

FACT SHEET

## Health Care Refusals Harm Patients: The Threat to LGBT People and Individuals Living with HIV/AIDS

August 2013

*Lesbian, gay, bisexual, and transgender (LGBT) individuals have long faced barriers to obtaining necessary health care. LGBT individuals have higher rates of uninsurance than their heterosexual counterparts, are more likely to experience chronic health problems, and often face discrimination in health care settings.<sup>1</sup> Additionally, LGBT individuals are more likely to suffer from a variety of chronic conditions including certain types of cancers, obesity, HIV/AIDS and have higher rates of mental health and substance abuse issues.<sup>2</sup> These disparities are only exacerbated when health care providers refuse to provide needed care because of personal or religious beliefs. Refusals to provide medically appropriate care can have serious emotional, physical, and financial consequences for patients.*

*Some proponents of refusals argue that patients can find an alternative provider, hospital, or clinic. However, this is often not the case—especially in emergency situations, rural areas, or long-term care facilities, where a refusal can simply leave a patient without access to necessary care. Moreover, this perspective obscures the ways refusals exacerbate stigma and discrimination already faced by LGBT people and individuals living with HIV/AIDS.*

### **LGBT people and individuals living with HIV/AIDS report being denied care altogether or treated in a discriminatory manner**

Studies have found LGBT individuals may be refused care or treated in a discriminatory manner because of their sexual orientation, gender identity, or HIV status. Approximately 8% of LGB individuals, nearly 27% of transgender and gender-nonconforming individuals, and almost 20% of HIV positive individuals report being denied health care.<sup>3</sup> LGBT people and individuals living with HIV/AIDS report that health care professionals have used harsh language towards them, refused to touch them or used excessive precaution, or blamed the individuals for their health status.<sup>4</sup> The numbers are especially high for transgender individuals, with over 20% reporting that they were subjected to harsh or abusive language by their health care professionals and were blamed for their health problems.<sup>5</sup> Some LGBT individuals also report being excessively questioned about their sexuality by their health care provider even when their sexual orientation or gender identity was completely unrelated to the reason for their visit. For example, a participant in a recent study on LGBT health reported, “I went in for a broken hand and was grilled about my sexuality for ten minutes by the emergency room doctor. It was very frustrating and embarrassing because I felt like there must be something wrong, I’m not giving a good enough answer.”<sup>6</sup> Such unnecessary questioning is discriminatory and harms patient care.

## Refusals to provide health services to LGBT people and individuals living with HIV/AIDS can have long-term consequences, resulting in injury, disability, and even death.<sup>7</sup>

