify for Social Security Retirement benefits, you qualify for Medicare by having paid into the system during your working life. Medicare is currently divided into four parts—Part A (hospital insurance), Part B (medical insurance), Part C (Medicare Advantage, formerly called the Medicare+Choice program), and Part D (the prescription drug benefit). Parts A and B are sometimes called Original Medicare.

If you are not proactive in making choices about how you use Medicare, choices will be made for you, so it is important to learn what your options are. You can compare the health plans available in your area by using the “Medicare Personal Plan Finder” under the “Find Out What Medicare Covers” option at www.medicare.gov, or you can call **1-800-MEDICARE (1-800-633-4227)**. You can also contact your state’s State Health Insurance Assistance Program (SHIP)—for help finding the SHIP in your state, you can contact NCLR or SAGE, or your local Area Agency on Aging (AAA).

Medicaid is a joint federal and state health care insurance program that helps people, regardless of age, who are low-income, are medically needy, or have disabilities.





Medicaid is run by state and local governments using guidelines set by federal law, though states have some flexibility, especially when spending state funds. Medicaid, not Medicare, covers long-term care and home health care if an elder needs it but cannot pay for it. Many elders rely on Medicaid after they have used most of their own money to pay for care. The law allows Medicaid to recover funds it has paid towards a person's care from that person's estate after he or she has died.

More information about both Medicare and Medicaid is available on the website of the Centers for Medicare & Medicaid Services (CMS), the federal government agency that oversees both programs, at <http://www.cms.hhs.gov>.

3. DISCRIMINATION AGAINST LGBT PEOPLE UNDER MEDICARE & MEDICAID

LGBT elders are excluded from important rights and protections under both Medicare and Medicaid because of discrimination in the law against same-sex couples and because of Medicare and Medicaid rules that limit coverage for health care needed by many transgender people.

Issues for Same-Sex Couples: Before you can get Medicaid benefits, Medicaid rules require you to use all of your own financial resources, as well as the resources of any person who is legally financially responsible for you, like a spouse or domestic partner. And after a person who received Medicaid benefits has died, Medicaid can recover the costs of that person's care from his or her estate, including his or her home. But when a person in a different-sex marriage enters into a nursing home or long-term care facility, federal law protects the financial assets of that person's different-sex spouse in certain ways. For example, different-sex spouses of nursing home residents using Medicaid may remain in the couple's home until death—only after both spouses have died can the state attempt to recover the cost of the care provided by Medicaid from the spouse's estate.

These important protections are not provided to same-sex partners because, as explained above in the section about relationship recognition, the federal government does not recognize same-sex relationships as marriages for any purpose. Because same-sex couples are completely excluded from these protections, you must undertake extra planning to protect your assets, and it is important to talk to a competent attorney about what will work best for you.

Recently, some states have begun to try and fill in this gap for same-sex couples by providing these same spousal protections using only state money. For example, in 2008, Massachusetts enacted the MassHealth Equality bill, H. 4107. Under this plan, Massachusetts can protect the same-sex spouses of Medicaid recipients on equal footing with heterosexual spouses. Similarly, Vermont has been protecting couples in civil unions using state Medicaid money rather than federal money. In some states, parts of the Medicaid program are already fully funded by the state. In states that also recognize legal unions between same-sex couples with all or most of the rights of marriage, same-sex couples in legal unions should be treated as married for the purposes of the parts of Medicaid that are fully state-funded. For more information about the law in your state, you can contact NCLR's Legal Information Helpline.

Issues for Transgender People: Transgender elders also currently face discrimination under Medicare and, in many states depending on the state's rules, under Medicaid. First, as of June 2009, transgender people who receive medical treatments related



MEDICAID RULES VARY BY STATE:

If your assets or long-term care insurance policy might not cover your long-term care needs, you must speak with an experienced attorney who can guide you through the Medicare and Medicaid eligibility mazes and help you and your partner organize your property in the way that will save you both the most money.

to gender transition often encounter barriers to coverage under Medicare because the federal government currently excludes “sexual reassignment surgery” from Medicare coverage. Second, it is not clear whether long-term hormone therapy is covered under Medicare’s “Part D” prescription drug benefit for every available plan, although some transgender people have been able to obtain hormone coverage.

Finally, transgender people who have changed the gender marker in their Social Security records may be denied Medicare coverage for treatment of medical conditions associated with their pre-transition gender for which they remain at risk. (For example, a female-to-male transgender person may not be covered for cervical cancer screenings, and a male-to-female transgender person may not be covered for prostate cancer screenings.) Medicaid coverage may be similarly limited, depending on state law. NCLR and SAGE, along with many other LGBT advocacy organizations, are working to change Medicare and Medicaid policies to eliminate discrimination against transgender people. In the meantime, if you have questions about your eligibility for coverage for a specific health issue, you should speak with a qualified attorney.

B. FINDING NON-DISCRIMINATORY HEALTH CARE PROVIDERS

Many LGBT elders are rightly concerned about whether they will be treated in a fair and non-discriminatory manner, and with dignity and respect, by doctors, nurses, and other caregivers. It is important to make sure that you receive the care you need, and this may include finding an LGBT-friendly health care provider. Here are two resources that may be helpful:

