

Aging With Dignity

LGBT older adults and older adults living with HIV face special challenges—but there are precautions they and their loved ones can take. **By Staff Attorney Natalie Chin**

JUDE PATTON, 71, AN LGBT ADVOCATE

in Washington State, considers himself lucky. A pioneer transgender activist, Patton is in excellent health and has the companionship of his wife, Carol, to whom he's been married for 24 years. "But many of us in the LGBT community close to my age have lost our parents and many of us have not had children," he said. "You do become more isolated." Trans seniors, in particular, can have serious worries about privacy issues. "At conferences and in my advocacy work, I certainly have heard some horror stories," Patton said, "including in assisted-living and nursing homes, where staff who had rigid religious beliefs prayed for transgender clients to die, because they thought they were an abomination to God."

If getting older weren't challenging enough physically, LGBT older adults also face not only ageism, but sexual orientation and gender identity/expression discrimination. In a recent survey spearheaded by the National Senior Citizens Law Center, *LGBT Older Adults in Long-Term Care Facilities: Stories From the Field*, several respondents provided telling accounts of discrimination in nursing homes and disrespect by medical providers. In Lambda Legal's 2009 national Health Care Fairness Survey (which had nearly 5,000 respondents overall), 33.8 percent of LGBT seniors reported that health care professionals had used harsh language towards them, and 35.5 percent of seniors living with HIV reported that health care professionals had refused to touch them. An astonishing 62.9 percent of transgender seniors said they felt health care professionals were unaware of their health needs. (To access this report, visit www.lambdalegal.org/health-care-fairness).

Moreover, LGBT seniors, like the rest of the rapidly growing population of Americans, face staggering financial challenges. Health care costs continue to skyrocket and increased life expectancy—not to mention a burgeoning senior population—are straining personal as well as national retirement resources.

Faced with both economic challenges and discriminatory treatment, LGBT older adults need

travel across state lines. LGBT seniors should seriously consider the following list of tools.

• **THE FEDERAL NURSING HOME REFORM ACT ("FNHRA")**

was enacted in 1987 by Congress after a study found that many nursing home residents were being neglected and abused. The FNHRA may offer LGBT seniors and seniors living with HIV protections against discrimination, abuse and neglect based on sexual orientation and gender identity/expression. Nursing homes, rehabilitation, and health-related care and services facilities that receive Medicaid or Medicare funding are prohibited, for instance, from isolating residents and required to treat all residents with dignity and respect. If you or a loved one are being discriminated against on the basis of sexual orientation, gender identity or expression or HIV status, call Lambda Legal's HelpDesk at 866-542-8336 or visit www.lambdalegal.org/help.

• **HOSPITAL VISITATION REFORM:**

In January, new federal guidelines took effect, resulting from a 2008 lawsuit which Lambda Legal brought on behalf of Janice Langbehn, who, with her children, was kept from visiting her partner, Lisa Pond, when Pond collapsed on a family vacation and died in the hospital. The case ultimately prompted

President Obama to personally contact Langbehn and to issue a presidential memo urging changes in the law. National regulations now require hospitals participating in Medicaid and Medicare to have written policies and procedures regarding patients' visitation rights. Hospitals must inform patients, or an attending friend or family member, of the patient's rights to visitors



Advocate Jude Patton says LGBT seniors tend to be more isolated and vulnerable.

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to know their rights and protect themselves. If you're married, in a civil union or domestic partnership, you and your partner may benefit from protections associated with those legal statuses in the event either of you is incapacitated or dies. However, because recognition of the marriages, civil unions and domestic partnerships of same-sex couples aren't consistent from state to state, death-related protections may not

of his or her choosing. The policy also prohibits discrimination against visitors based on gender identity and sexual orientation.

- **HEALTHCARE PROXY OR DURABLE POWER OF ATTORNEY:** This document enables you to legally designate someone you trust (an agent) to make health care decisions for you in the event you cannot make them for yourself. Hospitals, doctors and other health care providers must follow your agent's decisions as if they were your own. You can access the U.S. Living Will Registry at <http://uslwr.com/formslist.shtm>, to find free advance directive forms for each state. These forms sometimes change, so consult your local legal services organization or private attorney to ensure the forms are correct.
- **A FINANCIAL POWER OF ATTORNEY:** This document allows you to legally designate an individual to handle your financial assets should you become unable to do so. Financial power of attorney is a critical tool to ensure that your everyday expenses are paid, taxes are filed and your government benefits such as Social Security and Medicare are collected. Without a financial

power of attorney, a court proceeding will likely occur to determine who will handle your finances.

- **A WILL:** This document is a key component in your life-planning arsenal and often the only way to make sure the people you love are protected after your death. When you do not have a will, you die "intestate," which means state law dictates how your property will be distributed. A will allows you to decide what happens to your personal belongings after your death, including your home, cash, bank accounts, pets and other personal assets, like jewelry and family photographs. Martha Stark, former finance commissioner for New York City and a Lambda Legal supporter, said she prepared a will because her mother, who died at 46, did not. "I want to make sure my family is provided for when I die or become ill."
- **FUNERAL ARRANGEMENTS:** You can create a separate, written document that conveys your wishes and provides instructions for funeral arrangements and for what should be done with your body. This information can be included in

your will, but a will may not be opened until the funeral is over, and if your wishes are not in writing, your loved ones may have no legal rights to make these decisions after you die. Since some funeral homes won't honor written funeral directives, it may be best for you to make funeral arrangements while you're alive.

LGBT seniors and seniors living with HIV are entitled to enjoy their older years free of harassment and discrimination. To learn more about the documents and legal protections in this article, call Lambda Legal at 212-809-8585 and request our Take the Power toolkit (you can also download it online at www.lambdalegal.org/takethepower). And if you or a loved one does encounter discrimination on the basis of sexual orientation, gender identity or expression or HIV status, call Lambda Legal's Help Desk at 866-542-8336 or visit www.lambdalegal.org/help.

TIP: For all documents, sign multiple copies so you have extra originals in case health care staff says a copy is insufficient. Sign in blue ink to reduce the chances that health care staff will claim it's not an original. **L**



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