- **A refusal to provide time-sensitive medical care can endanger patients' lives.** In one case, a 39-year old teacher called 911 after experiencing a sudden, severe headache, high blood pressure, and vomiting.<sup>8</sup> According to a lawsuit filed by the teacher's brother, the EMTs who responded to the call assumed the woman was a lesbian because of artwork and other items displayed in her apartment.<sup>9</sup> Then, at the hospital, the brother states that the EMTs told the nurse the call was not a serious one and that the patient "was a lesbian who probably had a spat with her lover and got drunk."<sup>10</sup> The patient was then reportedly left unattended for over an hour, in violation of hospital protocol.<sup>11</sup> By the time the staff returned to her, she had gone into a coma after having suffered a stroke and, within days, was dead.<sup>12</sup>
- **A refusal to provide medical care can make worse the underlying condition for which health services were sought.** An HIV-positive patient filed a lawsuit against his primary care physician, alleging that the doctor treated him "like an outcast" because of his HIV status and failed to provide the kind of care individuals without HIV received.<sup>13</sup> According to the patient, when he told the doctor that he was HIV-positive, the doctor stated that he did not "treat HIV" and suggested he visit—but did not refer the patient to—a specialist.<sup>14</sup> Later, when he sought care for chest pain from the same doctor, he received some treatment, but upon returning to the hospital with further discomfort, the doctor refused to authorize emergency room treatment.<sup>15</sup> Days later, police brought the patient to an emergency room, where he was admitted to the hospital with internal bleeding; he was ultimately diagnosed with an infection, pneumonia, and AIDS.<sup>16</sup>
- **A refusal to provide care can delay access to time-sensitive treatment and make medication ineffective.** A patient reported being denied medication to treat his HIV after his doctor found out he had contracted it through sex with men.<sup>17</sup> The patient stated that after he disclosed that he was gay, the hospital staff treated him with disgust, refused to allow his family to visit, and ignored his requests for his HIV medication.<sup>18</sup> When his personal doctor called the hospital to ask about the denial, the doctor was reportedly told that "[t]his is what he gets for going against God's will."<sup>19</sup> By the time the patient was able to get his medication, he states that he had missed five doses.<sup>20</sup> Because some HIV medications are highly time-sensitive, a missed or delayed dose can make the medicine less effective or even completely ineffective.
- **A refusal to provide medical care can interrupt ongoing treatment.** In one case, after nearly a year of preparatory care, doctors refused to provide fertility services for a patient because she was a lesbian.<sup>21</sup> Because fertility declines with age, a delay in care may decrease the chance that a woman will ever become pregnant. In another case, upon learning that his patient was gay, a doctor refused to provide the patient, whom he had been treating for more than a year, with the necessary prescription to treat the patient's diabetes and high blood pressure.<sup>22</sup> These refusals disrupt patients' access to care, forcing them to find an alternative, delay treatment, or face increased health costs, among other consequences.
- **A refusal to provide medical care can intensify physical and emotional distress.** According to one patient, a hospital refused to perform breast-augmentation surgery for her because she was a transgender woman.<sup>23</sup> The health system reportedly stated that it does not provide surgery related to transition.<sup>24</sup> Another transgender patient described being forced to wait two hours in the emergency room without treatment for injuries from a fall on ice after a health care provider discovered the patient's breasts under the patient's "outwardly...male" clothing.<sup>25</sup> A transgender man also reported "living with excruciating pain in [his] ovaries" because he could not find a doctor who would examine his reproductive system.<sup>26</sup> People living with HIV/AIDS, too, are vulnerable to refusals to care for painful conditions that can worsen if not treated. In one case, a surgeon refused to operate on an HIV-positive woman diagnosed with gallbladder disease after discovering the patient's HIV status.<sup>27</sup> She continued to experience painful gallstones during

the time it took to find another doctor and schedule a procedure.<sup>28</sup>

### Refusals can be especially harmful to those with no alternative health care options available.

LGBT and HIV-positive individuals in rural areas or long-term care facilities can be especially harmed by refusals.<sup>29</sup> The additional time and expense of finding an alternative provider after a refusal falls most heavily on those with low-incomes or without the job-flexibility necessary to take time off to seek health care.<sup>30</sup> LGBT elders and those living with HIV too often report being denied medical treatment at, abruptly discharged from, or denied admission to long-term care facilities.<sup>31</sup> According to a complaint filed against an assisted living facility, the facility discharged an elderly HIV-positive man when they discovered his HIV status the day after he moved in.<sup>32</sup> During the seven weeks it took his family to find and admit him to another facility, he slept on a bed in his daughter's kitchen and went without medical assistance.<sup>33</sup>

### Fear of discrimination prevents LGBT and individuals living with HIV/AIDS from seeking needed medical care

A refusal, or the fear of being refused care, can lead LGBT individuals and people living with HIV/AIDS to distrust health care workers and to feel alienated, ashamed, and vulnerable. This can lead patients to avoid the health care system entirely or to delay necessary care. Indeed, those most in need of services frequently report mistreatment by providers.<sup>34</sup> For example, a counseling student refused to provide services to a suicidal gay client because the student objected to same-sex relationships.<sup>35</sup> Nearly 30% of transgender individuals reported postponing medical care out of fear of discrimination<sup>36</sup> and over 1 in 5 LGBT individuals reported withholding information about their sexual practices from their doctor.<sup>37</sup> One study found that lesbian and bisexual women were less likely to receive preventive services for cancer because they avoided medical care.<sup>38</sup> The fear of stigma and discrimination resulting from a refusal can discourage people from disclosing personal information that can be essential to their care.