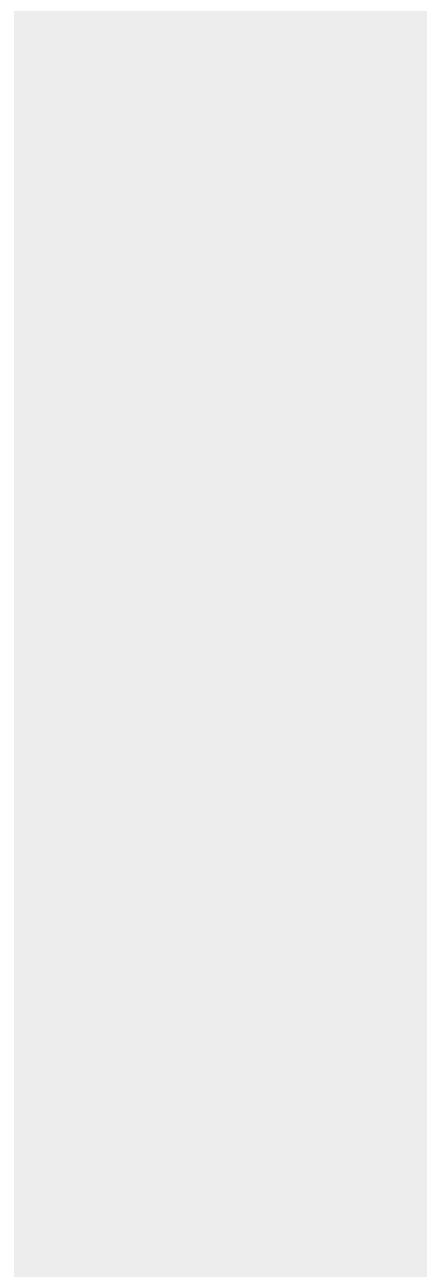
- The Gay & Lesbian Medical Association maintains a searchable online database of LGBT-friendly doctors and care providers, as well as web pages devoted to transgender health resources. Their website can be found at <http://www.glma.org>
- The National Register of Health Service Providers in Psychology maintains a searchable online provider database. Under the Qualifications field, you can choose “Gay, Lesbian, Bisexual or Transgender Issues.” Their website can be found at <http://www.nationalregister.org>

LGBT community centers and HIV service providers may also be good sources of information about health care providers. If you can locate one culturally-competent care provider in your area, you may want to ask that person for a referral to other kinds of providers.

If you feel that you have been the victim of health care discrimination based on your sexual orientation or gender identity or expression, we recommend that you seek legal assistance. Some resources are provided at the end of this guide.

C. ENSURING THAT YOUR HEALTH CARE DECISIONS ARE CARRIED OUT

You are legally entitled to make your own health care decisions if you are competent to do so. You are also entitled to write down your own health care wishes, and for those to be respected. While most of us are not eager to think about dying or being incapacitated, the reality is that most of us will need help during the end stage of living, often in a health care setting. Whether you have control of your future is likely





to depend on the legal steps you take now.

If you are ever seriously injured or incapacitated, you may be unable to make medical decisions about your care. In most states, if you do not provide written directions, health care professionals will turn to your legal relatives to make these decisions. This is true even if you have a partner, no matter how long you and your partner have been together, and regardless of whether you have a good relationship or even any relationship with your relatives. As of June 2009, the only exceptions are for same-sex partners in legally recognized relationships in specific states. Currently, California, Connecticut, Hawaii, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New York,⁴ Oregon, Vermont, Washington and the District of Columbia afford registered same-sex domestic partners or same-sex spouses the rights to:

- visit their partner in the hospital,
- make medical decisions for their partner,
- control the disposition of their partner's body when they die, and
- make funeral arrangements.

Same-sex couples in other states, and unmarried or unregistered couples in all states, must sign authorizations to allow a partner to make these decisions.

(Note: Nevada will provide these rights to registered same-sex domestic partners as of October 1, 2009. In Maine, registered domestic partners in Maine currently receive some of these rights. Same-sex couples will be able to marry in Maine, and make medical decisions for a spouse, as of September 15, 2009.)

Regardless of your rights in your home state, we strongly encourage all LGBT people to leave written instructions in case you become ill or incapacitated in a state that refuses to honor your choices about who you consider to be your family or your relationship. This is important for everyone, including those who are not in relationships. If you do not feel close to your blood relatives, you should make sure that your closest friends and loved ones have the right to make important medical decisions for you. The documents you need to do this are the medical directive and the durable power of attorney for health care. It is also important to name who you would like to be able to visit you in the hospital, using a document called a hospital visitation authorization.

Medical Directive (Living Will): A living will or medical directive is a document that spells out what measures you want to be taken when you are not capable of communicating your choices regarding prolonging your life and other medical care issues. Depending upon the state, the document may be called by any one of several different names, including: living will, medical directive, health care directive, directive to physicians, or declaration regarding health care.

The medical directive and the durable power of attorney for health care are often bundled together into a two-part legal document called an advance health care directive. The advance health care directive lets you choose a health care decision-maker and also tell others what you want to do about medical decisions, organ donation, and funeral arrangements



DOCUMENTS:

Once you and your attorney have completed and properly executed the forms, you should make sure to keep a copy of your medical directive, power of attorney, and hospital visitation authorization for yourself and give copies to:

- **Your partner or spouse**, if you have one;
- **Any physician** with whom you now consult regularly;
- **Any person named as a health care proxy**;
- **Officials at the hospital** or other care facility in which you are likely to receive treatment; and
- **Any family members, friends**, or other people or institutions whom you think should know about your medical intentions.

You should carry copies of your authorization with you at all times, but especially when you anticipate undergoing medical treatment.

⁴ As of June 2009, New York recognizes marriages between same-sex couples validly entered into outside of New York.

Durable Power of Attorney for Health Care (Health Care Proxy): A durable power of attorney for health care (which is also sometimes called a “health care proxy”) empowers another person to make medical decisions about your care if you become unable to make these decisions for yourself.

Even when you have specified your wishes in a living will or medical directive, there may be some situations in which the health care providers need additional information in order to decide what action should be taken. Unless you have designated someone to make these decisions for you by executing a durable power of attorney for health care, your health care providers will turn to your relatives to make these decisions.

In most states you can use a durable power of attorney for health care to appoint someone you trust to make medical decisions for you. In some states, the living will, medical directive, and durable power of attorney for health care are included on the same form. It is critical that you consult a knowledgeable attorney in your state to make sure that you have executed the correct forms and that your forms are up-to-date.

WARNING: Nothing is more important than ensuring that someone you trust will make medical decisions for you if you are unable to make them yourself. The laws on this issue vary significantly from state to state, and are constantly changing. For your own protection, it is critical that you consult a competent, knowledgeable attorney who can make sure that you are complying with the law in your state. For information on how to find an attorney, see the section on finding an attorney later in this manual [Page 32, section IX].

Hospital Visitation Authorization

A hospital visitation authorization allows you to name the people you would like to be able to visit you in the hospital if you are unable to communicate this yourself. You can name a partner or other people, such as close friends or chosen family, in your hospital visitation authorization.

It is important to fill out a hospital visitation authorization even if you have made your partner or another person your health care agent using a durable power of attorney for health care, because the durable power of attorney may not take effect unless you are incapacitated. In order to make sure that your loved ones can visit you in the hospital any time you are there, use a hospital visitation authorization form too.

Same-sex partners in legally recognized relationships in some states have an automatic right to visit each other in the hospital. Nonetheless, we strongly encourage couples who have legally recognized relationships in these states to complete a hospital visitation authorization in case one or both of you are hospitalized in another state. In all other states, couples are not necessarily entitled to visit each other in the hospital and must complete authorizations to make their wishes known in advance.

Make sure that your doctor and your hospital have copies of your hospital visitation authorization on file. You should also carry a copy of it with you at all times.



TRAVEL:

An advance health care directive that is valid in one state is not always valid in another. If you travel out of state or you spend time in more than one state for much of the year, it is very important to ask a competent attorney about making sure that your advance health care directive will be valid wherever you go.



PART IV:
PLANNING FOR CARE OF MINOR
OR DISABLED CHILDREN

IV. PLANNING FOR CARE OF MINOR OR DISABLED CHILDREN

If you have minor or disabled children, it is a good idea to plan for their future care no matter what age you are. But as you become older, it becomes even more important to make sure that your wishes for your child's care will be carried out if anything happens to you.

First, LGBT people with minor children who are not their children's biological or adoptive parents should take all necessary and available steps to be a legal parent, either through an adoption or a parentage judgment. Even LGBT people who are legal parents in their home state because of a marriage, civil union, or domestic partnership should ensure that their parentage will be respected in other states by getting an adoption or parentage judgment.

Second, *all* parents of minor or disabled children also need legal documents that set out:

- Who can make medical decisions for your child, such as your partner or the child's co-parent(s) (called an "Authorization for Consent to Medical Treatment of a Minor"); and,
- Who will be your child's legal guardian(s) if you die or become incapacitated (called a "Nomination of Guardian or Conservator").

Authorization for Consent to Medical Treatment of a Minor: An authorization for consent to medical treatment of a minor allows someone other than a child's legal parents to authorize a doctor or other health care professional to provide medical services to a minor child.

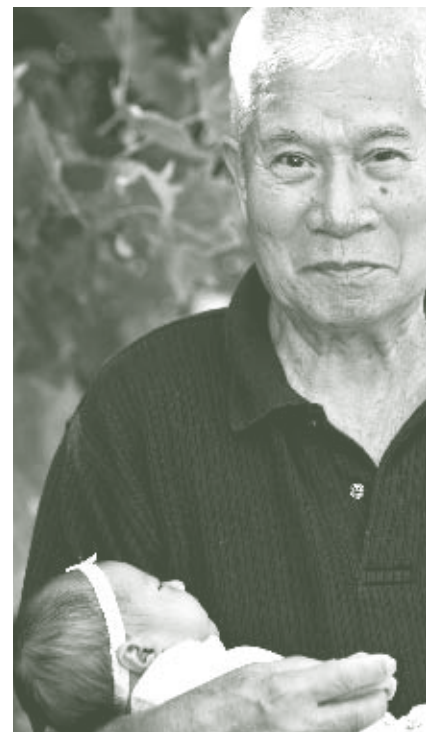
Especially in states that do not recognize both parents in a same-sex couple as legal parents, this form can be important to ensure that your partner can consent to emergency medical treatment for your child if you are not available. Even if both you and your partner are recognized as legal parents, it is advisable to execute this document in case you are traveling in a state that refuses to recognize your relationship or parental status.

You should give a copy of the authorization to your child's doctor and carry a copy with you at all times.

Nomination of Guardian or Conservator: A nomination of a guardian or conservator assigns the care and custody of a child to another responsible adult if the child's legal parent dies or becomes physically or psychologically unable to care for the child. Usually, a person who is appointed to be the child's guardian is given physical custody of the child and authority to manage the child's financial matters.

While a nomination is not legally binding, most courts will give great deference to a clear nomination of guardianship in cases where there is no other legally recognized parent. If there is another legal parent who is fit to care for the child, they have the right to seek custody.

Because the required format of these guardianship documents varies significantly from state to state, you should have the nomination drafted by an attorney who knows the requirements in your state.





PART V:
LONG TERM CARE

V. LONG TERM CARE

Everyone wants to live independently for as long as possible. For LGBT people, having choices in the future requires you to plan ahead for a time when you may need new living arrangements in order to handle basic daily activities such as bathing, dressing, shopping, meal preparation, housework, etc. LGBT people may face particular challenges in care because most long-term care facilities still tend to assume that all elders are heterosexual. Similarly, there is very little awareness among care facilities about transgender people and issues of gender identity. While the law does not yet provide a nationwide solution to the problem of discrimination on the bases of sexual orientation and gender identity and expression in long-term care facilities, there are some federal, state, and local laws that may help.

A. ADVANCE PLANNING

For LGBT people, the best approach to long-term care is to be proactive, and to research and know your best options for long-term care facilities before you ever need them. Explore what care-giving services and facilities are available in your community, and what levels of care they provide (for example, rehabilitation services designed to help you return home versus nursing home care). Visit them and talk with administrators and staff, including exploring whether the facilities have appropriate non-discrimination policies that include sexual orientation and gender identity and expression. Too often, LGBT people are faced with being severely closeted in retirement facilities and other long-term living arrangements. By visiting in advance, you can learn more about what the environment would be like in a facility and try to confirm that you will not need to hide who you are in order to receive good care.