### Refusals to provide medically appropriate care violate ethical standards and anti-discrimination laws

Proponents of refusals claim they are necessary to protect "religious freedom" or the personal beliefs of health care workers. But personal or religious beliefs neither exempt health care workers from complying with anti-discrimination laws, including the anti-discrimination provisions of the federal health care law,<sup>39</sup> nor allow them to interfere with any patient's right to access medically appropriate care. Insurance issuers selling insurance in the new health insurance exchanges are prohibited from discriminating on the bases of gender identity and sexual orientation.<sup>40</sup> Hospitals that receive federal money are prohibited from restricting or denying patient visitation based on sexual orientation or gender identity.<sup>41</sup> Health provider organizations including the American Medical Association and American Counseling Association have made clear that providers and institutions that offer services to the public cannot deny those services to patients based on sexual orientation, gender identity, HIV status, or any discriminatory ground.<sup>42</sup> **Simply put, a health care worker should no more refuse to treat an individual because they are lesbian, gay, bisexual, transgender, gender non-conforming, or living with HIV/AIDS than because of their race or religion.**

- 1 Jeff Krehely, THE CENTER FOR AMERICAN PROGRESS, HOW TO CLOSE THE LGBT HEALTH DISPARITIES GAP, (Dec. 21, 2009), available at [http://www.american-progress.org/wpcontent/uploads/issues/2009/12/pdf/lgbt\\_health\\_disparities.pdf](http://www.american-progress.org/wpcontent/uploads/issues/2009/12/pdf/lgbt_health_disparities.pdf).
- 2 *Id.*
- 3 LAMBDA LEGAL, WHEN HEALTH CARE ISN'T CARING: LAMBDA LEGAL'S SURVEY OF DISCRIMINATION AGAINST LGBT PEOPLE AND PEOPLE WITH HIV (2010), available at [www.lambdalegal.org/health-care-report](http://www.lambdalegal.org/health-care-report).
- 4 *Id.*
- 5 *Id.*
- 6 Kelsey E. Rounds et. al., *Perspectives on Provider Behaviors: A Qualitative Study of Sexual and Gender Minorities Regarding Quality of Care*, 44 CONTEMP. NURSE 99 (2013).
- 7 Further discussion of some of the points addressed here can be found in Brief for Nat'l Ctr. for Lesbian Rights et. al. as Amici Curae Supporting Defendants-Appellants and Intervenors-Appellants, *Stormans, Inc. v. Selecky*, (Nos. 12-35221, 21-35223), 2012 WL 3911751(9th Cir. Sept. 7, 2012).
- 8 *Beckett v. Maine Medical Center*, No. CIV.98-93-P-C, 1999 WL 1995210 (D. Me. Jan. 25, 1999). See also Steven G. Vegh, *Lesbian Died After Medical Care Delayed, Lawsuit Alleges*, PORTLAND PRESS HERALD, Apr. 11, 1998.
- 9 Vegh, *supra* note 8.
- 10 *Beckett*, 1999 WL 1995210 \*1 n.3.
- 11 *Id.* at \*2.
- 12 Vegh, *supra* note 8.
- 13 *Woolfolk v. Duncan*, 872 F. Supp. 1381, 1387 (E.D. Pa. 1995) (internal quotations omitted).
- 14 *Id.* at 1390.
- 15 *Id.* at 1386.
- 16 *Id.*
- 17 Complaint, *Simoes v. Trinitas Regional Medical Center*, No. UNNL-1868-12 (N.J. Super. Ct. Law Div. May 23, 2012); see also Chris Fry, Doctors With Gay Bias Denied Meds, Man Says, COURTHOUSE NEWS, June 1, 2012, available at <http://www.courthousenews.com/2012/06/01/47019.htm>.
- 18 Fry, *supra* note 17.
- 19 Complaint, *Simoes*, No. UNNL-1868-12 at 5.
- 20 Fry, *supra* note 17.
- 21 *N. Coast Women's Care Med. Group, Inc. v. San Diego County Superior Court*, 189 P.3d 959 (Cal. 2008).
- 22 See Summary: *In re Shuffield*, LAMBDA LEGAL (Jan. 2007), <http://www.lambdalegal.org/in-court/cases/in-re-shuffield.html>.
- 23 Complaint, *Hastings v. Seton Med. Ctr.*, No. CGC-07-470336 (Cal. Sf. Super. Ct. Dec. 19, 2007) (case settled).
- 24 *Id.* at 4.
- 25 Jaime M. Grant, et. al., NAT'L GAY AND LESBIAN TASK FORCE & NAT'L CENTER FOR TRANSGENDER EQUALITY, INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 73 (2011), available at [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).
- 26 *Id.* at 77.
- 27 *Rose v. Cahee*, 727 F. Supp. 2d. 728 (E.D. Wis. 2010).