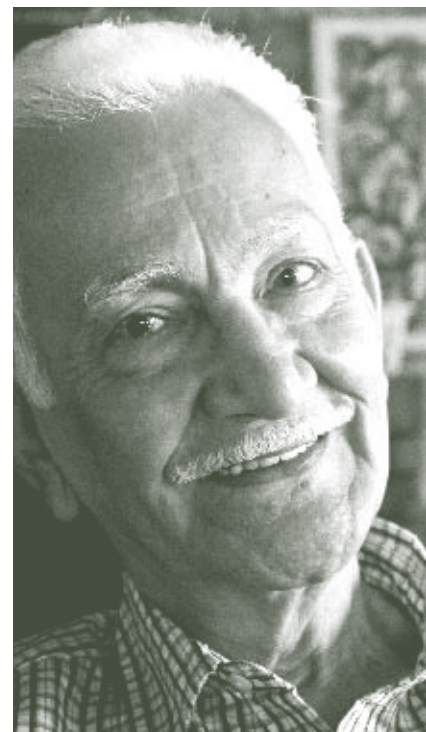
B. THE LONG-TERM CARE CONTINUUM: FROM GETTING A FEW SERVICES TO NURSING HOMES

LGBT people not only go through the universal aging experiences that most elders face, they also represent a higher percentage of elders living alone, without a partner or adult children living with them, and are more likely to be living in poverty.⁵ This may mean that an LGBT elder is more likely than a non-LGBT elder to need assistance or long-term care.

Typically, a person's need for assisted living arrangements falls somewhere along the so-called "continuum of long-term care services." From the least restrictive to the most, this "continuum" covers everything from living independently in your own home to living in a nursing home.

In your community, it may be possible to gain access to some services that help you continue to live independently, including help with meals, transportation or chores; low-income or subsidized housing; senior retirement living communities; and congregate (group) living sites that provide independent living units, meals, chore services, and informal health care services.

On the other end of the continuum, you may reach a point where you need to live in an assisted living facility or even need 24 hour care, referred to as "custodial care" in a long-term care facility. Depending on the community where you live, there may be few options or a large range of options. One of the great challenges in gaining



LGBT-FOCUSED CARE FACILITIES:

As more LGBT seniors seek gay-friendly operations, more are likely to be developed, but currently there are very few. It should be a priority for the LGBT movement to increase the availability of affordable, LGBT-friendly facilities for seniors, whether or not the facilities serve a predominantly LGBT population.

⁵ The Williams Institute, Poverty in The Lesbian, Gay, and Bisexual Community, available at <http://www.law.ucla.edu/williamsinstitute/pdf/LGBPovertyReport.pdf>.



access to long-term care is paying for it, which the next section addresses.

C. FINANCING LONG-TERM CARE

Many people mistakenly believe that Medicare pays for long-term care such as that provided in a skilled nursing facility or nursing home. However, neither Medicare nor regular health insurance—such as you might have through an employer, as part of a retirement package, or purchased on the open market—pays for long-term care.

Individuals must pay the costs of long-term care themselves through private long-term care insurance policies or by using their personal assets. Only when your assets are completely spent and you meet the strict income and asset requirements do you qualify for Medicaid, which does pay for long-term care, although typically at very low levels. As discussed in more detail in the previous section on Medicare and Medicaid, Medicaid rules are complex and vary from state to state, making it very important for LGBT care-givers to consult with an LGBT-sensitive and knowledgeable elder law attorney who has expertise in how best to protect a home, savings and any additional assets and property.

D. RIGHTS OF NURSING HOME RESIDENTS

All elders in certified nursing homes are covered by the 1987 federal Nursing Home Reform Act (NHRA), which requires facilities to provide certain services to residents and establishes a Nursing Home Bill of Rights. Each nursing home must list and give all new residents a copy of these rights.

Discriminating against LGBT nursing home residents may violate any one of these key provisions of the Nursing Home Bill of Rights:

- The right to freedom from abuse, mistreatment, and neglect;
- The right to privacy;
- The right to accommodation of medical, physical, psychological, and social needs;
- The right to participate in resident and family groups;
- The right to be treated with dignity;
- The right to exercise self-determination; and,
- The right to communicate freely.

If the government finds that a nursing home is violating the NHRA, the nursing home may lose its Medicare or Medicaid payments or be subject to other penalties. The federal Older Americans Act requires every state to have an Ombudsman Program that addresses complaints about long-term care facilities, and you can complain to your local Ombudsman about NHRA violations or other problems in your facility. To find the ombudsman nearest you, contact your state Ombudsman office – a directory of all state offices is available at http://www.ltombudsman.org/static_pages/ombudsmen.cfm.

More information about nursing home resident rights is available at www.medicare.gov/nursing/residentrights.asp.

E. DEALING WITH DISCRIMINATION IN HOUSING, RETIREMENT, AND CARE FACILITIES

Unfortunately, discrimination against LGBT people in housing, retirement communities, nursing homes and care facilities is common. Currently, there is no federal law that explicitly prohibits discrimination against LGBT elders in retirement and care facilities, and most states also do not have such a law. But as of April 2009, 20 states and the District of Columbia have enacted sexual orientation anti-discrimination laws, 13 of which also expressly cover gender identity discrimination—these more general laws are likely to apply to retirement and care facilities, but it depends on the state. Many cities and counties also have non-discrimination laws that prohibit discrimination based on sexual orientation and gender identity. For more information about the law in your state and local area, you can contact NCLR's Legal Information Helpline, at info@nclrights.org, or [800.528.6257](tel:800.528.6257).

As we continue to try to improve the law, NCLR, SAGE and other organizations around the country are also taking proactive steps to provide awareness and sensitivity training to those who serve LGBT elders. You can reduce your own risk of facing discrimination on the basis of your sexual orientation or gender identity by visiting the facilities in your area to ensure that the staff and administration are competent and educated on the needs of LGBT residents, before you need them.

When looking into assisted living situations, nursing homes, independent elderly housing or retirement communities, ask as many questions as you can about the attitude and policies towards LGBT people at the facility. You may find that the facility is not willing to accept same-sex couples as the equivalent of a married couple, and may not allow a same-sex couple to live in the same apartment, much less share the same bed. You might note that staff presumes that all residents are heterosexual, or may even engage in homophobic conduct. Nursing home staff, including medical staff, may also be unfamiliar with transgender people and their health needs. Always visit in person if possible before you agree to live or to receive care anywhere.

If you feel that you have encountered discrimination in a housing, retirement or care facility because of your sexual orientation or gender identity, you can and should reach out for help and information. Even in areas where there is not yet a specific anti-discrimination law on the books covering sexual orientation or gender identity and expression, there may be people who can help you advocate for yourself, or who can advocate on your behalf. There are also federal and state laws and accreditation standards for retirement and nursing facilities that should protect all elders in ways that are important to LGBT people—for example, by requiring the facility to allow residents to receive visitors, or by requiring that residents be treated with dignity and respect.

For more information about the laws and standards that apply to your facility or facilities in your area, and to find attorney information in case you decide to take legal action, you can contact NCLR's Legal Information Helpline at info@nclrights.org or [800.528.6257](tel:800.528.6257); SAGE at info@sageusa.org or [212.741.2247](tel:212.741.2247), as well as www.sageusa.org's "Ask The Experts" section; any one of the state legal hotlines provided by the U.S. Administration on Aging, available at http://www.aoa.gov/eldfam/Elder_Rights/Legal_Assistance/Legal_Hotline.aspx; or a local or national organization that serves LGBT elders, many of which are listed at the end of this guide.



In 2004, Joy Lewis and Sheila Ortiz-Taylor (in photo above), a lesbian couple, filed a lawsuit against Presbyterian Retirement Communities, Inc. (PRC), a national chain of retirement communities. Joy and Sheila alleged that Westminster Oaks, a PRC community in Tallahassee, Florida, had discriminated against them based on their sexual orientation, which is prohibited by local housing law. NCLR represented Joy and Sheila in their lawsuit, and they reached a settlement with PRC. Sheila and Joy were pleased that PRC made clear that all qualified applicants have equal access to its facilities, and made plans to join the Westminster Oaks community.



PART VI:
WATCHING OUT FOR ELDER
ABUSE AND NEGLECT

VI. WATCHING OUT FOR ELDER ABUSE AND NEGLECT

Elder abuse can happen to anyone, regardless of gender, economic status, sexual orientation, or gender identity. It can take many forms, including neglect, emotional abuse, physical abuse, sexual assault, financial exploitation, and even self-neglect. Isolation puts elders at increased risk of abuse by another person.

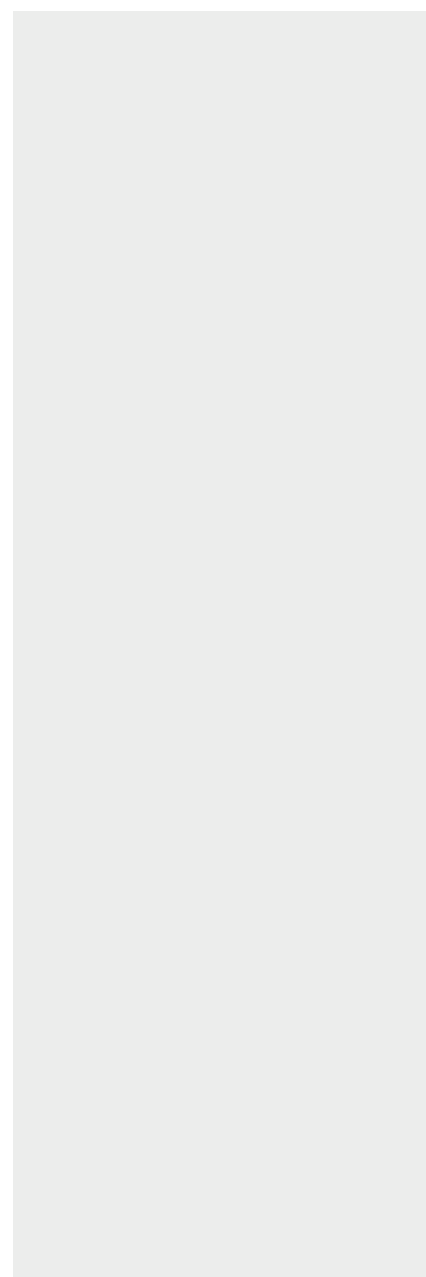
LGBT elders may be at increased risk of elder abuse at the hands of others for several reasons, including reluctance to use local aging services because of fear of bias or discrimination. In order to stop abuse of LGBT elders, we must increase knowledge and acceptance of LGBT people among care providers, and also make sure that LGBT people know their legal rights and can advocate for non-discriminatory services and care.