- 28 *Id.* at 734-35.
- 29 See SAGE & MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT ELDERS 35-36 (Mar. 2010), available at <https://www.lgbtagingcenter.org/resources/pdfs/ImprovingtheLivesofLGBTOlderAdultsLargePrint.pdf> (stating that LGBT elders may face hostile environments in nursing homes and assisted living facilities as a result staff or other patients; refusals to allow same-sex partners to live with one another; and refusals to include families of choice in medical decision-making).
- 30 NAT'L WOMEN'S LAW CTR., HEALTH CARE REFUSALS HARM PATIENTS: THE THREAT TO REPRODUCTIVE HEALTH CARE 4 (Jan. 2013), available at [http://www.nwlc.org/sites/default/files/pdfs/refusals\\_harm\\_patients\\_repro\\_factsheet\\_1-24-13.pdf](http://www.nwlc.org/sites/default/files/pdfs/refusals_harm_patients_repro_factsheet_1-24-13.pdf).
- 31 NAT'L SENIOR CITIZENS LAW CTR., ET. AL., STORIES FROM THE FIELD: LGBT OLDER ADULTS IN LONG-TERM CARE FACILITIES, 15-16 (2010), available at [http://www.lgbtlongtermcare.org/wpcontent/uploads/NSCLC\\_LGBT\\_report.pdf](http://www.lgbtlongtermcare.org/wpcontent/uploads/NSCLC_LGBT_report.pdf).
- 32 *Franke v. Parkstone*, Compl. No. 4-09-UV-341, 6 (E.D. Ark. May 12, 2009).
- 33 *Id.* at 7-8.
- 34 See INJUSTICE AT EVERY TURN, *supra* note 25 at 74.
- 35 *Ward v. Wilbanks*, 09-CV-11237, 2010 WL 3026428 (E.D. Mich. July 26, 2010) *rev'd and remanded sub nom. Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012), *dismissed without prej. by Ward v. Wilbanks*, 09-CV-11237 (E.D. Mich. Dec. 12, 2012) (case settled).
- 36 JAIME M. GRANT, ET. AL, NATIONAL CENTER FOR TRANSGENDER EQUALITY AND THE NATIONAL GAY AND LESBIAN TASK FORCE, NATIONAL TRANSGENDER DISCRIMINATION SURVEY REPORT ON HEALTH AND HEALTH CARE, October 2010, available at [http://www.thetaskforce.org/downloads/resources\\_and\\_tools/ntds\\_report\\_on\\_health.pdf](http://www.thetaskforce.org/downloads/resources_and_tools/ntds_report_on_health.pdf)
- 37 Christina S. Moyer, LGBT patients: Reluctant and Underserved, AMERICAN MEDICAL NEWS, Sept. 5, 2011, available at <http://www.ama-assn.org/amed-news/2011/09/05/prsa0905.htm>.
- 38 J.P. Brown and J.K. Tracy, *Lesbians and Cancer: An Overlooked Health Disparity*, 19 CANCER CAUSES AND CONTROL: CCC, 1009 (2003).
- 39 Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (2012); Letter from Leon Rodriguez, Dir. of Office for Civil Rights, Dep't of Health & Human Servs. to Maya Rupert, Fed. Pol'y Dir., Nat'l Ctr. for Lesbian Rights (Jul. 12, 2012) (OCR Transaction No. 12-000800) (prohibiting discrimination based on race, color, national origin, sex, gender identity, sex stereotypes, age, and disability in programs and activities that receive federal financial assistance, are created under Title I of the Affordable Care Act, or are administered by an executive agency). Several states prohibit sexual orientation and gender identity discrimination in public accommodations, such as hospitals. See, e.g., CAL. CIV. CODE § 51 (2012). Some providers or facilities may also be covered by laws that prohibit discrimination in housing or establish patient rights. See, e.g., FLA. STAT. § 400.6095 (2012) (requiring that a hospice program make its services available to all terminally ill patients and their families without regard to sexual orientation, among other characteristics).
- 40 45 C.F.R. §§ 155.120(c)(2), 156.200(e) (2012).
- 41 42 C.F.R. §§ 483.13(h)(2), 485.635(f)(3) (2012) (requiring that all visitors, regardless of whether they are legally or biologically related to the patient, have equal visitation privileges).
- 42 See, e.g., American Medical Association, *AMA Code of Ethics*, "Opinion 9.12 - Patient-Physician Relationship: Respect for Law and Human Rights" (2008) available at <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion912.page>; American Counseling Association, *Code of Ethics*, "C.5. Nondiscrimination" (2005) available at <http://www.counseling.org/Resources/CodeOfEthics/TP/Home/CT2.aspx>.