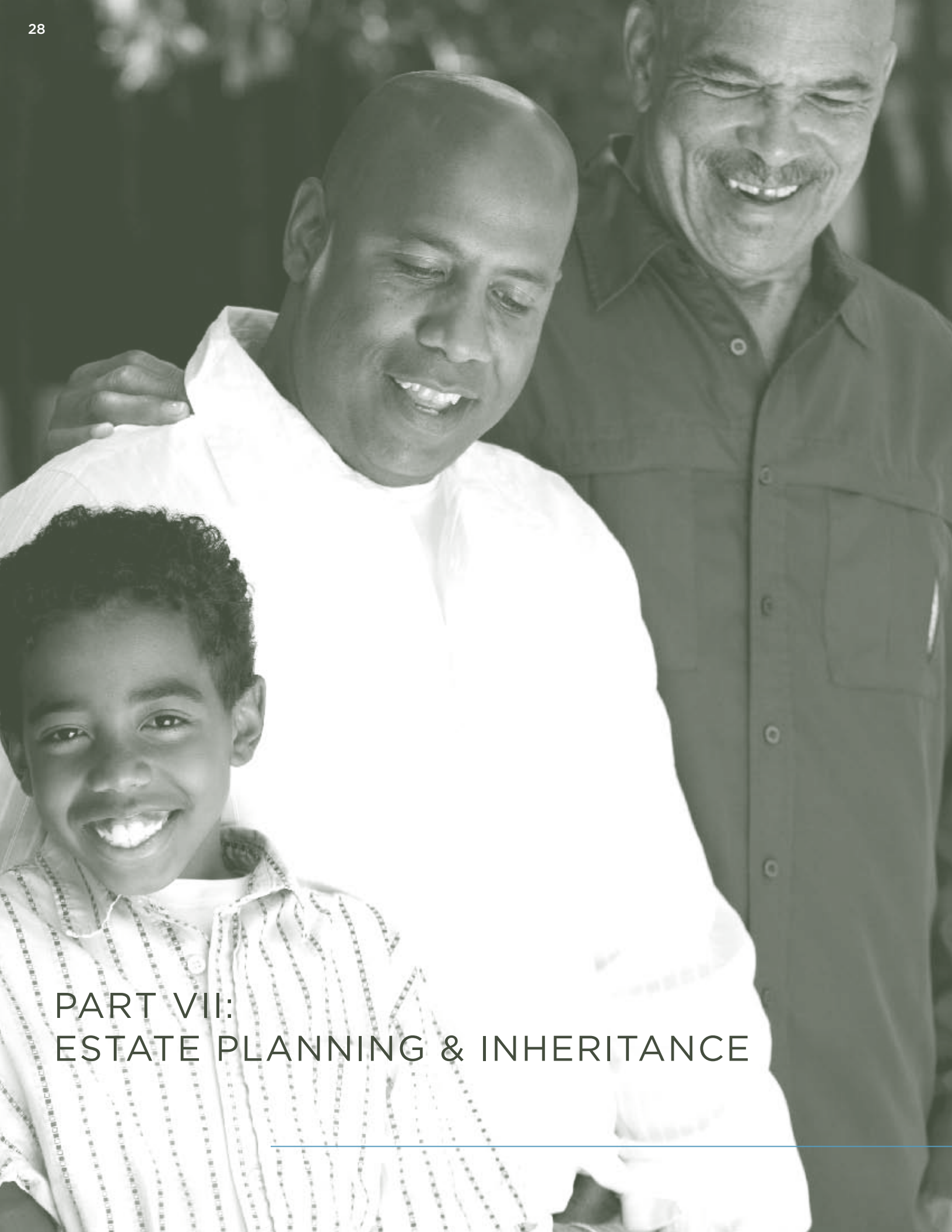
It is important to recognize the signs of elder abuse and neglect, and to report it. The National Center on Elder Abuse (NCEA) has identified a number of signs of elder abuse, including physical symptoms, unexplained withdrawal from normal activities, poor hygiene, unattended medical needs, strained relationships with family members or caregivers, and sudden changes in financial situation. To report elder abuse, contact the police, local adult protective services agency, or the long-term care ombudsman in your state. For a list of reporting numbers, state government agencies, state laws, state-specific data and statistics, and statewide resources, visit the NCEA website at <http://www.ncea.aoa.gov>.

To protect yourself, seek care from medical care and social service providers who are sensitive to the needs of LGBT elders. Always visit a facility before you agree to live or be treated there, and ask questions that will help you determine whether this will be a good and safe place for you to live as an LGBT person. Ask whether a non-discrimination policy is in place that covers sexual orientation and gender identity and expression, and request that those who run the facility provide training to staff on LGBT issues to help ensure fair, equitable and non-discriminatory care and services are provided. Know your rights as a consumer of medical treatment and social services, and how to get help if you need it.

Between 1 and 2 million Americans age 65 or older have been injured, exploited, or otherwise mistreated by someone on whom they depended for care or protection. It is estimated that for every abuse incident reported, at least 5 are not.

Source: Minnesota Elder Care Rights Alliance.





PART VII:
ESTATE PLANNING & INHERITANCE

VII. ESTATE PLANNING & INHERITANCE

Even with the best of care, we all need plans in place for when we die. It is especially important to make plans for who will get your assets—your estate—after you die. If you do not choose where your assets go, they will go to your legal relatives—usually parents, children and siblings—or, if none can be found, to the state. This will happen even if you do not have a good relationship with your family of origin, or if you just want your assets to go to other loved ones. Wills and trusts are the documents that allow you to make sure that your property goes to the people you choose, and they let you have some control over how that happens as well.

A. WILLS

A will is a legal document that allows you to designate who, how, and when, people will inherit (receive) your property when you die. If someone dies without a will, their property is automatically distributed to legal heirs, as defined by the laws of their state. With the exception of the few states where the marriage, civil union or domestic partnership law recognize the right of a same-sex partner to inherit, a same-sex partner or spouse is *not* considered to be a legal heir. Regardless of how long a same-sex couple has been together or whether the deceased partner was estranged from their relatives, a same-sex partner is not legally entitled to inherit property without a will in most states. As of June 2009, same-sex partners in legally-recognized relationships in California, Connecticut, Hawaii, Iowa, Maine, Massachusetts, New Hampshire, New Jersey, New York (through a marriage in another state), Oregon, Washington, Vermont, and the District of Columbia have the right to inherit without a will if their spouse or partner dies. Even in states that recognize the right of a same-sex spouse or partner to inherit, it is best to have a will in place.

A will also gives you the opportunity to name someone, called a “personal representative,” who will be in charge of distributing your property or personal belongings in the way that you specify in your will.

You can also include preferences in your will about funeral arrangements, disposition of your remains, and who will be in charge of your funeral or memorial service—although since wills are sometimes not discovered or read right away after a person dies, a better practice is to have specific documents that specify your exact wishes in those areas.

Finally, if you have children, you can use your will to name a guardian to care for your children after your death. A nomination of guardian is not legally binding, but most courts will honor a clear nomination of guardianship if there is no other legally recognized parent. If there is another legal parent who is fit to care for the child, that legal parent has the right to seek custody. If you wish to name a guardian for your children in your will, a competent attorney can help you make sure that the nomination meets all of the legal requirements in your state.

You should also be aware that taxes can have a large impact on an estate when someone dies, and same-sex couples face serious tax consequences due to discrimination in federal, and often state and local, law. These issues are described above in the section on financial planning, on page [9, section II]. If you are LGBT and plan to leave property to your partner or other loved ones, it is important for you to seek expert tax advice particular to your situation.



EVERYONE HAS AN ESTATE:

The word “estate” means everything you own, including your personal belongings, and real estate. Many people do not think of themselves as having an estate, but all of us do.



B. TRUSTS

Another way to designate who will receive your property upon your death is through a revocable living trust. A living trust is like a will because it allows you to say who should get what; it is different from a will because your assets do not go through your state's probate process. In probate, your will must be proven valid and your debts paid before your property is distributed. In some states, probate can be a long and complicated process, and in others it is fairly simple. With a living trust, your estate will avoid probate altogether and your property goes directly to the people you have named in the trust. In some circumstances, transferring property through a living trust rather than a will also helps you reduce or avoid some estate taxes. Also, if you are leaving assets to someone who receives need-based benefits, like Supplemental Security Income (SSI), using a trust may keep that person from losing his or her benefits after inheriting your assets. If this is a concern for you, speak to an estate planning attorney.

A revocable living trust lets you transfer your ownership of your assets to the trust, while still maintaining control over those assets during your lifetime. Although the trust is technically the owner of the property, you (as the trustee) maintain management and control of the property.

Trusts do not make sense for everyone. There are some drawbacks to using a living trust and, depending on the type of assets you have, the costs may outweigh the benefits. You should consult an estate planning attorney before making a decision about whether a revocable living trust makes sense for you.

C. DISPOSITION OF REMAINS AND FUNERAL ARRANGEMENT INSTRUCTIONS

Unless you leave written instructions, nearly every state gives your legal relatives the right to control what happens to your body when you die, including whether to authorize an autopsy, and to make funeral arrangements. A surviving same-sex partner does not automatically have this right—except for those in legally-recognized relationships in some states. For information on your state, please consult NCLR's website at www.nclrights.org.

Written instructions let you express your wishes regarding these issues and name the person you would like to carry them out. In most states, these instructions are legally binding. Even if you live in one of the states listed above and are in a legally recognized relationship, NCLR strongly encourages all couples to leave written instructions in case you or your partner die while in a state that refuses to honor your relationship. You should carry a copy of your instructions with you at all times. As with all other legal documents, the laws regarding such instructions vary by state. You should speak to an attorney to ensure that your documents comply with the relevant state law.



FUNERAL ARRANGEMENTS:

You can include your preferences about funeral arrangements in your will, but often a person's will is not read until after the funeral has occurred. For this reason, many people also include directions for their funeral in their advance health care directive, and/or create a separate document that gives funeral directions. More information is in the section below on Funeral Arrangement Instructions.

WARNING:

You should never rely on a pre-packaged trust bought on the Internet or in a commercial publication. To protect yourself, it is essential that you consult a knowledgeable attorney who is familiar with the law in your state.



PART VIII:
HIRING A COMPETENT ATTORNEY

PART IX:
FINDING MORE INFORMATION

VIII. HIRING A COMPETENT ATTORNEY

Every state has different legal rules for creating valid documents such as those described in this guide, and courts are often quite strict about these rules. Also, the laws affecting same-sex couples change often. A competent lawyer can make sure that your documents follow the current rules in your state. Although there are some do-it-yourself legal forms available for purchase or online, these forms are often incorrect or out-of-date, or just do not make sense for your situation. **For your own protection, you must have an experienced, knowledgeable attorney help you draft your estate and life planning documents, and give you advice and counsel in all aspects of planning.**

For information about how to find an attorney in your area, you can contact the National Center for Lesbian Rights' Legal Helpline by calling **800.528.6257** or by emailing info@nclrights.org. You can also contact other national, state, or local LGBT legal organizations. For a list of local LGBT bar organizations, visit the National LGBT Bar Association at www.lgbtbar.org/affiliates.html.

IX. FINDING MORE INFORMATION AND ASSISTANCE

FOR INFORMATION ABOUT LAWS THAT AFFECT THE RIGHTS OF LGBT PEOPLE, OR FOR INFORMATION ABOUT HOW TO FIND AN ATTORNEY:

National Center for Lesbian Rights Elder Law Project (NCLR)
870 Market Street, Suite 370
San Francisco, CA 94102
(800) 528-6257

Legal Information Helpline
(800) 528-6257
info@nclrights.org
www.nclrights.org

National Senior Citizens Law Center
3435 Wilshire Boulevard,
Suite 2860
Los Angeles, CA 90010
(213) 674-2900

1444 Eye St., NW Suite 1100
Washington, DC 20005
(202) 289-6976
www.nscl.org

American Civil Liberties Union LGBT Project
125 Broad Street, 18th Floor
New York, NY 10004
www.aclu.org/lgbt

National Academy of Elder Law Attorneys (NAELA)
1604 North Country Club
Road
Tucson, AZ 85716
(520) 881-4005
www.naela.com

The National Center for Transgender Equality
1325 Massachusetts Ave.,
Suite 700
Washington, DC 20005
(202) 903-0112
www.nctequality.org

Transgender Law Center
870 Market Street, Suite 823
San Francisco, CA 94102
(415) 865-0176
www.transgenderlawcenter.org

Human Rights Campaign (HRC)
1640 Rhode Island Avenue
NW
Washington, DC 20036
(202) 628-4160
(800) 777-4723
TTY: (202) 216-1572
www.hrc.org

Gay and Lesbian Advocates and Defenders (GLAD)
30 Winter Street, Suite 800
Boston, MA 02108
(617) 426-1350
(800) 455-GLAD
www.glad.org

Lambda Legal
120 Wall Street, Suite 1500
New York, NY 10005-3904
(212) 809-8585
www.lambdalegal.org

National Gay and Lesbian Task Force
1325 Massachusetts Ave. NW
Suite 600
Washington, DC 20005
(202) 393-5177
www.thetaskforce.org

FOR INFORMATION ABOUT SERVICES FOR LGBT ELDER:

SAGE & SAGE AFFILIATED NETWORK:

Services and Advocacy for Gay, Lesbian, Bisexual & Transgender Elders (SAGE)
305 Seventh Avenue, 16th Fl.
New York, NY 10001
(212) 741-2247
www.sageusa.org

CenterSAGE
Hudson Valley LGBTQ
Community Center
P.O. Box 3994
Kingston, NY 12402
www.lgbtqcenter.org

SAGE/Queens
A program of Queens
Community House
74-09 37th Avenue #409
Jackson Heights, NY 11372
(718) 533-6459

SAGE at the Center on Halsted
3656 N. Halsted
Chicago, IL 60613
(773) 472-6469
www.centeronhalsted.org

SAGE of the Rockies
P.O. Box 9798
Denver, CO 80209-0798
(303) 733-7743
www.glbtcOLORADO.org

SAGE Long Island
34 Park Avenue
Bay Shore, NY 11706-7309
(631) 665-2300
http://sageli.org

SAGE South Florida
8333 W. McNab Road, Ste.
239
Tamarac, FL 33321
(654) 720-0833
www.sagewebsite.org

SAGE of Metro St. Louis
P.O. Box 260016
St. Louis, MO 63126
(314) 821-4845
www.sagemetrostl.org

SAGE Upstate
P. O. Box 6271
Syracuse, NY 13217
(315) 478-1923
www.sageupstate.org

SAGE Milwaukee
1845 N. Farwell Avenue, Ste.
220
Milwaukee, WI 53202
(414) 224-0517
www.sagemilwaukee.org

SAGE Western New York
18 Trinity Place
Buffalo, NY 14201
(716) 852-PRIDE
www.pridecenterwny.org/
Seniors.html

ADDITIONAL RESOURCES:

Aging as Ourselves
4069 30th Street
San Diego, CA 92104
www.elderhelpofsandiego.org

LGBT Aging Project
555 Armory Street
Jamaica Plain, MA 02130
(617) 522-1292
www.lgbtagingproject.org

Azteca Project
P.O. Box 7678
Chula Vista, CA 91912
www.aztecaproject.org

Lavender Seniors of the East Bay
1395 Bancroft Avenue
San Leandro, CA 94577
(510) 667-9655
www.lavenderseniors.org

GLBT Generations (Minnesota)
(651) 229-3136
www.glbtagenerations.org

Prime Timers World Wide
http://www.primetimersww.org

Griot Circle
25 Flabush Avenue, 5th Floor
Brooklyn, NY 11217
(718) 246-2775
www.griotcircle.org

SunServe
1480 SW 9th Avenue
Fort Lauderdale, FL 33315
(954) 764-5055
sunserve@aol.com

Howard Brown Health Clinic
4025 N. Sheridan Road
Chicago, IL 60613
(773) 388-1600
www.howardbrown.org

Transgender Aging Network
6990 N. Rockledge Avenue
Glendale, WI 53209
(414) 540-6456
www.forge-forward.org/tan

Old Lesbians Organizing For Change (OLOC)
P.O. Box 5853
Athens, OH 45701
(888) 706.7506

Gay, Lesbian & Bisexual Veterans of America
P.O. Box 29317
Chicago, IL 60629
www.glbva.org

Gay & Lesbian Association of Retired Persons
PO Box 30808
Los Angeles, CA 90024
www.gaylesbianretiring.org

New Leaf Outreach to Elders
1390 Market St., Suite 800
San Francisco, CA 94102
(415) 626-7000
TDD: (415) 252-8376
www.newleafservices.org

Openhouse ~ senior community living in pride
870 Market Street, Suite 458
San Francisco, CA 94102
(415) 295-8995
www.openhouse-sf.org

Los Angeles LGBT Community Center
1125 N. Mccadden Place
Los Angeles, CA 90038
(323) 860-7397
www.lagacenter.org

Senior Housing and Retirement Enterprises (SHARE)
P.O. Box 12294
Portland, OR 97212

Transgender Education Partnership
5245 College Ave. #142
Oakland, CA 94618

FOR INFORMATION ABOUT ELDER ABUSE:

National Center on Elder Abuse
1201 15th Street, NW, Suite 350
Washington, DC 20005
(202) 898-2586
www.elderabusecenter.org

FOR INFORMATION ABOUT MEDICAID & MEDICARE

Social Security Administration
http://www.socialsecurity.gov/mediinfo.htm

(RESOURCES CONTINUED ON BACK COVER)

www.nclrights.org

ADDITIONAL LGBT AND LGBT-FRIENDLY ORGANIZATIONS:

Family Caregivers Alliance
180 Montgomery St, Ste
1100
San Francisco, CA 94104
(415) 434-3388
1-800-445-8106
www.caregiver.org

On Lok (SeniorHealth)
On Lok Administrative
Offices
1333 Bush Street
San Francisco, CA 94109
(415) 292-8888
www.onlok.org

The National Coalition for
LGBT Health
1325 Massachusetts Ave,
NW, Suite 705
Washington, DC 20005
(202) 558-6828
www.lgbthealth.net

CenterLink, the National
Association of LGBT
Community Centers
1325 Massachusetts Avenue
NW, Suite 700
Washington, D.C. 20005
(202) 824-0450
http://www.lgbtcenters.org

OTHER RESOURCES FOR ELDERS:

Administration on
Aging
www.aoa.dhhs.gov

Alliance for Aging
Research
www.agingresearch.org

Alzheimer's Disease
Referral and Education
Center
www.nia.nih.gov/
alzheimers

American Association
of Health Insurance
Plans
www.aahp.org

American Association
of Homes and Services
for the Aging
www.aahsa.org

American Association
of Retired Persons
(AARP)
www.aarp.org

American Federation
for Aging Research
www.afar.org

American Geriatrics
Society
www.americangeriat-
rics.org

American Society on
Aging
www.asaging.org

Association for
Gerontology in Higher
Education
www.aghe.org

Association of Jewish
Aging Services
www.ajas.org

B'Nai B'rith Center for
Senior Housing and
Services
www.bnaibrith.org

Center for Health Care
Strategies
www.chcs.org

Commission on Law
and Aging (American
Bar Association)
www.abanet.org/aging

Gray Panthers
www.graypanthers.org

The Gerontological
Society of America
www.geron.org

National Academy on
an Aging Society
www.agingociety.org

National Asian Pacific
Center on Aging
(NAPCA)
www.napca.org

National Association
for Home Care and
Hospice
www.nahc.org

National Association
of Area Agencies on
Aging
www.n4a.org

National Association
of Nutrition and Aging
Services Programs
www.nanasp.org

National Active and
Retired Federal
Employees Association
www.narfe.org

National Caucus and
Center on Black Aged
www.ncba-aged.org

National Committee
to Preserve Social
Security and Medicare
www.ncpssm.org

National Council on the
Aging
www.ncoa.org

National Hispanic
Council on Aging
(NHCOA)
www.nhcoa.org

National Osteoporosis
Foundation
www.nof.org

Older Women's League
www.owl-national.org